

The complaint

Mrs W complains about how Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance ('NF') handled a claim she brought to it.

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

On 17th March 2020 Mrs W had lens surgery carried out by a clinic ('the supplier') and which she funded using a fixed sum loan from NF.

In summary, Mrs W was unhappy with the surgery and said it had caused migraines, blurred vision and light sensitivity. Around the start of 2022 she complained to the supplier about this, and about how it wouldn't give her further surgery without her paying for this.

The supplier denied any wrongdoing and said as it had been 12 months since the surgery she was not entitled to any further treatment or aftercare without additional charge.

Around February 2022 Mrs W raised a claim with NF under Section 75 of the Consumer Credit Act 1974 ('Section 75') but this was not upheld in a claim response around May 2022. Mrs W attempted to raise another claim with NF toward the latter stages of 2023 but NF closed this due to a lack of further information.

Mrs W continued to contact NF in 2024 and 2025 about the matter and her dissatisfaction about the claim outcome. However, when she did not get a response from NF she referred the matter to this service. As a result of this NF looked into a complaint about the claim. It did not agree its claim outcome was incorrect, but it credited £180 for customer service failings in the way it had communicated with Mrs W.

Our investigator thought that NF had acted fairly in the circumstances. Mrs W asked for the matter to be escalated for a final 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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

I am sorry to hear Mrs W is unhappy with the eye surgery service she paid for. However, it is important to note that my decision here is about the actions of NF – and what it should fairly have done for Mrs W in its position as a provider of financial services. In looking at how it handled the claim Mrs W brought to it I consider the information reasonably available to it at the time, along with the relevant financial protections available to Mrs W – in this case Section 75.

Limited information

It is worth noting there are challenges presented by limited information in respect of Mrs W's individual treatment plan and contract. However, I have looked to decide what is fair based on the information reasonably available to NF when considering this Section 75 claim. This includes the supplier's response to Mrs W's complaint – including information from the consent form the supplier said she signed, archived terms and conditions or readily available information online, what information NF was able to get from the supplier, and Mrs W's testimony.

Section 75

Section 75 can allow Mrs W in certain circumstances to hold NF liable for a breach of contract or misrepresentation by the supplier of the financed treatment. There are certain technical criteria which have to be met in order for Section 75 to apply, and I am satisfied these are met here. Therefore, I move on to consider whether information showed NF that the supplier of the treatment has breached its contract with Mrs W or misrepresented it.

Misrepresentation

Mrs W's claim to NF appears to be about breach of contract rather than misrepresentation. But in the interest of completeness, in any event I don't consider there to be persuasive evidence available to NF when it considered the claim that the supplier had misrepresented its service to Mrs W at the outset.

Breach of Contract

The way the treatment was provided

The Consumer Rights Act 2015 implies terms into consumer contracts to say that services will be provided with reasonable 'care and skill'.

While there is no specific definition of reasonable care and skill – of particular relevance will be what is considered good practice in the particular industry in question.

The difficulty here is Mrs W has purchased a complex medical product where specific expert knowledge is necessary to understand it. I am not an expert in this area (nor is NF) and without an expert report that explains what has gone wrong here and why or some other similarly persuasive evidence it is difficult to fairly conclude that NF should have determined the treatment wasn't carried out properly. This is particularly the case when in this field there are certain reasonably expected potential side effects or other variables which can impact the treatment and the end results. Furthermore, over time health can change – which isn't always the result of a particular treatment.

I know Mrs W has said she is unhappy with the treatment she received. And she has described the side effects she has experienced. I am sorry to hear this. However, this testimony does not persuasively show NF that the treatment received from the supplier was carried out without reasonable care and skill. I say this also noting:

- The supplier has denied wrongdoing and outlined the aftercare actions it took in a detailed response to Mrs W's complaint to it; and
- the supplier has pointed to complications and side effects that can arise – and that these are specifically noted in its consent documentation which Mrs W agreed to.

It is also important to note that even if I agreed Mrs W had not achieved certain results she was expecting a finding in respect of reasonable care and skill is not dependent on the results achieved but the manner in which the treatment was carried out. And while particular results may be indicative of how a treatment was carried out – it is common, particularly in the medical field for outcomes to vary for a number of reasons other than a lack of care or skill by the practitioner.

In summary, based on the limited evidence available to it (and noting the lack of expert evidence to support Mrs W's case) I am not able to say that in considering the Section 75 claim presented to it NF should fairly have concluded the treatment was carried out without reasonable care and skill.

The express terms of the contract

In order to determine if there has been a likely breach of any express term(s) of the contract I have considered the supplier's documentation from around the time Mrs W bought the treatment, alongside other information such as Mrs W's testimony.

I acknowledge that I don't have a copy of Mrs's specific treatment plan or the full contractual agreement signed. However, the parties appear to accept that Mrs W entered into a contract for lens surgery. And that Mrs W received it – so there is no breach of contract in that regard.

I note that the extract from the consent document that Mrs W signed, which I do have, clearly says the results of the surgery are not guaranteed and explains potential side effects. So I don't think there is a breach of contract in respect of Mrs W not getting a particular outcome in respect of improvements to vision or a lack of side effects.

I note the supplier in its response to Mrs W said if she was considered clinically suitable for (and clinicians determined she required) further surgery this would have to be carried out within 12 months of the initial treatment to qualify at no further charge. This appears to be backed up by the supplier's archived terms and conditions and Mrs W does not dispute this. However, she says she tried to contact the supplier about follow up treatment during this period, but it was closed due to the COVID-19 pandemic.

I note that the supplier denied to NF that it was not available during the pandemic. I also note that Mrs W does not dispute she received some follow up treatment during this period – which indicates it was open. And she has not provided evidence such as correspondence to show she specifically requested further surgery within the first 12 months. So on the face of it, I don't think that NF should fairly have concluded there was a breach of contract in this regard.

However, even it was established that the supplier had closed during the period Mrs W tried to contact it I note:

- the supplier denied that there was any agreement with clinicians that she needed more surgery during the follow up appointments she had to date – so it isn't clear if she would have been eligible for further surgery in the 12 months following the procedure in any event; and
- an inability by the supplier to carry out an agreement under a contract due to something like a pandemic is likely to be deemed 'frustration' of the contract rather than a breach of contract – in which case NF would not be liable for it under Section 75 in any event.

All things considered I don't think NF should reasonably have concluded that there was a breach of contract here which it was liable for under Section 75.

I note NF has recognised that when Mrs W contacted it after the initial claim it wasn't clear with her about certain things and it was not responsive. I understand it has reduced her account balance by £180 to reflect the distress and inconvenience caused – which seems to be fair. And I note Mrs W has not submitted persuasive arguments on this point to make me consider otherwise.

I know Mrs W thinks she should not have to pay for her treatment, and therefore my decision is likely to disappoint her. However, she does not have to accept it and may consider more formal ways to continue her dispute against the supplier, such as court.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 25 November 2025.

Mark Lancod
Ombudsman