

The complaint

Miss P has complained about the way Tesco Personal Finance Limited dealt with her claim for money back in relation to treatment she paid for on her credit card.

What happened

The circumstances of the complaint are well known to the parties, so I won't go over everything again in detail. But, in summary, in March 2024 Miss P tells us she made a payment of £2,645 using her Tesco credit card towards treatment cost with a provider I'll call "S". She was very unhappy with how the treatment went.

Miss P contacted Tesco to put in a claim for money back. She said Tesco explained she'd need to wait for S to respond and that she should complete a chargeback form. She said after waiting for a few weeks Tesco told her it would consider the claim under section 75 of the Consumer Credit Act 1974. The chargeback was defended by S. Miss P said Tesco asked for evidence demonstrating the treatment wasn't carried out correctly. Miss P said she provided emails where S apologised for giving Miss P an incorrect time frame of swelling, and admitting an allergy test wasn't carried out.

Tesco didn't uphold the claim. It said the treatment was performed so the contract was fulfilled. It said it wasn't given sufficient evidence of a breach of contract or misrepresentation. It said if there was medical negligence it wouldn't be able to consider that sort of claim under section 75.

Miss P contacted the Financial Ombudsman. She'd also supplied a GP letter, treatment invoices, and further opinions to say she had an allergic reaction. She said she'd spent around £1,400 to try to investigate and resolve the issue. She said she couldn't understand why Tesco didn't offer a refund of the sum paid to S or the amount she'd paid to try to resolve the issue. She provided an image of the reaction she had from an allergy test that she said should've been carried out by S prior to treatment. She also said the situation affected her work.

One of our investigators looked into things but didn't think there was sufficient evidence of a breach of contract or misrepresentation that Tesco would be liable for under section 75. She didn't think a chargeback would have had a reasonable prospect of success. And ultimately didn't think Tesco's handling of the claim was unfair.

Miss P didn't agree. In summary she said:

- Her concern wasn't just about the reaction she had but also the lack of skill and care in performing the treatment. She said S should have carried out an allergy test.
- She was unhappy she was left with significant and prolonged side effects, which could have been avoided if S carried out the service with proper skill and care.
- The fact her swollen face was deemed acceptable by S was very concerning. It was an abnormal reaction and Tesco had acknowledged the lack of care.
- She hadn't been supplied a copy of the consent form our investigator said she'd signed. She didn't recall doing so.

- Three other medical professionals indicated an allergy test is necessary prior to the type of treatment she had.
- Another credit card provider had refunded her £70 she'd paid to S using the card, based on the same evidence submitted to Tesco.
- Evidence had been missed.
- Our investigator didn't acknowledge Tesco had mentioned the lack of skill and care not falling under section 75.
- She couldn't understand how parties acknowledge things were not carried out correctly, but the complaint wasn't upheld.

As things weren't resolved the complaint has been passed to me to make a decision.

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 want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Miss P and Tesco that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I also want to say I'm very sorry to hear that Miss P is unhappy with the treatment she paid for. I can't imagine how she must feel, but I thank her for taking the time to bring her complaint.

It's important to set out up front that even if the complaint was upheld, I'm unable to make an award for loss of amenity so if Miss P was looking to pursue this aspect of the complaint, she may wish to seek independent legal advice because I can't cover it in a decision.

What I need to consider is whether Tesco – as a provider of financial services – has acted fairly and reasonably in the way it handled Miss P's request for getting her money back. It's important to note Tesco isn't the supplier. I've gone on to think about the specific card protections that are available. In situations like this, Tesco can consider assessing a claim under section 75 or raising a chargeback.

Section 75 is a statutory protection that enables Miss P to make a like claim against Tesco for breach of contract or misrepresentation by a supplier paid by credit card in respect of an agreement it had with her for the provision of goods or services. But there are certain conditions that need to be met for section 75 to apply. The value of the transaction falls within the financial limits. And I think the necessary relationships exist between the parties.

Implied terms

Miss P is indicating S didn't carry out its service with reasonable care and skill. She says it should have carried out an allergy test before carrying out the treatment. She wasn't happy with how the treatment was carried out. She's also unhappy with its aftercare support.

I've first thought about terms that were implied into the contract by the Consumer Rights Act 2015 ("CRA"). The CRA implies terms into the contract that says services need to be carried out with reasonable care and skill.

In cases such as this it is often complex to assess the quality of the service Miss P paid for.

Results from such treatments are subject to many variables. While I've reviewed all of the evidence, I don't think Miss P has provided sufficient supporting evidence such as an independent, expert opinion that sets out the treatment she paid for has not been done with reasonable care and skill as implied by the CRA. I'm mindful it is the manner in which the service was provided rather than the results of the treatment that is the crucial issue for me in considering whether there's been a breach of an implied term in relation to the service.

The GP consultation I've seen doesn't set out the treatment wasn't carried out with reasonable skill and care. It gives a narrative of what Miss P said had gone wrong along with a plan for her including medication. The notes say Miss P told the GP that she found out she should have had a patch test before the treatment and that the next appointment available with S was in two weeks. The GP prescribed medication; advised Miss P to call emergency services if she had any particular severe symptoms and also recommended seeing S at the earliest opportunity.

I've seen other invoices for treatment carried out from other practitioners. And I've seen a letter from another practitioner that said Miss P went to the clinic showing signs of a significant allergic reaction and swelling. It said it had carried out a test and determined an allergic reaction to the substance S used in the treatment. It said it recommended an alternative approach, and also another type of therapy.

Having reviewed everything, while of course I'm very sorry to hear the treatment didn't go well for Miss P, I can't see any of the reports she was able to supply specifically state that S didn't carry out the treatment with reasonable skill and care.

Moreover, I'm not a medical treatment expert, and neither is Tesco. I've not seen enough to be able to safely conclude that a patch test was required prior to the treatment. And without sufficient supporting evidence, I don't think Tesco was unfair to not uphold the claim on the basis of a breach of an implied term of the contract because I've not seen enough to determine the service S offered wasn't carried out with reasonable skill and care.

Express Terms

I also need to consider what I think Miss P's contract with S agreed to provide in terms of treatment so I can determine whether there has been a breach of an express term of it. I'm conscious Tesco put Miss P's claims to S and it responded with information. It provided a copy of a signed consent form as is typical with these sorts of treatments. It sets out the type of substance being used, along with details of the risk of injection; reactions; side effects; treatment failure and complications from infection. It also sets out that Miss P understood there was a risk of an allergic reaction and/or swelling. It set out an allergy test could often identify the risk prior to full exposure, but I've not seen one was included as part of the contract.

The aftercare documentation that S supplied Tesco also set out that the results of the treatment could be unpredictable and that there could be side effects including swelling. It also gave instructions for what to do if the patient experienced certain symptoms as well as some recommendations for support.

S provided Tesco a copy of the terms and conditions that state payments are non-refundable. It also set out again why patch testing wasn't a regulatory requirement for the type of treatment Miss P had. S explained it responded to Miss P's aftercare requests with advice and recommendations. It also said it advised her to seek emergency medical advice if symptoms persisted or worsened. And it had offered an appointment at its next available clinic.

Based on what Tesco had from Miss P and S, I'm not persuaded there was enough evidence to show that S breached express terms of the contract either.

Chargeback

The chargeback process provides a way for a card issuer to ask for a payment to be refunded in certain circumstances. The chargeback process is subject to rules made by the relevant card scheme. It's not a guaranteed way of getting money back.

While it's good practice for a card issuer to attempt to chargeback where certain conditions are met and there's some prospect of success, there are grounds or dispute conditions set by the relevant card scheme that need to be considered. If these are not met, a chargeback is unlikely to succeed. And something going wrong with a merchant won't always lead to a successful claim.

Miss P was claiming for defective services or services not provided, which are reason codes under chargeback. But for similar reasons to what I've set out above, I don't think a chargeback would have had a reasonable prospect of success had Tesco pursued it further given I think it would have been fairly defended on the basis that the treatment was supplied, and that there was insufficient independent evidence it was defective.

Summary

Overall, I've not seen enough to conclude that Tesco's answer was unfair. I'm not saying that something definitely hasn't gone wrong, but that I don't think it had sufficient evidence of a breach of contract or misrepresentation it would be liable for under a 'like claim'. I need to consider how it responded based on the evidence submitted to it. While I don't necessarily agree it's impossible to bring a claim like this under section 75, like our investigator pointed out, if this was a case of medical negligence, chargeback and section 75 may not have been the best forum to deal with it. There are certain limitations to what can be claimed under breach of contract and, unlike a court, Tesco (or the Financial Ombudsman) can't summon and cross examine witnesses; order court reports are undertaken, and so on. But I should point out Miss P is free to pursue her claim by more formal means (such as through the courts) if she wishes.

Finally, I understand Miss P was unhappy with the way the claim was dealt with. I don't think Tesco was unfair in asking for supporting information to consider the claim. I appreciate Miss P was unhappy it didn't offer a refund after she sent in information it asked for. But, for the reasons given above, on balance, I don't think that was unfair. And I've not seen it caused any unreasonable delays or distress to the extent that would lead to a different overall outcome. While I'm again sorry to hear Miss P is unhappy, I don't find I have the grounds to direct Tesco to take any action.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 30 April 2025.

Simon Wingfield
Ombudsman