

## **The complaint**

Mrs M complains about how NewDay Ltd trading as John Lewis Credit Card ('JL') handled a claim she made 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.

Mrs M paid for her adult son to attend a private hospital ('the supplier') to investigate ongoing joint pain. Mrs M used her JL credit card for the transaction.

Mrs M said the supplier did not carry out the service properly. In summary, she says that it scanned her son's left leg when he had been getting problems with the right. She says it should have scanned the right side and contacted JL to raise a dispute and claim a refund.

JL looked into the claim. It said Section 75 of the Consumer Credit Act 1974 ('Section 75') did not apply. It raised a chargeback – but decided to discontinue this after it was defended by the supplier.

Mrs M escalated a complaint about the claim outcome to this service. Our investigator did not uphold it so Mrs M asked for an ombudsman to look at things 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 M is unhappy with the medical service she bought for her son. It is worth noting here that JL is not the supplier of the service. So when looking at what is fair I consider its role as a provider of financial services – and what it reasonably could have done to help with the information that was reasonably available to it at the time. As Mrs M used a credit card to pay for the service in dispute I consider the protections of chargeback and Section 75 of the Consumer Credit Act 1974 ('Section 75') to be particularly relevant here.

My outcome is going to disappoint Mrs M. However, I underline that my decision here does not necessarily mean a contracting party is unable to take action against the supplier (such as through court) if they wish to. That is not a matter for me to advise on.

## **Section 75**

Section 75 in certain circumstances allows Mrs M to hold JL liable for a '*like claim*' for breach of contract or misrepresentation in respect of an agreement by a supplier of goods or services which is funded by the credit card.

However, certain technical requirements need to be met for Mrs M to have a claim against JL. One of those is that there is the requisite 'Debtor-Creditor-Supplier' ('DCS') agreement that gives rise to a claim for the specific breach or misrepresentation being alleged by Mrs M.

Unfortunately, I don't think the necessary DCS agreement is in place here. My starting point is that the customer for this highly personal service relating to individual medical needs is usually the patient being cared for – in this case the patient was not Mrs M but her adult son. It is he who was referred by his GP for further treatment and he who wrote to the supplier to request this – and it is he who would have to consent to any scans or procedures on his person. There was no persuasive evidence presented to JL to indicate that Mrs M's son was not the contracting party for the provision of the service here.

I acknowledge Mrs M paid for the medical service for her son so it is arguable there is some kind of functional DCS agreement in respect of the transaction for payment. But that does not mean there is the required agreement to allow Mrs M to make a claim against JL for any breach of contract in respect of the quality of the treatment (which is the subject matter of her claim against JL).

I note Mrs M has said she had full permission to discuss her son's medical care and to act on his behalf when liaising with the supplier. However, that puts Mrs M in a position where she is acting as her son's agent – it does not mean she is contracting with the supplier for the treatment.

It follows that although Mrs M paid the supplier using her credit card and represented her son as his agent, as she was not contracting with the supplier for treatment she has no 'like' claim against JL for breach of contract or misrepresentation in respect of those services. So I don't think JL acted unfairly by declining her Section 75 claim on this basis.

#### Chargeback

Chargeback is a way JL might be able to get Mrs M a refund. However, it is not guaranteed to succeed and depends on the specific rules of the card scheme (Mastercard here).

It will often be good practice to raise a chargeback in the first instance. And I can see that JL did that here. It appears it raised one on the basis of a service being 'defective' which based on the allegations does not seem to be an unreasonable way forward.

However, I can see that the supplier defended the chargeback. In summary, it confirmed:

- there was specific clinical reasoning behind the consultant's decision to scan the left leg (knee and ankle);
- the reasoning for this was communicated to Mrs M's son;
- on the day of the scan Mrs M's son would have confirmed and consented to the left side being scanned – and been aware it was this side being scanned due to the equipment being placed on his left knee and ankle.

Based on this JL discontinued the chargeback. On the face of it this was not an unreasonable stance to take based on the information it had. There was no contract for service produced clearly showing Mrs M's payment was for a particular type or area of scan. And while Mrs M provided JL with information showing a GP had mentioned symptoms concerning her son's right side – there was also information from the supplier in response to the claim showing the consultant had considered this but based on three consultations with her son had decided to obtain scans of the left knee and ankle. And that in his view these

were not done in error. On the face of it JL (who are not medically expert) were not necessarily unreasonable in accepting it on face value.

I know Mrs M says that JL should have done more. Such as investigating further and obtaining more evidence from the supplier (such as requesting the consent form to show if her son agreed to the left side scan or not). Outside of its liability under Section 75 I don't think it is necessarily reasonable for JL to have gone about contacting the supplier for this – particularly as it concerned a third party which was not its customer. I think it was for Mrs M to present the evidence that supported her chargeback claim here.

Mrs M indicates there is sufficient evidence to support her case. However, I note she has also referred to correspondence that has come to light after JL handled the claim (such as a letter from a clinic dated January 2025). It wouldn't be fair to say that JL should have decided whether to progress the chargeback based on information it didn't have at the time of the claim.

However, even if I agreed that JL should have pushed the claim further based on the information it did have it is clear the supplier would likely have continued to defend it. Which only leaves the card scheme to decide at arbitration. And I think it is difficult to say that Mastercard is more likely than not to have ruled in Mrs M's favour in any event, noting:

- what I have already highlighted regarding the lack of a specific contractual agreement regarding what area is to be scanned.
- medical matters such as these are highly complex and while I know Mrs M has expressed her view on the consultant misdiagnosing her son and acting improperly - the scheme is likely to place weight on the expert opinion available (in this case the consultant who has denied the incorrect side was scanned).
- while there is correspondence acknowledging Mrs M's son has symptoms impacting his right side it would likely be difficult for the scheme to conclude in her favour without further expert evidence specifically stating clinical decisions made by the supplier were incorrect.
- additional difficulties are posed to the scheme in deciding the outcome in favour of Mrs M as follows:
  - the dispute ultimately involves treatment administered to an adult patient who attended the appointments with the consultant and the scan and who is not a party to the claim;
  - there are serious allegations which Mrs M has made against the supplier in respect of its conduct toward her son which are likely unsuited to a forum like chargeback; and
  - the card scheme is unlikely to be able to summon witnesses or compel further evidence like a court might choose to.

In summary, it appears JL made a reasonable attempt to recover Mrs M's money via chargeback. But even if it could be argued that it should have done more, with the above comments in mind, I can't fairly say it deprived Mrs M of a likely success at arbitration in any event.

I want to reiterate my decision here is whether it is fair, noting the circumstances around the claim as presented, to hold JL liable to Mrs M for the allegations being made about the supplier. I have explained why I don't think it is (mainly due to the specific way Section 75 works). But that doesn't mean Mrs M is unable to explore what potential court or other action can be taken against the supplier (and by whom) for what has gone on here.

**My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 9 January 2026.

Mark Lancod  
**Ombudsman**