

The complaint

Miss N is unhappy with how Mitsubishi HC Capital UK PLC trading as Hitachi Personal Finance ('HPF') handled a claim under section 75 of the Consumer Credit Act 1974 ('S75').

What happened

Around November 2019 Miss N underwent laser eye surgery at a clinic I'll refer to as 'A'. To cover the cost of the surgery, Miss N entered into a fixed sum loan agreement with HPF. The agreement was for £3,200 to be repaid over 24 months. Miss N also paid a deposit of £500.

Miss N says as part of the cost she was entitled to twelve month's aftercare but says she didn't fully receive this, as A went into liquidation shortly after the procedure.

Miss N says she had complications with her eyes following the procedure. She then says she found out she was not a suitable candidate for the surgery, as her prescription was unstable, and she suffered from dry eyes. She says A never told her this and didn't disclose any risks.

Unfortunately, Miss N says around two years after the surgery she had to begin wearing glasses again. And she said her dry eyes persisted and worsened.

Miss N says she was told by A during a consultation that regression was a possibility, but it was extremely rare. She says A told her if regression did occur, this would be noted as part of the aftercare and a corrective procedure would be offered with a discount.

Miss N raised a S75 claim with HPF in November 2024. She asked for a full refund to allow her to get corrective surgery.

In February 2025 HPF sent Miss N details about the outcome of the S75 claim. In summary, this said HPF agreed her eyesight had regressed since the surgery. But it said there was no guarantee for the results of the procedure.

HPF said a contract with A showed Miss N's suitability for the surgery was assessed.

HPF said Miss N told it she was entitled to six follow up appointments but had only attended two. HPF said it had reimbursed Miss N £200 because of this in October 2020, which she accepted. It said the contract with A showed following Miss N being discharged A would charge £75 to see an optometrist. So, it offered a further £100 to reflect this cost over four appointments.

HPF said it had seen no evidence to suggest the surgery was performed incorrectly nor that Miss N was an unsuitable candidate. But it said the contract with A explained if vision regressed and retreatment was required twelve months after the surgery, it would be charged at a discounted rate of £500 per eye. HPF said it had "*honoured the terms of the contract*" and offered a payment of £500 per eye towards further surgery.

Miss N then complained about the outcome of the claim. HPF issued a final response later in

February 2025. This said, in summary, that Miss N had not shown a medical opinion or evidence that she was not suitable for the surgery. It said it would review the outcome of the claim if Miss N provided this.

HPF said Miss N hadn't shown the follow up appointments would be with a doctor. And it said the £1,000 offered was a good will gesture in relation to the experience Miss N had and said there was no evidence to suggest HPF were liable for corrective surgery.

HPF said it thought no further funds were due to Miss N.

Miss N remained unhappy and referred the complaint to our service. She said the money offered by HPF falls short of covering the cost of corrective treatment. She said the calculation for the aftercare was wrong, as this was based on four appointments with an optometrist when this should have been with a surgeon.

Miss N said HPF needed to cover the ongoing costs of appointments, medications and treatments that arose from the complications caused by A.

Miss N said she wanted a full refund of the amount paid so she could have corrective laser eye surgery.

Our investigator issued an opinion and did not uphold the complaint. In summary, he said he'd not seen evidence A should not have performed the surgery. He said he'd not seen any results were guaranteed from the surgery and hadn't seen A didn't use reasonable skill and care. He said he thought the total of £300 to cover the missed aftercare appointments was fair. And he said the £1,000 offered wasn't unreasonable.

Miss N remained unhappy. In summary, she said reasonable skill and care wasn't used due to her preexisting condition and unstable prescription. She said it placed an unrealistic burden on her to get medical evidence. She said promotional language clearly conveyed guaranteed results. She said the offer of £1,000 would not cover more surgery. She said aftercare should've been with a surgeon. And she described the impact the situation had had on her life.

Our investigator explained what Miss N said didn't change his opinion.

As Miss N remained unhappy, the case was passed to me to decide.

I sent Miss N and HPF a provisional decision on 21 July 2025. My findings from this decision were as follows:

Firstly, I'd like to explain to both parties that I may not comment on every piece of evidence in relation to this complaint and I may not comment on every individual point raised. Miss N has written at some length about the issues, and I want to reassure Miss N and HPF that I've carefully thought about all the information. But in my decision, as I've done in the background above, I'm going to summarise things and focus on what I think are the key facts and the crux of this complaint. This reflects the informal nature of our service.

Miss N complains about a claim made under S75. 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 Miss N had a valid claim under S75.

In order for there to be a valid claim, there needed to be a valid debtor-creditor-supplier (DCS) agreement in place. I'm satisfied Miss N took out a fixed sum loan from HPF to pay for the treatment with A. I've seen she contracted with A directly and the surgery was carried out on herself.

Thinking about this, I'm satisfied a valid DCS agreement was in place for the transaction covered in this decision.

I've then considered the financial limits that apply to a valid S75 claim. Miss N needed to have purchased a single item with a cash price of over £100 but no more than £30,000.

I'm satisfied the 'single item' in this case was the surgery including aftercare. This cost £3,700. So, I'm satisfied this falls within the financial limits for a claim.

What I need to decide in this case is whether HPF did anything wrong with how it handled Miss N's claim under S75.

Pre-existing conditions and reasonable skill and care

Miss N has raised a few points to consider. But her main argument seems to me that A should not have performed the surgery, as she says she was not a suitable candidate in the first place. She said this led to further issues and complications following the procedure. So, I'll consider this first.

The Consumer Rights Act 2015 implied a term into the contract Miss N entered into that services would be carried out using 'reasonable skill and care'.

I am not a medical professional and nor are other staff at our service. This case involves a complex surgery about which I am not an expert. So, when thinking about 'reasonable skill and care' along with what else happened here, including the question of whether Miss N was a suitable candidate for surgery, it's important to note that I would rely heavily, and put a lot of weight, on expert opinion and testimony to explain what happened.

I should say up front that there is a lack of any such evidence here. So, while I of course have carefully considered what Miss N has provided, both parties should be aware from the beginning that this is very limited.

Miss N says she was not suitable for surgery due to her suffering from dry eyes and an 'inconsistent prescription'. If Miss N shouldn't have undergone the surgery, I'm satisfied this would clearly show a lack of reasonable skill and care and so would be a breach of contract.

I've seen a letter from an opticians dated January 2017 that explains:

"We have been monitoring (Miss N) for several months now for dry eyes"

I've seen a letter from the same opticians dated January 2020 that explains Miss N attended an appointment following the surgery. This states:

"She has extremely dry eyes before and after the surgery"

I've seen a copy of a letter from an eye hospital dated 1 April 2020 to Miss N's GP. I should note this was a telephone consultation and the author didn't see Miss N. This said:

"Her optician reported that she has normal uncorrected vision once lubricants are instilled but prior to this, vision was slightly blurry. She had dry eyes prior to laser"

"I have explained that dry eyes are a common adverse effect of LASIK and that in patients with pre existing disease, this worsens after treatment"

A further letter from the opticians dated 29 December 2024 states:

"prescriptions prior to and after Laser surgery which indicate that her prescription was and is still changing."

Miss N also provided details of her prescriptions and how these changed.

I'm satisfied having reviewed things that Miss N did suffer from dry eyes, before and after surgery. And I don't doubt what she said about her prescription being inconsistent.

I want to reassure Miss N that I've carefully thought about everything she said in relation to this. And I do understand her concerns about the difficulty of getting medical evidence after the surgery had taken place. But I need to weigh this up against the fact none of the above states nor implies that she should not have had the surgery, even though I accept what she says about her conditions beforehand. And there is nothing else to back up what she said here.

I've seen a copy of the terms and conditions from A that were signed by Miss N. These state:

"The consultation involves extensive tests to assess your suitability for treatment."

To repeat, I am not an expert on this. But I should also note that, if she thinks she was not a suitable candidate, I can't see the logic behind Miss N requesting a full refund of laser eye surgery to fund further laser eye surgery.

Thinking about all of this, I've not seen enough to persuade me A didn't use reasonable skill and care when it accepted Miss N for the surgery.

I've gone on to consider if the treatment itself wasn't carried out with reasonable skill and care.

Results alone don't show a lack of reasonable skill and care, as even if they were not what Miss N expected, this doesn't mean A necessarily did anything wrong. While she said A caused ongoing problems with her eyes, Miss N hasn't shown any evidence that this was the case. Nor has she shown any other evidence to show A did anything else wrong.

In summary, having reviewed all of the information and evidence, I've not seen anything to show A didn't use reasonable skill and care during the surgery.

Miss N has said communications with A clearly showed she should expect guaranteed results. But, respectfully, having reviewed the evidence I'm satisfied this is not correct.

Having thought about all of this, I'm not persuaded any breach of contract occurred here.

Aftercare

It isn't in dispute that Miss N didn't get the full aftercare that came as part of the agreement with A.

The terms and conditions Miss N agreed to state:

"Aftercare appointments are conducted throughout the 12 month period following treatment."

They go on to explain six appointments are scheduled following surgery over the next twelve months.

Miss N says she only attended two out of six appointments, and HPF accept this.

What is in dispute, is what would be a reasonable way of compensating Miss N for this.

Miss N has been adamant that all follow up appointments would be conducted with the surgeon who performed the operation. But I've not seen anything to persuade me this was likely the case.

The terms and conditions say about the follow up appointments:

"These will take place at (A name and location) or with an ('A') optometrist network partner closer to home"

I've also seen an email from A from around the time of the surgery. This explains follow up appointments have been booked with A, but not who would conduct them.

Thinking about this, I'm not persuaded that Miss N was due to see a surgeon at the follow up appointments.

The terms and conditions explain:

"Once you have been discharged, post-operative checks will be charged at a rate of £75 per visit with our specialist optometrist or £150 per visit with surgeon"

HPF has offered a total of £300 here, meaning £75 each for the missed appointments. Given the contract gives a clear value on this, I think this is fair and reasonable under the circumstances.

Miss N has raised the argument that if she had attended the appointments then the issues with her eyes could've been spotted earlier. But I haven't seen any evidence this would've likely been the case.

Further treatment

Miss N has explained that she doesn't think the £1,000 offered by HPF is reasonable to reflect the ongoing issues with her eyes and that this isn't enough to cover the cost of further surgery. Our investigator said this offer was made in recognition of Miss N's eyes deteriorating and was so she could seek treatment elsewhere. He said this offer was not unreasonable.

But it's important to note my understanding is that this offer was not supposed to cover the cost of getting treatment elsewhere, nor to reflect any ongoing issues. I'm satisfied having reviewed the communications with Miss N that HPF offered this as a gesture of goodwill and did not accept A did anything wrong. In the final response to the complaint, HPF said:

"While this amount has been offered based on the discounted cost the treatment would have been offered to you by (A) should they had not been into administration and you raised it with them within a year, ultimately the amount offered remains a good will gesture in relation to the experience you've had, and there is no evidence to suggest we are in any way liable for any future costs to you around further corrective surgery in relation to your eyes"

I've reviewed what the terms and conditions say here. They explain what's included in the

surgery:

“Any required enhancement (re-treatment) procedures conducted within 12 months of the original treatment. This includes drops (one month) and three post-operative checks that are required after additional treatment”

“Regression of vision a year after laser treatment is extremely rare. If retreatment is required 12 months after the procedure, it will be charged at the discounted rate of £500 per eye.”

I haven't seen that Miss N did require enhancement procedures within twelve months.

In relation to the second part, all parties do seem to accept regression took place. But the term here is very specific – it states a discount would be applicable if Miss N required retreatment twelve months after the procedure. I've noted this doesn't say after twelve months. And I haven't seen any medical evidence to show Miss N did require retreatment twelve months after the procedure.

This means I don't think HPF needs to take any action on this point. As I'm satisfied the offer made was a gesture of goodwill, it's up to Miss N to contact HPF if she wishes to now accept this.

Summary

In summary, I find that there isn't evidence to show that A did not use reasonable skill and care when performing the surgery on Miss N. Nor have I seen other evidence that a breach of contract or misrepresentation took place.

I find Miss N was due to attend four aftercare appointments that she did not receive. And I'm satisfied HPF's offer to pay a total of £300 to reflect this is fair and reasonable under the circumstances of the complaint.

It follows all of this that I'm satisfied HPF didn't do anything wrong when it handled Miss N's claim under S75.

I gave both parties two weeks to come back with any further comments or evidence.

Miss N didn't reply.

HPF responded and confirmed it had already paid the additional £100 it offered in relation to the missed appointments, as well as the £1,000 gesture of goodwill to Miss N.

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 thought about all of the information and arguments again, I still think what HPF offered to put things right was fair, and so I find how it handled Miss N's claim under S75 was reasonable. This is for the reasons I explained in my provisional decision and set out above.

I previously explained I was considering instructing HPF to pay Miss N any outstanding amounts due from the offer. But it has confirmed these have already been paid.

So, HPF needs to take no further action.

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 Miss N to accept or reject my decision before 5 September 2025.

John Bower
Ombudsman