

The complaint

Miss W says Barclays Bank UK PLC ('Barclays') has unfairly declined her claim under section 75 of the Consumer Credit Act 1974 ('CCA').

What happened

- In January 2018, Miss W paid £4,005 to a dental practice I'll call A. She told us she purchased 'clear aligner' treatment and a dental implant. She used her Barclays credit card account to make the payment.
- Miss W started her treatment. However, she says that before it was completed, A went into administration. Miss W says the type of aligner treatment she purchased allowed her to repeat or continue the treatment until her teeth were straight. She says her teeth aren't fully straight – and they've started moving since A went into administration and her treatment stopped. And although A implanted a metal post, it didn't attach the artificial tooth (the 'crown').
- When A went into administration, Miss W contacted Barclays.
- Barclays wrote to Miss W on 12 March 2021 to say it couldn't submit a 'chargeback' claim or consider a claim under section 75 of the CCA as Miss W was unable to provide an invoice or dental plan which showed exactly what she'd paid for and what she'd received.
- At this point, Miss W referred her complaint to our service.
- She explained to our investigator – as she'd explained to Barclays – that she was unable to provide an invoice or dental plan because A had ceased trading.
- Our investigator explained to Miss W that, in the absence of a contract, invoice or any other paperwork which shows what she paid for, she couldn't safely say there had been a breach of contract.
- Miss W was subsequently able to obtain her records from the company that makes the aligners – which I'll call B.
- However, our investigator didn't think this was enough to show that she hadn't finished her aligner treatment, or that the dental implant was part of the contract. For the first time, Miss W said the contract also included teeth whitening – and repeated something she'd said earlier about A offering to fix some of her fillings for free. Our investigator explained that neither was mentioned in any of the paperwork that had been provided.
- Miss W has sent us a copy of a letter from a dentist – who I'll call D1 – which discusses the appropriateness and likely success of further treatment. This letter is dated 8 July 2021. Miss W has also sent us a quote from another dentist – who I'll call D2 – which shows that the cost of further treatment and a crown implant is £3,660. This quote is dated 3 November 2021.
- Our investigator spoke to someone from D2's office, who:
 - explained that '[B] full' – which is the treatment type Miss W purchased according to the records provided by B – allows the patient to continue treatment, or return for treatment, until the 'treatment expiration date';
 - thinks A would have had to continue treating Miss W if it hadn't gone into administration, as B's records shows a 'treatment expiration date' of

- 19 March 2023;
- explained that Miss W would, however, have had to pay 'lab fees, etc' herself;
- thinks A would have entered into an agreement with B, and Miss W would need a referral from A, otherwise any other dentist will consider it a new treatment plan and Miss W would incur additional costs; and,
- recommended Miss W get the terms and conditions of '[B] full' from B.
- Miss W asked B to provide a copy of the relevant terms and conditions. Unfortunately, it didn't.

I issued a provisional decision on 13 July 2022, which included the following provisional findings:

Section 75 of the CCA protects consumers who buy goods and services on credit. It says, in certain circumstances, that the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier.

Here, there's no dispute about the applicability of section 75 – I'm satisfied that Barclays is legally answerable for any breach of contract by A. The question is: was there a breach of contract by A?

The starting point for such an enquiry is usually the point of sale paperwork. Unless I can say what someone paid for, I can't compare it to what they received, and therefore determine whether there's been a breach of contract. Here, unfortunately but understandably, Miss W hasn't been able to provide any point of sale documents. And she hasn't been able to provide me with anything that shows she purchased a dental implant, teeth whitening or any fillings from A. I'm therefore unable to say that A was paid to provide these services and hasn't – or that Barclays is liable as a result.

Miss W has, however, been able to provide some information about her aligner treatment – and I've carefully considered the evidence she's provided.

First, Miss W's records from B show she purchased '[B] full' on 23 February 2018, and her 'treatment expiration date' ('TED') is 19 March 2023. It's not clear if this is the original expiration date or an adjusted date – the two-page summary of Miss W's treatment that B has provided appears to be a screenshot of its system, and 'Adjust TED' is one of a number of actions listed.

In any event, Miss W told us that '[B] full' meant she could continue or repeat her treatment until her teeth were straight – and our investigator was told something similar by someone from D2's office.

On balance, and in the absence of any evidence to the contrary, I think this broadly reflects the treatment plan Miss W purchased from A. However, without the applicable terms and conditions, I don't know what restrictions applied, if any, and what was included. For example, in her letter dated 8 July 2021, D1 wrote:

'[Miss W] was upset about having to pay for her scans, photos and DPT as she thought [B] pays for this. I advised [Miss W] that [B] will only pay for the aligner trays all other work is chargeable and whoever she sees for [B brand aligner treatment] will charge her for surgery time, this will be expensive as her work is complicated.

As [Miss W] feels she has not been informed of the charge I have refunded her money...'

The person at D2's office also said that Miss W would still have to pay 'lab fees, etc.' So it seems the plan only covers some of the costs involved, not all.

The quote Miss W provided from D2 includes teeth whitening (£395) and a crown implant (£950) – which obviously aren't part of the aligner treatment plan. And I think it's unlikely a hygiene treatment (£115) was included either. This reduces the quote for orthodontic treatment to £2,200, which includes: 'orthodontic retention' (£200), 'initial [B] scan' (£500), 'initial [B] fit' (£1,000), 'fixed upper appliance' (£250), and 'fixed lower appliance' (£250). It's not clear to me which of these, if any or part thereof, would be covered by the plan Miss W purchased.

There are two further complications.

First, as Miss W now has her records from B, it's not clear to me that another dentist would necessarily charge her for those costs which are covered by the plan. While the person at D2 said they probably would, in the absence of a referral from A, D1's letter indicates that the cost will be met by B. (Miss W obtained her records from B after her consultations with D1 and D2.)

Second, D1's letter included the following observations:

'I warned [Miss W] that her treatment is difficult. She has had four refinements of [B brand aligner treatment]...I advised [Miss W], I could not make space with [B brand aligner treatment] for the crown replacement...The only way would be with fixed appliances.

We then discussed the upper arch I informed [Miss W] that this could be done with [B brand aligner treatment], but it will take a long time to treat, to close the space and avoid a centreline shift.

After discussion [Miss W] has declined fixed appliance treatment and is going to seek a second opinion regarding [B brand aligner treatment].'

I appreciate that Miss W subsequently got a second opinion from D2 – but the quote I've seen from D2 simply says, 'As a result of your examination we advise the following treatment...'. It doesn't comment on the appropriateness or likely success of such treatment. And given D1's comments, I think there's some doubt about both.

I note, too, that D1's patient notes for Miss W say she'd 'nearly finished [B brand aligner] treatment with another dentist and the company went bust'.

In summary, based on the evidence I've seen so far:

- I think Miss W's aligner treatment was incomplete when A went into administration – although it was 'nearly finished' (in the words of D1).*
- On balance, I think the plan she purchased from A allowed her to repeat or continue her treatment until her 'treatment expiration date' – which, in this case, is 19 March 2023.*
- A's failure to complete Miss W's treatment was a breach of contract, for which Barclays is legally answerable.*

However:

- *I don't think the plan Miss W purchased from A covered all costs – and on the evidence I've seen so far, I can't say which costs were covered;*
- *I don't know if B will meet those costs in any event; and,*
- *I can't say if further clear aligner treatment is clinically possible and/or appropriate.*

For these reasons, I don't think it would be fair to tell Barclays to refund the full amount Miss W paid A – especially as her treatment was 'nearly finished'. Nor do I think it would be fair to tell it to pay Miss W the full cost of the orthodontic treatment for which D2 has quoted – as I've explained, I simply don't know which elements should have been performed by A as part of the contract, or which costs will be, or would have been, covered by B. On the other hand, I think it would be unfair not to make an award at all – after all, there's been a breach of contract and I think, on balance, Miss W has lost out as result, even if it's not been possible for me to say to what extent.

With such limited information, I must, necessarily, paint with a broad brush. In the circumstances, I think a 20 percent reduction in the contract price is fair, practical and proportionate.

If Miss W or Barclays think this approach is unfair, they can explain why in reply to this provisional decision and tell me what they think I should do instead.

Finally, when Barclays wrote to Miss W on 12 March 2021, it explained why it couldn't submit a 'chargeback' claim or consider a claim under section 75 of the CCA. Above, I've considered a claim under section 75 of the CCA. For completeness, I'll briefly explain why I don't think it was unfair for Barclays not to attempt a chargeback claim.

A 'chargeback' is a way for a credit card provider to reclaim money from the retailer's bank when a consumer doesn't get the goods or services she's paid for. It isn't a legal right and there's no guarantee the card provider will be able to recover the money this way. The process is subject to the rules of the scheme and strict criteria apply.

The card provider isn't required to raise a chargeback claim just because the consumer asks it to – although I think it's good practice for one to be attempted when there's a reasonable prospect of success.

As Miss W was unable to provide any paperwork which showed what she'd paid for when she first contacted Barclays, I don't think a chargeback claim would have been successful – and I don't think it was unfair for Barclays not to attempt one in the circumstances.

In reply to my provisional decision, Miss W asked if I'd seen the quote from D2. She says she doesn't think £801 is fair as she'll have to pay D2 an additional £2,859 to continue her treatment, which is far too much as she's already paid £4,005.

And she says that as it's been so long since A went into administration and her treatment stopped, her teeth have moved and her back teeth now touch the metal post. Miss W says this is why it's going to be very hard to correct the damage done. She says this wouldn't have happened if she'd got her money back as soon as she made her claim.

Barclays also disagrees with my provisional decision.

It said it declined Miss W's claim under section 75 of the CCA because she didn't provide anything to show what she paid for or what she'd received. As Miss W had since provided our service with some evidence, it said it thought it was only fair for it to have the chance to review the evidence and reconsider her claim.

I agreed and sent Barclays all the evidence Miss W had provided.

After an unexplained delay, Barclays wrote to me to say:

- it had reviewed the evidence provided by Miss W – and it couldn't understand some of it;
- the documents show Miss W received treatment and was given advice and guidance during that treatment;
- it had searched online to find evidence that A has gone into administration but says it can't find anything – and has therefore asked for evidence; and,
- it says it requires an independent assessment that shows what Miss W was due to receive, what she received and what it would cost to rectify any errors.

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.

I'll address Miss W's comments first.

First, I'm sorry if I caused any confusion by referring to the dentist who supplied the quote Miss W mentions as 'D2' in my provisional decision. Unfortunately, I can't refer to them by name. However, I hope Miss W can now see that I carefully considered this quote. And in my provisional decision, I explained why I didn't think it would be fair to tell Barclays to pay the amount quoted in full. My reasons remain the same.

Second, while I appreciate Miss W's frustration and understand the point she makes, I think it was fair for Barclays to decline her claim based on the evidence she provided at the time. And it looks like it was only after our investigator rejected her complaint that Miss W asked for and got the limited information we have from B, which is a key piece of evidence in this case. We received this in January 2022. In the circumstances, I don't think Barclays is responsible for the delay or that it's liable for any extra Miss W will have to pay as a result of the time that's past since her treatment stopped.

I'm surprised and disappointed by Barclays' review of the evidence Miss W has provided. As I made clear in my provisional decision – which Barclays had the benefit of reading alongside the evidence – I think it's possible to work out elements of the contract. Miss W has also provided evidence from two dentists. With the available evidence, it's unclear to me what more Barclays could hope to get from an 'independent assessment'. In my provisional decision, I explained what I thought the evidence showed, why I thought there was a breach of contract and what I thought was a fair remedy in the circumstances. Barclays hasn't commented on any of this. My decision and the reasons for it therefore remain the same.

Finally, Barclays says it can't find any evidence online that A has gone into administration. Our service has received several complaints because A has ceased trading – so I'm satisfied it has. In any event, if Barclays types A's trading name into a well-known search engine, followed by the word 'liquidation', the first result is a news item on the British Dental Association ('BDA') website that makes this clear.

My final decision

For the reasons I've given, I uphold this complaint and direct Barclays Bank UK PLC to pay Miss W £801.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept

or reject my decision before 24 October 2022.

Christopher Reeves
Ombudsman