

## **The complaint**

Mr M complains about how Omni Capital Retail Finance Limited ('OC') responded to a claim he made to it in respect of medical treatment he paid for using the fixed sum loan it provided.

## **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.

In October 2020 OC financed hair transplants for Mr M supplied by a clinic ('the supplier').

In summary, Mr M says he isn't happy with the results of the treatment. And he is mainly unhappy regarding the level of involvement of a particular doctor ('whom I will refer to as Dr A'). He says Dr A did some of the treatment while another doctor did the rest. Mr M says this didn't align with his expectations, based on discussions he had with the supplier prior to the sale of the treatment. And what it said on its website.

Mr M wants a full refund. OC considered the claim in respect of its liability under Section 75 of the Consumer Credit Act 1974 ('Section 75') but didn't uphold it.

A complaint about the claim outcome was escalated to this service. Our investigator didn't uphold it, so Mr M asked for an ombudsman to consider matters again 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 Mr M is unhappy with the treatment he bought from the supplier. However, it is important to note that my decision here is not a definitive statement about any potential wrongdoing or otherwise by the supplier. Ultimately, I look to whether the actions of OC were reasonable in declining the Section 75 claim based on the information reasonably available to it at the time.

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

## Breach of contract

When considering whether there has been a breach of contract by the supplier I consider the express terms of the contract along with any terms implied by relevant law. Here I consider the Consumer Rights Act 2015 ('CRA') to be of particular relevance in considering any implied terms.

## Express terms of the contract

I note here that OC didn't appear to have a copy of Mr M's specific treatment notes or plan. But they did have a copy of the terms of the treatment called '*Request for treatment*' – which appears to be part of the overall consent process Mr M agreed with the supplier. So I have considered what that says in assessing if OC dealt with the claim fairly.

Here I note this consent form does not specify a particular outcome and explains that results from the treatment are not guaranteed. So even though Mr M has submitted some evidence from another practitioner to show his results can be improved – it is not sufficient to say this shows any express promise has been breached in respect of the treatment outcome.

I also note Mr M's key point about how the surgery was carried out – including the involvement of Dr A and another doctor. However, there appears to be nothing in this consent form or another express written term of the contract to specify what tasks Dr A will be involved in the treatment – and whether he will be assisted by another doctor. I appreciate what Mr M says about what the supplier told him/what the website led him to believe – and later in my decision I have considered this in respect of any misrepresentation or breach of implied contractual provisions under Section 50 of the CRA. But as far as express agreement for a specific surgeon carrying out certain tasks this wouldn't have been apparent to OC when it handled the claim from the express contractual documentation available to it.

## The way the treatment was provided

The 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 Mr M has purchased a complex cosmetic/medical product where specific expert knowledge is necessary to understand it. I am not an expert in this area (nor is OC) and without an expert report that persuasively explains what has gone wrong here and why or some other similarly persuasive evidence it is difficult to fairly conclude that the treatment wasn't carried out properly.

It is also important to note that even if I agreed Mr M had not achieved certain results he 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 to vary for a number of reasons other than a lack of care or skill by the practitioner.

With this in mind, I note Mr M appears to have submitted some expert evidence to support his claim. This appears to be a letter from another surgeon. However, I don't think this expert

evidence persuasively shows the original treatment was carried out without reasonable care and skill. I say this because although the letter acknowledges that a second procedure would improve the results obtained – it doesn't say the first procedure was carried out without due care/skill and why. The need for possible follow up treatments is not inconsistent with the information in the consent form for the original treatment. Furthermore, and in any event, the assessment appears not to have been carried out in person (I presume it was based on photos) and lacks the sorts of things usually expected from an independent report including the full credentials of the expert, the date the assessment was completed and a statement of truth.

I note that in considering the claim OC would also have been aware of a detailed rebuttal of Mr M's claim by the clinic – explaining that despite a goodwill offer to carry out a follow up treatment at no charge it did not accept the original treatment was carried out without reasonable care and skill. It explained that Mr M had agreed that the result was not guaranteed and provided photos which appear to show that Mr M had some beneficial results. It states Mr M took years to make a formal complaint and indicated he was satisfied at the time with the way things had been carried out (providing text messages to show this). So OC would have had to weigh this information up against what Mr M had provided – noting that while he had produced detailed testimony, there was not a persuasive report to show the procedure was carried out below an expected standard.

Furthermore, while a Care Quality Commission ('CQC') report from around the time identified both positive and negative aspects of the clinic – as a non-expert I don't think OC would reasonably have concluded from this report that Mr M's treatment was carried out without reasonable care and skill.

I understand one of the points Mr M has made is that he understood trainees were in the room and participating with his treatment. He points to the CQC report which confirms that the clinic employs trainees. The supplier appears to have denied that trainees were carrying out the procedure for Mr M so it was difficult for OC to conclude this was the case without evidence to the contrary. And although Mr M's testimony is evidence – it appears that he didn't raise the issue within a short period of the procedure which makes it more difficult for OC to conclude this likely happened. Furthermore, it is worth noting that even if it were able to conclude that a trainee was in the room at the time – this does not necessarily show the treatment was carried out without reasonable care and skill.

In summary, I am unable to fairly conclude OC should have decided that some express term of the contract had been breached or the treatment was carried out without reasonable care and skill. However, I have gone on to look at Mr M's concern which is that he alleges the supplier misled him about the extent of Dr A's involvement in the treatment.

#### Misrepresentation / Misdescription

I have considered information Mr M was given prior to agreeing to the service to see if it was clear to OC that he relied on false information to his detriment.

I note Mr M's testimony appears to be that the supplier led him to believe that Dr A would be carrying out all the procedure – rather than with another doctor. Mr M accepts that Dr A was involved with carrying out part of the surgery – but says he didn't carry out the initial parts of it he was expecting.

The supplier has strongly denied it misled Mr M here. It said that it made Mr M aware that the surgery was performed by Dr A and his team together. It said Mr M didn't raise concerns when he met the other doctor that morning. Or soon after the treatment and produced

messages Mr M sent showing he was satisfied at the time with how the surgery had been carried out.

Even if the supplier markets itself around a particular surgeon, it doesn't seem unusual that a clinical team would be involved in a treatment – and there seems no dispute that Dr A oversaw and participated in Mr M's treatment. While I appreciate that Mr M has provided detailed testimony about how he researched surgeons and had identified Dr A as the one he wanted and expected to personally carry out particular aspects of the process – it is difficult for OC to evidence that a specific agreement was reached on this if there is nothing in writing or any recordings of any conversations. And it is made more difficult for OC to conclude the supplier likely gave Mr M incorrect information about this when there isn't persuasive evidence to show Mr M raised the matter soon after the surgery.

One of Mr M's key points is the supplier had a statement on its website which Mr M says indicated he would be Dr A's only patient that day. And it has since been confirmed he wasn't.

I note the website states that there is a '*Personal service. With one patient per day assurance. Because care and quality is paramount*'. The supplier says this statement relates to ratios – and essentially confirms a 1:1 ratio patient to doctor. It appears to be saying that because Dr A and another doctor were involved in two treatments that day it wasn't a false thing to say. I think at the very least this statement is an ambiguous one. And I can see how Mr M would read it that his surgeon was not treating any other patients that day.

It is debatable whether the statement is sufficient to constitute a false statement of fact. However, even if OC were to accept the statement was able to form the basis for a misrepresentation or breach of contract there would still be the question of assessing detriment. And because there was not sufficiently persuasive evidence to show OC that the procedure was carried out without reasonable care and skill and that the results achieved would likely have been materially improved had things been done different way, it is difficult for OC to conclude the manner in which the supplier conducted the procedure led to a material loss in any event.

In summary, based on the evidence available to it I don't think OC was acting unfairly in not upholding the claim based on Mr M's allegation that the supplier promised something it didn't deliver.

I know Mr M has alleged that OC simply took what the supplier said at face value. I think that isn't necessarily what's happened here. But ultimately, I don't think OC not upholding the claim is unreasonable. It is a complex claim, brought a significant time after the treatment – and for OC to accept liability and agree to reimburse the substantial claimed financial loss Mr M wants I think it required more persuasive evidence from him to rebut the defence by the supplier.

A complex case such as this could potentially benefit from summoning witnesses and cross examination of the individuals involved, including requests for other evidence. That is something a court is better placed to do. My role here is to informally look at OC's claim handling. And on the face of it, based on the evidence available to it – I don't think it has acted unfairly or unreasonably. That is not a direct finding regarding the actions of the supplier here – and Mr M will need to decide what next steps he wishes to take in respect of any claim he might wish to pursue against it.

**My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 May 2026.

Mark Lancod  
**Ombudsman**