

## The complaint

Mr B complains that Santander Plc UK didn't do enough to help him when he told it about a dispute he had with a merchant, over services paid for using his Santander credit card.

## What happened

The complaint originates from some extremely sad circumstances involving Mr B's late father. Mr B's father had become unwell whilst visiting the UK and was admitted to a UK hospital. Mr B contracted with a third-party supplier I'll call "E" on 11 April 2023, to provide medical transport for his father. The transport was from the UK to Rome, Italy, so Mr B could return home. The mode of transport which was agreed was an "Air Ambulance" and my understanding is E would arrange the transfer in full, from leaving the hospital in the UK until arrival at the receiving hospital in Rome.

The total cost of the service was £21,950 and Mr B paid £2,500 using his Santander credit card and the remaining £19,450 was paid via a bank transfer. The invoice details a "provisional date" of 13 April 2023 for the transfer. The transfer didn't take place and on 17 April 2023 Mr B's father's condition worsened and sadly he passed away on 19 April 2023.

Mr B contacted E to gain a refund for the money paid, but E refused to pay it. E argued that it had incurred considerable costs in arranging the transportation and staffing and as per its terms and conditions, Mr B was not entitled to a refund.

As Mr B had part paid using his Santander credit card, he asked Santander to recover the funds paid via a "like claim" under s.75 of the Consumer Credit Act 1974 ("CCA"). Santander considered the claim but declined it. Santander concluded that there wasn't sufficient evidence of a breach of contract.

To summarise it said:

- E had argued that the delay was caused by lack of confirmation from the hospital in Rome regarding the admission and provision of an available bed for Mr B's father. And the terms of the contract, which Mr B agreed to, set out that E would not be liable for events which is outside it's control.
- Once the hospital in Rome had provided the required confirmation on 17 April 2023, E was set to provide the service. However unfortunately Mr B's condition worsened and E needed to reassess the situation (as per clause 3.6.1). Santander felt it was reasonable for E to reassess the situation before proceeding with the transport and in line with the contractual terms. Santander also highlighted that under clause 5.3(5) the contract was nonrefundable.
- Upon reassessment of the claim, Santander was unable to substantiate the costs incurred by E with E. So under the terms of the contract (which limited payment to a maximum of 15% of the total cost of the contract) Santander offered to pay Mr B £3,292.50.

Mr B's arguments in response included:

- The UK hospital had provided all the necessary information by 13 April 2023 (Mr B has provided an email between himself and the UK hospital stating this). Mr B argues that E did not contact the hospital in Rome until 17 April 2023, at which point it responded promptly and on the same day. Mr B has provided a letter from the receiving hospital in Rome which he argues states E didn't contact it until 17 April 2023. So, Mr B argues E unfairly delayed matters with no intention of fulfilling the contract and overall, the service was not delivered with reasonable care and skill.
- Mr B alleges that it wasn't until after his father was admitted to intensive care on 17 April 2023 that E contacted the receiving hospital in an attempt to "cover their failures".
- E said the delay was caused by the hospital in Rome's failure to confirm an available bed, but as the correspondence from the hospital in Rome states, Mr B's father could have been taken to an emergency department. Mr B argues that therefore, E didn't need to delay the transport.

One of our investigators considered the complaint but didn't uphold it as they didn't think there had been a breach of contract. Unhappy with the investigator's opinion, Mr B asked for an ombudsman to consider the complaint.

I initially considered the complaint and issued a provisional decision setting out why I didn't intend to uphold the complaint. This was in part because I thought there was insufficient evidence to demonstrate that E had failed to exercise reasonable care and skill. So I didn't think Santander had handled the claim unfairly. I gave both parties the opportunity to provide anything further.

In response Mr B provided a letter from the hospital in Rome stating that there was no contact made by E prior to 17 April 2023.

I put this evidence to Santander. I explained that based on this I thought there was sufficient evidence of a breach on the part of E for failure to provide the service agreed, with reasonable care and skill. And I also thought there was a failure to fulfil the contract within a reasonable period of time. Santander contacted E who provided earlier emails between itself and the hospital in Rome. E also provided a copy of its contact notes which showed telephone notes and other action it took regarding the transfer. E argued that these documents "*demonstrate that [E] has consistently acted proactively, undertaking all necessary communications and securing the requisite documentation from the hospital.*"

I considered all the evidence I had been provided with throughout the complaint, including the most recent evidence from both parties. I then issued another provisional decision where I was minded to uphold this complaint.

In my provisional decision (which forms part of this decision) I said:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I intend to uphold this complaint.*

*I've read everything that the parties have said, but I'll concentrate my comments on what I think is relevant. If I don't comment on a specific point it's not because I've failed to consider it, but because I don't think I need to comment in order to reach a fair and reasonable outcome. And our rules allow me to do this. This reflects the nature of our service as a free and informal alternative to the courts. It is for these reasons that my summary of the points in*

*dispute between Mr B and Santander has focused on the issue which I think has resulted in a breach of contract.*

*As I explained previously, when something goes wrong with goods or services and the payment was made, in part or whole, with certain types of credit, it might be possible to make a s.75 CCA claim. This section of the CCA says that in certain circumstances the borrower under the credit agreement can make a like claim against the credit provider, as they can against the supplier, if there's been a breach of contract or misrepresentation.*

*As detailed above, Mr B paid in part for the transportation using his Santander credit card. Having considered the statutory requirements for making a s.75 CCA claim, I'm satisfied that s.75 CCA applies to the contract in dispute and that Mr B is able to make a s.75 CCA claim.*

*Breach of contract – implied terms*

*The Consumer Rights Act 2015 ("CRA") implies certain terms into a contract involving a consumer. I think that most relevant to this case is s.49 CRA which implies the term that a service should be performed with reasonable care and skill. I think it's important to explain that there is no set definition of what this means. However, I'd expect the service provider to work to the same standard as a reasonably competent person within that trade or profession. In addition, s.52 CRA also implies the term that the service will be performed within a reasonable time period in circumstances where this isn't specified. Whilst E gave a provisional date of 13 April, it wasn't able to meet this and no further date was confirmed, so I think this implied term is also relevant.*

*E provides medical transportation typically in situations (such as this case) where someone falls ill abroad and needs transporting home quickly. Having reviewed E's website, I can see that it emphasises speed and the accessible nature of its service at any time of the day or week. Furthermore, having reviewed text message correspondence between Mr B and E I think it's fair to say that Mr B also made clear the pressing need to transport his father quickly and regularly asked for progress updates. So I think as part of exercising reasonable care and skill, I'd expect a reasonably competent provider of this service to endeavour to provide this service as quickly as possible. And I think a reasonable time period was likely to also require quick delivery of this service.*

*As explained above, Mr B has provided a letter from the receiving hospital which states there was no contact with E prior to 17 April 2023. Mr B has also provided evidence to show that the medical records for his late father were sent to E by the UK hospital on 13 April 2023. So Mr B has argued throughout that this delay represents a failure by E to exercise reasonable care and skill.*

*As also explained above, Santander has provided evidence of the actions E took between 12 April 2023 to 17 April 2023 which E has provided to it. From this I can see:*

- 12 April, 12:36 CET (Central European Time) call to the receiving hospital in Rome. The note says E spoke with a named contact, discussed Mr B's late father's condition and was provided with an email contact address ("email address one"). The note also says the email has been sent.*
- 12 April, 2:35 PM - Email from E to the receiving hospital using email address one. This gives a medical summary for Mr B's late father, E states that it is reaching out "to assist with the arrangements for the patient's reception" and states "I am currently in the process of collecting more medical information from the treating hospital".*
- 13 April 10:49 CET note on the system to say the medical reports have been received by E.*
- 13 April 11:42 - Email from E to the receiving hospital using email address one, enclosing the medical reports.*

- 13 April 17:30 CET – call to receiving hospital. E was asked to send information via email. It was given a different email address (which I'll refer to as "email address two"). It says "Will revise the report and get back by replying to our email."
- 14 April 11:55 AM - Email from receiving hospital using email address one to E which queries whether Mr B's late father could travel independently or does he need organised transport. It also asks how his diagnosis was made.
- 14 April 11:27 - Email from E to the receiving hospital using email address one in response to above. It confirmed how the diagnosis was made. It also encloses "the latest information" from the UK hospital and asks the receiving hospital to "let us know if you have any further questions on this".
- 14 April 21:21 CET note on E's system saying that Mr B had contacted and provided a third email address to use to contact the hospital ("email address three").
- 15 and 16 April notes on system to show E was gaining updates on Mr B's condition from the UK hospital.
- 17 April case note details several calls to the receiving hospital:
  - In the first call E spoke with a nurse and was given a specific email address for the doctor who was on call ("email address four"). E notes it was told this doctor will review the email and revert back.
  - E called back after one hour and was told the doctor was busy and it could be the afternoon before they can review the email.
  - E called the chief of haematology (this is the doctor who's email address is email address four). It says E spoke to this doctor's secretary to chase.
  - The overall note detailing all of the above contact on 17 April was logged at 14:54 CET.
- 17 April 16:23 CET case note stating E now has confirmation that a bed is arranged and it states the name of the receiving doctor (who was the chief of haematology, detailed above).
- E has also provided a copy of the email exchange between E and several named parties at the receiving hospital which took place on 17 April. This is the same email chain which Mr B has previously provided.

*For context I think it would be helpful to highlight that some of the correspondence above is in Central European Time and it seems likely (although the information I have isn't definitive), that at least some of the emails are in Greenwich Mean Time. This would explain why the response to the email on 14 April appears to have been sent before the request.*

*I have carefully considered all the information I've been provided with and I'm satisfied E did make contact with the receiving hospital in Rome prior to 17 April. Whilst I don't doubt that the letter from the receiving hospital in Rome is likely to have been a genuine account of its records, it's clear these records haven't captured the earlier contact made by E. And this is entirely plausible given the different parties and contact email addresses which were used.*

*However, I still think the contact records I have available demonstrate that E hasn't exercised reasonable care and skill in line with a reasonably competent provider of this service or provided the service within a reasonable time period.*

*Turning to the email exchange I have between E and the receiving hospital which ends on 14 April 2023, it's clear from this that E has provided information about Mr B's late father's medical condition. It initially explained it was reaching out to "hopefully assist with arrangements for the patient's reception". E goes on to answer a query about the diagnosis, confirm it will be providing transport and provide further patient information from the UK hospital. The exchange ends with E asking the receiving hospital to let it know of it has further*

questions. On the facts there is no further contact from the receiving hospital in response to this.

However, I'm not clear at this stage what further steps/ confirmation E was expecting the receiving hospital to provide after this time. It's clear from the calls and emails on 17 April that E wanted a receiving named doctor (as it notes this in its records on 17 April) and the email exchange on 17 April shows it wanted confirmation of an available bed for Mr B's late father. In addition, confirmation of the bed is what E explained to Mr B was still outstanding and causing the delay in commencing the transportation. However, looking at the contact which has taken place, I can't see that either of these things were specifically requested prior to 17 April. Whilst E had initially provided limited context of why it was contacting (i.e. assistance with the "arrangements for the patient's reception") the exchange was left for the receiving hospital to raise any further queries it needed. So, on the facts I think E's lack of clarity in this regard is what caused a failure to secure the information it needed.

Furthermore, whilst it's clear E continued to get updates on Mr B's late father's condition on 15 and 16 April from the UK hospital, I can't see any further attempts to contact the receiving hospital was made until 17 April. So, after failing to make any clear requests, I can't see E made any efforts to chase the receiving hospital for what it thought was outstanding. And I note that on 13 April 17:30 CET the receiving hospital had provided E with email address two. In addition, on 14 April 21:21 CET Mr B also provided another email address – email address three. I've seen no evidence to suggest E did anything to chase the receiving hospital in the intervening time or use either of the alternative email addresses given.

As I've explained above it's clear that E was offering a service where speed was crucial. I think it's also fair to say that from its website E held itself out as providing a 24 hour, 7 days a week service in emergency circumstances. And I think the cost of the service provided also reflects this. The evidence I have suggests E failed to clearly request the information required from the receiving hospital and this led to a significant delay (in the context of the service being offered.) Additionally, I can't see E made any attempts to chase the information it required until 17 April or use either of the alternative email addresses provided.

These factors lead me to conclude that E fell below the standards of a reasonable provider of this service and so failed to act with reasonable care and skill and failed to perform the contract within a reasonable time period. I therefore feel there is sufficient evidence to conclude that E breached the contract with Mr B. And I think it was these breaches which led to a situation where no service could be provided and Mr B received no benefit. So I therefore conclude that I don't think Santander has handled the claim fairly.

I'm also mindful that E hasn't been able to evidence the costs or expenses which it says were incurred (such as medical staff or costs associated with securing an aircraft). And whilst it strongly argued it did exercise reasonable care and skill, I don't agree the evidence supports this. So, with these factors in mind, I don't think it's fair that Santander can rely on the contract terms to limit the refund amount which should be given (particularly given how much they heavily favour E).

I have also considered whether the contract has been frustrated. However, I think it's more likely to have been breached. Frustration typically will not occur when the event which frustrates the contract is easily foreseeable (and was foreseen) by the parties. Given the facts, I think it was in this case (and this reiterates why speed was such a concern to Mr B).

I asked both parties to provide me with anything further before I reached a final decision on this matter. In response, Mr B accepted my provisional decision. However, he did ask whether I considered the additional cost incurred by Mr B of transferring Mr B's father home after he had passed away. Mr B said the additional cost of this was £3,775.

Santander responded and acknowledged my provisional decision. Santander confirmed it had nothing further to add. It said it had already provided evidence to show E made contract with the receiving hospital in Rome prior to what was previously alleged. Santander said it

wasn't able to comment on what was required by E prior to the transfer and upon review it still doesn't feel that any delay was caused by E.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so I'm upholding this complaint for the same reasons detailed in my provisional decision, which forms part of this decision.

To summarise, it's not in dispute that Mr B's claim met the requirements of a s.75 CCA claim. It also isn't in dispute that the CRA implied terms into the contract which required E to perform the contract with reasonable care and skill and within a reasonable time period.

As explained in my provisional decision, I think that a reasonably competent provider of this service would have endeavoured to perform this quickly, given the urgency of the matter and the service it holds itself out as providing on its website. And with this in mind, a reasonable time period would also have required the service to have been performed quickly.

I also feel that E has breached these terms, as I think E caused an unreasonable delay which resulted a breach of contract. In my provisional decision I set out the details of the relevant contact E had with both the exiting hospital in the UK and the receiving hospital in Rome during the relevant period of 12 to 17 April 2023.

My key findings (set out in full in my provisional decision) are that:

- E did contact the receiving hospital in Rome and provided Mr B's father's medical information prior to 17 April 2023.
- However, I think the evidence still demonstrates a breach of both implied terms. In the email exchange leading up to 14 April 2023, there was a lack of clarity from E to the receiving hospital in Rome about what further information was needed. E ended this exchange by asking the receiving hospital to raise any further queries it had. However, E hadn't made clear what further information it required from the receiving hospital.
- The evidence suggests that E required confirmation of a bed and E has argued that this was what caused the delay. In addition, the records E has provided suggest E also wanted the name of a receiving doctor. However, I can't see that either of these things were specifically requested until 17 April 2023, causing an unreasonable delay.
- I also can't see any further attempts by E to chase the receiving hospital until 17 April 2023. So, after failing to make any clear requests, I can't see E made any efforts to chase the receiving hospital for what it thought was outstanding on 15 and 16 April 2023. This included failing to use either of the two alternative email addresses it was provided with.

As I've explained above and in my provisional decision, it's clear that E was offering a service where speed was crucial. And I think the cost of the service provided also reflects this. The evidence I have suggests E failed to clearly request the information required from the receiving hospital and this led to a significant delay (in the context of the service being offered.)

So I'm still persuaded that this amounts to a breach of contract by E. I think E fell below the standards of a reasonable provider of this service and so failed to act with reasonable care and skill and failed to perform the contract within a reasonable time period.

As set out in my provisional decision, I'm also mindful that E hasn't been able to evidence the costs or expenses which it says were incurred (such as medical staff or costs associated with securing an aircraft). And whilst it strongly argued it did exercise reasonable care and skill, I don't agree the evidence supports this. So, with these factors in mind, I don't think it's fair that Santander can rely on the contract terms to limit the refund amount which should be given (particularly given how much they heavily favour E).

I have also considered whether the contract has been frustrated. However, I think it's more likely to have been breached. Frustration typically will not occur when the event which frustrates the contract is easily foreseeable (and was foreseen) by the parties. Given the facts, I think it was in this case (and this reiterates why speed was such a concern to Mr B).

I've noted that Santander has said it wouldn't be able to comment on the information E required before the transfer took place. However, as explained above, E has said it required confirmation of a bed and this was what had caused the delay, so at the very least I think it's clear that this was what was required. And I think the evidence suggests E also wanted confirmation of a named doctor.

In response to my provisional decision Santander has also said it does not feel the delay was caused by E. However, it hasn't explained why or referenced any evidence to support this. So whilst I have considered Santander's comments, I'm still persuaded that the evidence shows E breached the contract by failing to perform the contract with reasonable care and skill and within a reasonable time period. And I think it was these breaches which led to a situation where no service could be provided and Mr B received no benefit. So, I'm still concluding that I don't think Santander has handled the claim fairly.

Mr B has asked whether Santander should also pay the additional costs he incurred to transport his father home after he had passed away. I appreciate why Mr B has asked for this, but unfortunately, I don't think this can form part of the compensation paid under this claim. I think Mr B would have incurred costs to transport his father in any event. And because of this and given Mr B is being refunded the full cost of the contract in dispute, I don't think he should also be paid the additional costs for transporting his father.

### **Putting things right**

I think Santander should meet the full claim of £21,950 and pay 8% simple interest\* from the date it declined the claim to the date of payment. If Santander has already paid Mr B the lower amount offered it can deduct this from the amount payable to Mr B.

\*HM Revenue & Customs requires Santander to take off tax from this interest. Santander must give Mr B a certificate showing how much tax it's taken off if he asks for one.

### **My final decision**

For the reasons, explained I uphold this complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 December 2025.

Claire Lisle  
**Ombudsman**