

The complaint

Miss S complains about cosmetic treatment she bought using finance from Mitsubishi HC Capital UK Plc trading as Novuna Capital ('Novuna').

What happened

The background facts of this case are well known to the parties so I will only cover these briefly.

Miss S bought dental treatment from a clinic ('the supplier') using a fixed sum loan from Novuna. However, she is unhappy with the results she has received and says the dentist has not completed the treatment and there were interruptions to it.

Miss S approached Novuna for a full refund of the treatment under Section 75 of the Consumer Credit Act 1974 ('Section 75'). However, it refused to refund her because it considered the supplier had met its obligations and acted fairly. It suggested that Miss S get an independent expert report in order that it could review the matter further for her.

Miss S complained about the outcome of her claim but Novuna did not offer her the full refund she wants. It did offer to pay her £200 for treatment she didn't receive.

Our investigator looked at the complaint but did not uphold it. She considered that Novuna had answered the Section 75 claim in a fair way.

Miss S has asked for an ombudsman to consider the case and make a final decision. In summary, she says:

- Her teeth have moved back to a point at which they were when the treatment started.
- She did not lose faith in the supplier – it refused to see her again which is shown by a letter it sent her.
- She purchased a treatment that was not completed and expert medical knowledge is not needed to show this.
- She never signed a contract.
- The £200 refund for the appointment she did not attend should be given to her anyway and ultimately she paid for a service she is unhappy with.
- This is not just about getting a refund – she wants her teeth sorted out and the whole situation has impacted her mental health – she no longer smiles in pictures and avoids getting involved in family pictures.

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 have considered the information provided by the parties but I will only comment on what I consider to be key. This is not intended as a discourtesy but reflects my role resolving disputes informally.

I am sorry to hear Miss S is unhappy with her treatment and how she says it has impacted her overall wellbeing. However, it is important to note here that Novuna is not the supplier of dentistry and I am considering its role as a provider of financial services only. In that respect in deciding what is fair and reasonable I consider its role in responding to Section 75 claims to be relevant – it is this I will focus on here.

Section 75

In order for Miss S to have a Section 75 claim against Novuna certain initial requirements in law need to be met. This relates to matters such as the cash price of the service and the relationship of the parties to the agreement. I am satisfied those initial requirements are met here.

Section 75 allows Miss S to hold Novuna responsible for a '*like claim*' for breach of contract or misrepresentation by the supplier. So in considering if Novuna has responded fairly to the Section 75 claim I have thought about the information available to it (or reasonably available to it) at the time of the claim and if this shows the supplier has breached or misrepresented its agreement with Miss S.

I note here that the issues Miss S has with the treatment she has received appears to fall into two broad categories. One is related to the quality of the treatment she did receive, the other is about disruption and discontinuation of the service. I will deal with these separately in order to decide if Novuna has acted fairly.

The quality of the treatment

In assessing the quality of the treatment received and whether there has been a breach of contract I consider the express terms of any agreement between the parties and any implied terms.

In this case I consider the Consumer Rights Act 2015 is particularly relevant as it implies a term into consumer contracts in respect of services as follows:

- that services will be performed with '*reasonable care and skill*'

I know Miss S is unhappy with the results she got from the treatment – but it is important to note that whether a service was carried out with reasonable care and skill won't necessarily be about getting desirable results – but the manner in which the service was carried out and whether it was done in accordance with accepted standards in that industry. With that in mind Miss S purchased a complex cosmetic/medical product involving a procedure on the human body and something which I do not have expertise in. It is commonly known that there are many variables and risks with a cosmetic/medical treatment – and unlike some other less complex services there is often a reasonable expectation that things may not always turn out as planned. So judging whether the supplier has acted without reasonable care and skill or breached the contract in some other way (even if discussions took place about desired results at the outset) is not straightforward in situations like this. I have taken this into account when deciding if Novuna acted fairly in its response to the claim Miss S raised under Section 75.

It is particularly challenging with a lack of independent expert evidence to say there has been a breach of reasonably expected professional standards here, further compounded with a lack of paperwork to show what was explicitly agreed between the parties (along with any conditions on this) at the outset (in fact Miss S says she didn't sign anything). This service and the financial business (unlike a court) is not able to compel witnesses for cross examination either – which makes getting to the bottom of things much more difficult.

I note here that Novuna did have sight of a letter from the clinician who treated Miss S for the supplier. They had written to Miss S in April 2021 to explain the treatment received was as it should have been and that they did *'everything that was clinically possible ...and in your best interests'*. So on the face of it, the supplier does not accept that the contract was carried out incorrectly/without due care and skill. With the supplier's strong rebuttal of the allegations against it and in the absence other persuasive evidence (such as an expert report) and considering the complexities and variables involving a cosmetic/medical treatment I am not able to fairly say Novuna acted unreasonably in not accepting that the treatment was carried out inappropriately.

I know that Miss S says she has had difficulty in sourcing an expert report to assess the treatment she received. I am sorry to hear this, however, I don't think it is fair in the circumstances here (and in light of information from the supplier) to expect Novuna to have concluded that the treatment was carried out wrongly based purely on the testimony she has provided to it.

Disruption/discontinuation of the service

A key aspect of the claim Miss S made to Novuna is that she didn't receive the complete treatment she was entitled to – and the treatment she did get was disrupted.

From what I can see Novuna has been presented with information which indicated that the disruption in treatment was as a result of the COVID-19 pandemic. This meant that the supplier's practice was closed to face to face appointments at times – and there were certain restrictions as to how it could interact with patients.

While I am sorry to hear that Miss S appears to have been impacted by this it was seemingly outside the control of the supplier and likely as a result of government restrictions. So I don't think this would constitute a breach of contract here for the purposes of her Section 75 claim. Such an eventuality could be covered by a certain provision (called a 'Force Majeure' clause) in the contract – but even if that were not the case it is likely to be considered a frustrated contract rather than a breached one. Miss S might be able to pursue a claim in court in respect of frustration – but it isn't something that Novuna is liable for under Section 75. So in respect of the service disruptions (which are likely a result of the pandemic) I don't think there is a clear case for breach of contract by the supplier here.

I have considered more generally if the supplier appears to have breached its contract with Miss S by not providing her with the service. In doing so I note that after investigating things Novuna concluded that Miss S had completed most of the treatment and the supplier had made reasonable efforts to provide the rest of it.

Based on the information I have seen including system notes from the supplier (showing the appointments provided and treatment notes) and its letter of response to Miss S (explaining the treatment carried out and noting that it was near finalisation) I don't think Novuna has come to an unreasonable conclusion here.

I accept there are conflicting accounts as to exactly what happened between Miss S and the supplier. I know Miss S says she didn't refuse further treatment but the supplier refused to

see her. However, from the information I have seen (including correspondence from the supplier and Novuna's contact notes) there is a persuasive indication the supplier only said it would no longer offer Miss S treatment because Miss S had previously refused to attend further appointments, requested to terminate the contract and expressed a lack of trust in the clinician. It appears that prior to that point the supplier was open to continuing the treatment. Instead (as relations had apparently broken down) the solution it offered was to refund the £200 for the outstanding treatment and to post the lower retainer which it says it had already ordered for her. Based on this information I think it is difficult to fairly conclude there was a breach of contract which entitled Miss S to a further refund.

So, it follows that in offering to honour the £200 the supplier offered here I don't think that Novuna has acted unfairly in the way it handled the Section 75 claim. While it is difficult to say if £200 represents exactly what treatment was outstanding, considering the evidence suggests Miss S only had a very small amount of treatment remaining it doesn't seem an unfair amount on the face of it. I also note that it has offered to look at things again if Miss S is able to produce new information – which seems fair.

Putting things right

If Novuna (or the supplier) has not paid Miss S the £200 on offer to date then I direct Novuna to do so here. Of course Miss S is free not to accept my decision and pursue the matter in court if she wishes (seeking appropriate legal advice in the process).

My final decision

I direct Mitsubishi HC Capital UK Plc trading as Novuna Capital to pay Miss S £200 in respect of this complaint if she has not already received this.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 21 December 2023.

Mark Lancod
Ombudsman