

The complaint

Miss P has complained about the way Barclays Bank UK PLC trading as Barclaycard (“Barclays”) dealt with a claim in relation to a surgical procedure she paid for using her credit card.

What happened

The circumstances of the complaint are well known to the parties so I’m not going to go over everything again in detail. But, to summarise, Miss P contacted the Financial Ombudsman to refer a complaint in March 2025. She said she’d paid for an operation to be performed through a private hospital provider I’ll call “C” and the surgeon didn’t perform the surgery as per the contract. She requested a full refund of around £4,800 which she’d paid in November 2024 to C using her Barclays credit card. Miss P said there was a clear breach of contract Barclays could be held jointly liable for under section 75 of the Consumer Credit Act 1974.

Barclays sent a final response to Miss P in April 2025 to say in order for it to review the claim it would need evidence such as C’s response to the claim. It wanted to see terms and conditions; notes from C; further responses from the independent regulator for doctors and the independent trade union and professional body for doctors; confirmation whether Miss P followed up her complaint to any other independent bodies which C is a subscriber to; and evidence from an expert on whether the procedure was carried out with reasonable care and skill. Barclays said it couldn’t review the claim until Miss P provided further information.

Miss P said she’d provided sufficient information to Barclays for it to refund her money. She said she’d provided the details of the procedure agreed and discharge form along with her complaint letter to C. She said she’d shown the consultant carried out an unauthorised operation code that wasn’t what was set out on the contract. This is because the operation code on the discharge form was different to that on the admission form. She provided treatment notes and her inpatient form. She also said the NHS had subsequently carried out the correct procedure she’d wanted when C failed to carry out the contracted procedure.

One of our investigators looked into things but didn’t make any recommendations. Miss P didn’t agree. In summary, she said she’d never had a contract with the consultant. She said it was clear the procedure she’d paid for wasn’t undertaken showing a breach of contract. She said the contract was the admissions letter that set out the procedure she’d paid for and that the discharge paperwork set out something different. She said this is all that was required under section 75. She said Barclays should have considered all avenues for her claim. She said she wasn’t provided terms and conditions. She also said she wasn’t interested in the Barclays customer service element of her complaint.

As things weren’t resolved, the complaint has been passed to me to decide.

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 that 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 want to assure Miss P and Barclays 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 set out that I'm very sorry to hear Miss P wasn't happy with the procedure. 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. I mention this because of the nature of the claim and the impact Miss P said the treatment had on her.

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

Before I go on to consider how Barclays handled the claim, I think it's also important to set out up front that Miss P has said a surgeon hasn't performed the operation that was agreed. This is a very serious allegation. It's not always appropriate for the Financial Ombudsman to investigate certain disputes. There are dismissal reasons in our rules that say an Ombudsman could choose to dismiss a complaint where it would be more suitable for the complaint to be dealt with by a court. In Miss P's case, while I can't currently be sure, I think it could be hard to conclude the case without expert medical evidence, or where the subject matter can be scientifically complicated and involve differences of professional opinion. Even if there was further evidence available, it may have been difficult for me to fairly decide Miss P's complaint in the quick and informal forum I'm working with.

That being said, I've thought about how Barclays handled the case based on what it was presented.

I take into account the relevant law. So, in this case, section 75 makes Barclays responsible for a breach of contract or misrepresentation by the supplier under certain conditions. I think the necessary relationships between Barclays, C and Miss P exist and the claim is within the relevant financial limits.

However, like our investigator noted, while I take on board Miss P's comments she wasn't given terms and conditions, I'm conscious that C's terms and conditions online say the consultants involved in the care are independent medical practitioners not employed by C. It also says C would not be liable for any act or omission of the consultant. The terms say consultants offer services to customers directly.

Miss P has said she received a letter from C and didn't receive any other terms and conditions. She said she never had a contract with the consultant. There's not much for me to go by. But based on what I've seen, I've not seen that C told Miss P that the consultant was directly employed by it. The consent form Miss P signed sets out she was the patient and also gave the name of the responsible health professional (the consultant). I think C provided hospital services to Miss P and charged a fee which included the consultant's fees. The booking form sets out there are fees for the surgeon; the anaesthetist; and the hospital. C needed to provide its service with reasonable care and skill as set out in the Consumer Rights Act 2015 (CRA). But it's not clear C can be held liable if the consultant didn't perform their service with reasonable skill and care.

I'm conscious there was a High Court judgment recently – *Bartolomucci v Circle Health Group Ltd* [2025] EWHC 529, which had some similar questions or claims raised. The claimant sought a declaration as to the scope of the obligations undertaken by the hospital. The dispute centred on whether the hospital was contractually liable for acts and omissions of the consultant. In that case, the judge found that the contract for the services of the consultant was being provided to the claimant directly, and that the claim against the hospital was dismissed.

In Miss P's case, I think the consultant was also providing services to Miss P 'directly' and so it's not clear there'd be grounds to say C breached the contract if the issue was down to the consultant doing something wrong. C took the consultant's fees as agent, but the consultant is not employed by C and is independent.

However, as I said, I agree that C needed to provide its own hospital services with reasonable skill and care. But the problem is that I don't think Barclays was provided sufficient evidence to show that it didn't. I'm conscious that both Barclays and our investigator asked Miss P for further supporting evidence such as correspondence between her and C both before and after the procedure. We've only received limited information. And based on what I've seen, while I note C has more recently offered Miss P £250 under a 'gesture of goodwill agreement', I think Barclays would have wanted to be more certain that C either breached the contract or made a misrepresentation in relation to the hospital services that it supplied.

Miss P thinks this is a straightforward case of either breach of contract or misrepresentation. But without more supporting evidence, I don't think Barclays were unfair to ultimately not offer to fully refund her. I don't think there's sufficient evidence to conclude that C would've been liable for the consultant doing something wrong. Miss P has complained about the services C itself offered, but Barclays hasn't seen what its full response to that was. I have to bear in mind it's not clear for an example if there was an error on the paperwork, or whether the consultant had to undertake a different procedure code for medical reasons.

With regards to chargeback, for similar reasons, I don't think Miss P provided sufficient evidence to Barclays for it to have been able to safely conclude the services provided were defective or not as described. I don't think it's as straight-forward as showing the discharge paperwork showed a different procedure to that set out on the admission paperwork. The fact C has only offered Miss P £250 goodwill compensation when the package was for nearly £5,000 strongly indicates it would've sought to defend a chargeback that was raised for the full sum. Overall, I think Barclays would've wanted to be more certain, and without more supporting evidence I don't find I can safely conclude a chargeback would've had a reasonable prospect of success.

Overall, it's not clear the Financial Ombudsman is the best forum for this sort of dispute to be considered. But based on what I've seen, I don't find I have the grounds to say that Barclays needs to refund Miss P for the services she paid for. Miss P may wish to provide Barclays with further evidence, and I'd expect it to review the information accordingly. Otherwise, I should also point out that Miss P is free to pursue the complaint by more formal means such as through the courts where, unlike at the Financial Ombudsman, witnesses can be called and sworn evidence taken.

Finally, I appreciate Miss P is unhappy with the outcome of the claim, but she's said she wasn't interested in the customer service Barclays provided. So I've not thought about that in great detail. I will say that while it could have offered its answer sooner, I don't think Barclays dismissed her concerns. While it asked for lots of and arguably too much information, I think Barclays was asking for more to enable it to properly understand what happened and for it to be able to assess the claim fairly before giving its answer. And I think it was for Miss P to evidence her claim. Overall, while I'm not saying something definitely hasn't gone wrong, I'm not going to direct Barclays to take any action in relation to how it handled Miss P's claim.

My final decision

My final decision is that Barclays Bank UK PLC trading as Barclaycard has considered the claim fairly. I make no directions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 25 February 2026.

Simon Wingfield
Ombudsman