

The complaint

Mr S is unhappy Nationwide Building Society declined a claim under Section 75 of the Consumer Credit Act 1974 ('S75') in relation to a cosmetic treatment.

What happened

Around January 2020 Mr S agreed to undergo hair transplant surgery with a company I'll refer to as 'P'. Mr S paid P £1,700, followed later by £800 in December 2020. Both payments were made with his Nationwide credit card.

Following the procedure, Mr S says his scalp felt numb. Mr S said P advised him to have some additional 'plasma treatment'. Mr S made two payments of £750 each, in December 2020 and March 2021 for these treatments, again on his Nationwide credit card.

Unfortunately, Mr S says he continued to suffer from numbness. So he contacted Nationwide and asked for a refund of all payments he'd made to P under S75.

At the beginning of May 2023, Nationwide responded to the S75 claim. It said, in summary, that Mr S had successful results from the treatment. But it said the issues he experienced following on from it were not covered under S75 and Nationwide said it couldn't consider compensation.

Mr S was unhappy with this and raised a complaint. Nationwide issued a final response at the end of May 2023. This said, in summary, that it didn't think it did anything wrong when it declined Mr S's claim under S75. It said this was because Mr S had received the service he'd paid for. Nationwide did however acknowledge some communication issues and arranged for £125 to be paid to Mr S.

On 15 June 2023 Nationwide issued a further final response. In this, it explained it didn't include a leaflet with its previous letter and said it should've clarified it looked at a claim for the total of £4,000. Nationwide said it was going to pay a further £25 to reflect this.

Mr S then referred the complaint to our service. He said he was never told numbness could be a side effect of the treatment and he was still having ongoing issues.

Our investigator issued an opinion and didn't uphold the complaint. She said, in summary, that she hadn't seen enough to make her think P had acted without reasonable care and skill. So, she didn't think Nationwide did anything wrong when it declined the S75 claim.

Nationwide agreed with the findings, but Mr S didn't. So, the complaint has been passed to me to decide.

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 don't think this complaint should be upheld. I'll explain why.

Mr S complains about a S75 claim being declined. So, S75 is relevant to this complaint. This explains, under certain circumstances, that the borrower under a credit agreement has an equal right to claim against the credit provider, Nationwide here, if there's either a breach of contract or misrepresentation by the supplier of goods or services.

Firstly, I need to consider if Mr S had a valid claim under S75.

In order for there to be a valid claim, there needed to be a debtor-creditor-supplier ('DCS') agreement in place. Here, I can see a booking form with details of the procedure and some terms and conditions between Mr S and P that Mr S signed. Nationwide have confirmed the credit card transactions were in Mr S's name to P and I've seen copies of receipts. And Mr S has confirmed P carried out the surgery on him. So, I'm satisfied a valid DCS agreement exists here.

I've then considered the financial limits that apply. Mr S needed to have purchased a single item with a cash price of over £100 but no more than £30,000.

I can see the original treatment Mr S paid for had a cash price of £2,500 and the follow up treatments were £750 each. These transactions were all individually, and collectively, in the limits above. So, it follows this that I'm satisfied the financial limits have been met for a valid claim.

So, I'm satisfied Mr S had a valid claim under S75. What I now need to consider is whether a breach of contract or misrepresentation took place.

It's important to note here that the Consumer Rights Act 2015 ('CRA') implied a term into the contract between Mr S and P that the surgery would be carried out with 'reasonable care and skill'. If this wasn't the case, I would consider this to have been a breach of contract.

There isn't a definition of what 'reasonable skill and care' means here – so I need to consider the evidence and what would've been good industry practice.

Mr S hasn't been able to provide a copy of the full contract with terms and conditions from the time, for either the initial procedure nor the follow ups. But I've seen a copy of a contract from P that was in use around the time we were investigating Mr S's complaint. I accept this may not be exactly the same as seen or signed by Mr S. But, I think on balance it's likely to be similar - and in the absence of other information I think it's worth commenting on.

On the 'Consent Form' this states:

"I have decided to proceed with the hair transplant surgery (FUE) with full knowledge of the intended benefits and risks involved"

Under "Key Points Discussed" "Risks" it states:

"Post FUE nerve damage which might lead to persistent or permanent nerve damage related symptoms including, but not limited to, numbness....."

I've carefully considered what Mr S said here. But, on balance, I think it's most likely he was made aware there was a risk of numbness from the procedure.

When then considering if the surgery was carried out with reasonable skill and care, it's very important to note in this particular case that I need to consider the procedure itself and not

the end result. There are risks with this sort of surgery, as I think was likely pointed out to Mr S. And just because the end result wasn't what Mr S expected, this doesn't automatically mean P did anything 'wrong'. The same logic applies to the follow up treatments.

I also need to point out that this case involves complex medical procedures, about which I am not an expert. Working out what likely happened can be very difficult, and so I need to rely on the evidence available.

That being said, there is a lack of evidence on this complaint. I have no reason to doubt what Mr S says about the results of the procedure and what he's experiencing. But, I have no information or evidence, such as medical reports, expert testimony or details from any medical professionals who have seen Mr S. So, I have nothing to suggest why the symptoms Mr S says he has have appeared, nor anything to suggest that P acted without reasonable care and skill.

I've very carefully thought about everything Mr S has said here. But, given the lack of evidence, I haven't seen enough to persuade me P didn't act with reasonable care and skill. It follows I'm satisfied there was no breach of contract.

I should also explain that this service can't make awards for loss of amenity. I was sorry to read about the ongoing problems Mr S has had from the surgery and the discomfort this numbness has caused him. But, even if I upheld the complaint, it's very unlikely our service would be able to make any award compensating him for these ongoing problems.

I have thought about whether Nationwide should've also considered Mr S's complaint under the chargeback scheme. I have limited information about this. But, I think given the dates involved its most likely Mr S made Nationwide aware of the issue outside of the timescales to make a chargeback claim. Even if this wasn't the case, given the lack of evidence and the complexity of the issue, I'm not persuaded any claim would've had a reasonable chance of success. It follows I don't think Nationwide need to take any action on this point.

I want to reassure Mr S that I've carefully considered all of the other information on the complaint. But I don't think there was a breach of contract nor misrepresentation here. So, I don't think Nationwide did anything wrong when it declined Mr S's claim under S75.

I have also considered the communication issues Nationwide identified. But I'm satisfied the amount it has already paid to Mr S is a fair amount to reflect any distress and inconvenience caused by these specific issues.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 March 2024.

John Bower
Ombudsman