

The complaint

Mrs F complains about how Barclays Bank UK PLC trading as Tesco Bank ('TB') handed 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 F paid a clinic ('the supplier') for medical treatment to have up to three internal masses treated along with aftercare. She used her TB credit card to pay for this.

Mrs F was unhappy with the treatment – including the way it was sold to her. In summary, she says the supplier:

- Falsely told her the treatment (and a subsequent follow up) would not worsen her symptoms.
- Falsely told her the procedure was not painful.
- Only treated two masses of a possible three.
- Failed to act professionally – for example the consultation was 'rushed and impersonal' the chaperone did not introduce herself or provide support, the doctor was using his phone during the appointment and was 'inattentive', medical notes were inconsistent and inaccurate and her feedback and complaint were initially ignored.

Mrs F says she has been advised by two other consultants that the supplier's treatment was a 'waste of time and money' and she now needs a surgical procedure to resolve her issues which the supplier's treatment was meant to help her avoid. She says the supplier is liable for misrepresentation and failing to provide a service with reasonable care and skill.

Mrs F approached TB with her claim wanting a refund for the service and compensation in addition to the cost of petrol and parking.

TB responded to the claim and ultimately offered Mrs F a refund for a follow up treatment she paid the supplier for (£715) and also said it had paid her £100 compensation for the way it handled her claim.

Mrs F escalated her complaint to this service. Our investigator considered TB had acted fairly. However, Mrs F disagreed so the matter was progressed to me 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.

Firstly, I want to say how I am very sorry to hear about the difficulties Mrs F had with the service she received and the impact she says it has had on her. It is important to underline that I don't have jurisdiction to consider a complaint about the supplier, nor am I making a definitive finding regarding the underlying service provided. My role is to look at the actions of TB in handling the claim in its position as a provider of financial services. In looking at how it handled the claim Mrs F brought to it I consider the information reasonably available to it at the time, along with the relevant card protections available to Mrs F including chargeback and Section 75 of the Consumer Credit Act 1974 ('Section 75').

I am also very sorry to hear about the long-term impact Mrs F says the matter has had on her health. I want to underline, that this service cannot make an award for loss of amenity. So if Mrs F is looking to claim for this she should consider alternative action (such as court). She should also consider taking advice on the impact of accepting my decision on any future claim she may wish to make in respect of her case against either the supplier or TB.

Section 75

Section 75 can allow Mrs F in certain circumstances to hold TB 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 broadly satisfied these are met here. Therefore, I move on to consider whether there was evidence available to TB to persuasively show that the supplier of the treatment had breached its contract with Mrs F or misrepresented it.

It is worth noting there are challenges presented by limited information in respect of Mrs F's individual treatment plan and contract. However, I have looked to decide what is fair based on the information reasonably available to TB when considering this Section 75 claim.

A breach of contract can be regarding an express term of the contract or implied term.

The Consumer Rights Act 2015 ('CRA') 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 F 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 TB) and without an expert report presented to explain what has fallen below the expected standard, or some other similarly persuasive evidence relating to the supplier (say from the standards boards that Mrs F references) it is difficult to fairly conclude that the treatment wasn't delivered 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 (and I note here that the information available to TB indicated that Mrs F signed a consent form which likely would have detailed these).

I note that Mrs F has more recently provided a medical letter from her consultant to show what symptoms she is currently experiencing and treatment options. It doesn't look like this was presented to TB at the time of the claim so I can't fairly say it should have considered it. However, in any event I note it does not appear to specifically conclude on the actions taken by the supplier.

I know Mrs F showed TB she was extremely unhappy by the way the supplier treated her. And has provided detailed testimony about where she thinks the service fell below standard.

However, the supplier provided a detailed defence to the accusations and (apart from accepting and apologising for some possible customer service issues – like the chaperone not introducing themselves, the doctor answering queries on his phone about other patients during the consultation, or a delay in actioning feedback) did not accept that there had been a material breach/lack of care and skill in providing the procedure. I note that although the supplier accepted there was a typographical error on a medical report – there is no admission or clear evidence to show that this had a material impact on the treatment received either.

I note Mrs F has said the supplier failed to pick up on the fact she had three masses which required treatment – and this meant she had to unnecessarily pay £715 for a follow up to treat the third. In its defence to the allegations the supplier does not clearly admit this is an error on its side – and claims that the doctor said he identified only two masses and a third mass might have become more apparent following the first treatment. So I don't think a breach of contract is clear here. However, I note (in any event) TB has offered to refund for the follow up treatment – so any debate over this falls away somewhat. I also note here that our investigator thought TB should pay out of pocket interest on the refunded amount from the date of transaction to the date of settlement too. And TB has not contested this. I know Mrs F has said she also wants reimbursement for the travel costs associated with the follow up treatment, but noting the lack of clarity over liability for the associated breach, I think what TB has offered to date along with what our investigator has recommended is broadly fair and reasonable.

I also note Mrs F has said that refunding the second treatment is 'logically inconsistent' as the first treatment is the 'root breach'. However, I don't agree. If there is a breach of contract in regard to missing the third mass (and I have mentioned the difficulties with concluding that for certain), the correct remedy is the cost to put that breach right (in this case the cost of the follow up treatment) – not to refund the first treatment.

Mrs F said rather than improve her symptoms it made them worse. I am sorry to hear this. I don't think it is clear what results Mrs F achieved from the information TB had. However, it is also important to note that even if I agreed Mrs F 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/cosmetic field for outcomes (and side effects) to vary for a number of reasons other than a lack of care or skill by the practitioner. Furthermore, although I am sorry to hear that Mrs F needs further treatment – I don't think there was persuasive evidence presented to TB that this was a direct result of lack of skill and care by the supplier here.

I have also considered if Mrs F presented TB information to show any express terms of the contract were breached by the supplier here. Such as particular guarantees around results. However, I don't see persuasive evidence of that here.

Misrepresentation

I know Mrs F says the supplier misled her about the treatment. Namely, that it would be painless and that it would not make her condition worsen. She says both things were not true. I have looked at the information available to TB at the time to see if it should have reasonably accepted liability based on the information it had.

I am sorry to hear the procedure was particularly painful for Mrs F – but while the supplier has said it has taken steps to use this feedback to improve the information it gives on its website around the different pain individuals might feel I don't think there was persuasive evidence presented to TB to support Mrs F's claim that the supplier told her the process

would be entirely painless. I don't know exactly what the website of the supplier showed at the time of sale – but currently it says that pain is 'low' in comparison to other treatments in a chart. And that it is 'not usually associated with significant pain'. As pain is subjective it is difficult to say this is a false statement of fact in of itself. And while TB does not know exactly what the supplier told Mrs F verbally– it would be unusual for a supplier of this sort of treatment to say there was no possibility of any pain. I also note that even if TB were able to accept that the supplier had falsely stated that the procedure was painless – it would also have to conclude that had Mrs F been told there was some pain she wouldn't have gone ahead with the treatment. Because she had further treatment with the supplier having experienced the procedure already, it would be difficult to conclude that in any event.

Mrs F also said the supplier told her the procedure would not make her symptoms worse. However, there was not persuasive evidence (such as advertisements or otherwise) to show she was told this. It would also seem unusual in this field to be told that there would not be any possible complications. However, even if TB accepted that the supplier did tell Mrs F the procedure would not worsen her symptoms – Mrs F (beyond her testimony) had not provided persuasive expert evidence to show the treatment specifically was responsible for making her symptoms worse.

All things considered, I don't think TB had been presented with persuasive evidence to show there had been a misrepresentation by the supplier here. I am also aware that things said in the course of agreeing a contract can become terms of said contract in line with the provisions of the CRA. But for similar reasons to those stated above – I don't think this changes things in respect of Mrs F's allegations. Ultimately, I don't think TB had substantive evidence to support either a misrepresentation or breach of contract in respect of what Mrs F says the supplier told her at the point of sale.

I want to underline my findings are not intended to indicate what Mrs F is saying is untrue. My role is to look at whether TB acted fairly in the way it handled the Section 75 claim. In summary, based on the limited evidence available to it (and noting the complexity of the issues raised, the supplier's defence and lack of expert evidence to support Mrs F's case) I am not in a position to say that in considering the Section 75 claim presented to it TB should have fairly concluded it was liable for more than the amount I am directing it to pay below.

Chargeback

TB also had the option of raising a chargeback for Mrs F in respect of the quality of the service. Chargeback is not guaranteed to succeed though, and is based on the particular rules of the card scheme (Mastercard in this instance).

Chargeback has strict time limits to raise a claim and it isn't immediately clear to me if Mrs F would have been in time to raise one when she approached TB. However, and in any event I don't think TB acted unfairly in not progressing one here. I say this because I don't think the chargeback had a reasonable prospect of success. Based on the information TB would have seen it would be apparent that the supplier would likely have defended a chargeback on the basis that it had provided the service to Mrs F as described. And while it conceded some customer service failings – these alone are unlikely to constitute valid grounds for a successful chargeback in respect of the quality of the procedure.

Furthermore, even if I agreed that TB should have raised a chargeback and pursued it beyond the supplier's defence to arbitration, I can't fairly say it was more likely to succeed than not. There would be similar challenges faced in determining the core service was not up to an acceptable standard to those I have already detailed above in respect of the Section 75 claim. The complexity of said matters is also arguably not well suited to the

chargeback process – which is unlikely to be able to summon witnesses and compel additional evidence in the same way a court can.

General claims handling

I note Mrs F says she has been caused upset by TB initially declining her claim and it caused her to have to re-live the unpleasant experience again. I am sorry to hear about the upset caused here – but I don't think that declining a claim in itself is something that would usually mean compensation is fair – particularly when it comes to complex matters such as these. I know TB appears to have then made an offer to refund Mrs F some money on further consideration but I think this was an attempt to help Mrs F rather than cause her further distress. Although, I do see how it is arguable that TB could have made an offer at the outset I also recognise that ultimately, the underlying distress here is as a result of the problem that Mrs F experienced with the supplier – rather than the actions of TB as a claims handler. With that said I note TB offered (and has apparently paid) £100 for any distress caused by its claims handling. In the circumstances I don't consider it fair to ask it to pay more.

Putting things right

As set out below.

My final decision

I direct Barclays Bank UK PLC trading as Tesco Bank to (only to the extent that it has not already done so):

- Refund Mrs F £715 plus 8% simple yearly interest calculated from the date of transaction to the date of settlement; and
- pay her £100 compensation.

If TB considers it is required to deduct tax from the interest award it should provide Mrs F with a certificate of tax deduction, so she may claim a refund if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 2 January 2026.

Mark Lancod
Ombudsman