

The complaint

Mr F is unhappy with how NATIONAL WESTMINSTER BANK PUBLIC LIMITED COMPANY ('NatWest') handled a claim under Section 75 of the Consumer Credit Act 1974 ('S75').

What happened

Around October 2023, Mr F paid a clinic I'll refer to as 'D' £1,200 for a course of hair loss treatments on his NatWest credit card. Mr F says he was due to receive six treatment sessions along with medication.

Unfortunately, Mr F says there were significant issues with the treatment. In March 2024 Mr F contacted NatWest and asked for a refund.

Mr F raised various points. He said during an initial consultation, it was specifically stated that the six sessions of treatment along with medication would have positive results. And he said he was told the procedure would be done with a device to minimize pain. Mr F told NatWest he was not informed of any potential side effects of the treatment or medication.

But, Mr F said the treatment was "*exceptionally painful*" and led to adverse effects for days after. He said he couldn't work for two days each time, got a fever and felt dizzy. Mr F said it felt "*like my head was going to explode*".

Mr F also said he was not told the treatment would be performed by a nurse rather than the doctor he initially saw. And he said he was later told it may take up to three years to see results.

In April 2024 NatWest responded to the claim. It said it had considered this under S75 but explained Mr F hadn't provided it with evidence there had been a breach of contract or a misrepresentation.

Mr F was unhappy with this and complained about the outcome.

In May 2024 NatWest issued its final response to the complaint. This said, in summary, that it thought the outcome of the claim was right and that it still hadn't seen evidence of a breach of contract or misrepresentation. It said Mr F signed a consent form explaining there may be side effects and that he was happy to go ahead. And it said no evidence was provided guaranteeing the results of the treatment.

Mr F remained unhappy and referred the complaint to our service.

Mr F reiterated the points he made to NatWest. He said the contract between himself and D was incomplete when he signed it. He said NatWest requested evidence that was difficult and expensive to obtain. And he explained he saw no other medical professional in relation to the issues and side effects.

Mr F also told our service he completed three of the sessions, but he did not see any improvement. He said when he cancelled the further treatments due to the issues he

experienced, the doctor in the clinic told him the pain was probably due to too many injections and offered to carry out the rest of the treatments themselves.

NatWest told our service it also looked into a chargeback dispute for Mr F, however it said this had been raised outside of the relevant time limits, and as the service had been received it couldn't have attempted this. And it still thought it had correctly declined the claim.

Our investigator issued an opinion and didn't uphold the complaint. She said, in summary, that she hadn't seen enough to persuade her there had been a breach of contract or misrepresentation, so she thought NatWest fairly declined the S75 claim. And she said she hadn't seen enough to make her think NatWest should've pursued a dispute under the chargeback scheme.

NatWest said it didn't have any further information to add.

Mr F disagreed. He said, in summary, that he only received half the treatments. He reiterated the painful side effects he'd suffered. He said the doctor pointing out that he may have been given too many injections showed a lack of reasonable skill and care. He said the terms and conditions didn't specify the medications he took. He said an unreasonable burden of proof had been put on him, but not D. And he said if he got an independent medical report this may worsen his losses if the complaint wasn't upheld.

Our investigator explained this didn't change her opinion. As Mr F disagreed, 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 do not think this complaint should be upheld. I'll explain why.

Mr F complains about a claim under S75 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 if there's either a breach of contract or misrepresentation by the supplier of goods or services.

Firstly, I need to consider if Mr F 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. I've seen the credit card transaction on Mr F's account to D. And Mr F has confirmed the treatments were carried out on himself. So, I'm satisfied a valid DCS agreement exists here.

I've then considered the financial limits that apply to a valid S75 claim. Mr F needed to have purchased a single item with a cash price of over £100 but no more than £30,000. I'm satisfied Mr F paid D £1,200. I haven't seen a breakdown of any individual treatments or services, but I'm satisfied in this case it's reasonable that the treatment as a whole can be taken as the 'single item'. So, it follows that I'm satisfied the financial limits have been met.

I'm satisfied Mr F had a valid claim under S75. What I now need to consider is whether there was a breach of contract or misrepresentation that took place.

I've considered both express terms in any contract between Mr F and D – in other words those in writing, and any implied terms.

I haven't seen any copy of a contract between Mr F and D. Nor have I seen an invoice or receipt for what was agreed. While Mr F has referred to signing terms and conditions, I'm satisfied what I've been provided with are consent forms. So, there are very few, if any, express terms to consider.

For instance, Mr F says he expected a doctor to carry out the treatment, not a nurse. But this isn't documented anywhere.

I've also considered that even if there were express terms, for instance guaranteeing results from the treatment, Mr F ended the treatment half way through.

Thinking about this, I have seen no breach of any express terms.

I've gone on to consider implied terms. The Consumer Rights Act 2015 ('CRA') implied a term into the contract between Mr F and D that services 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 carefully weigh up the evidence and relevant circumstances.

Mr F clearly believes the treatments weren't carried out with reasonable care and skill because of the side effects he describes. And I want to reassure him that I've very carefully considered all of his testimony about what happened. But, and I hope this doesn't come across as being too blunt, I think it's important to set out up front that, aside from his testimony, Mr F has provided only extremely limited information and evidence.

I should point out here that this case involves a complex medical procedure, about which I am not an expert. Working out what likely happened can be very difficult. And Mr F hasn't provided any evidence about the process, side effects or results of the treatment, nor any testimony from any other party or medical professional about anything that happened before, during or after.

This means, beyond what Mr F said, I've seen nothing to explain the severity of any side effects nor why these side effects may have occurred.

I've thought about the fact Mr F says the doctor told him the side effects were due to the nurse giving him too many injections. But I've seen nothing to explain anything that did or didn't happen during the treatment, or anything to back up this statement.

I've gone on to consider what Mr F says about the results of the treatment. But again, I have seen no evidence of this. Even if I *had* seen evidence that Mr F didn't get any positive results, while I've carefully considered why Mr F says he did so, he stopped the treatment half way through. And, when thinking about reasonable care and skill, I need to consider *how* the treatment was carried out – not the results of the treatment. So poor results, even if evidenced, by themselves wouldn't show a lack of reasonable skill and care during any treatment in this case.

I've thought very carefully about what Mr F told us. But I need to weigh this up against the fact there is almost nothing to provide any confirmation of what he describes, nor to add any context here. I'm satisfied that I haven't seen enough to persuade me the treatment wasn't carried out with reasonable skill and care. It follows that I've not seen enough to persuade me there was a breach of any implied terms here.

I've thought about the consent forms Mr F signed. And I do appreciate his point that these appear to be templates and, as he says, it does look like some information has been missed off. But, I don't think this in itself shows any breach of contract and doesn't change my

opinion.

I've gone on to consider if I think a misrepresentation occurred. But, having reviewed everything, I'm satisfied I have not been provided with any evidence to show this was the case.

I've finally considered whether NatWest should've raised a claim under the chargeback scheme.

A card issuer can attempt a chargeback under certain circumstances when a consumer has a dispute with a merchant – for example when goods or services aren't provided.

It isn't a legal right and it's not guaranteed any funds will be recovered. But I'd generally consider it good practice for a card issuer to raise a dispute if there is a reasonable chance of it being successful.

There is some debate here over whether Mr F raised his request for a refund within the timescales for a chargeback dispute and whether there was an applicable 'code' or reason to apply to it. But, I don't think I need to make any findings about this. Mr F hasn't provided enough evidence for me to consider that there was any reasonable chance of a successful claim. So, whatever happened, he hasn't lost out by NatWest not raising a dispute.

I know how strongly Mr F feels about this. And I was sorry to read about his experience. While Mr F feels there has been an unfair burden put on him to provide evidence, he has raised a claim and it was reasonable to expect him to show what happened. I'm satisfied he didn't provide NatWest with enough information and evidence to do this. So, I don't think it did anything wrong when it declined his request for a refund.

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 F to accept or reject my decision before 2 May 2025.

John Bower
Ombudsman