

summary of complaint

Miss E complains about a medical procedure paid for using a loan from Zebra Finance Limited ("Zebra Finance"). She complains that the medical products used as part of the surgical procedure are faulty and need to be replaced.

Miss E brings her complaint under section 75 of the Consumer Credit Act 1974 ("section 75").

background

Miss E underwent a surgical procedure. She says that the medical products that were used in her surgery are not fit for purpose. She said this is a breach of contract.

The supplier of surgery offered to remove the medical products for free but replace them at a cost. Zebra Finance has not responded to her complaint. Miss E maintains that Zebra Finance should compensate her under section 75 for breach of contract by the supplier.

Our adjudicator recommended this complaint be upheld. She was satisfied that there was a breach of contract in this instance and that the medical products were made of unsuitable material. She said that Miss E should be compensated for the cost she would incur to have the medical products removed and replaced with more suitable ones.

Zebra Finance did not respond to the adjudicator's recommendation – we have been notified that the company is currently in administration. Miss E should note this development and the potential implications it may have for her in terms of recovering any money she is owed.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

From the information available to me, including the credible submissions of Miss E and published information from the Department of Health I am satisfied that the medical products were not fit for purpose. It is fair to say that they contained materials that a consumer would not reasonably have expected them to contain. And because of the sub standard materials they contained the medical products were more likely to malfunction.

I conclude there has been a clear breach of contract which gives rise to Miss E's claim. Section 75 makes the finance provider (Zebra Finance in this case) liable for this breach.

I am satisfied that Miss E should be awarded the cost to remove the medical products and replace them with those fit for the intended purpose. Miss E has supplied us with a letter from the supplier which says to do this will cost £2,995. Therefore, I find it fair and reasonable that Miss E is awarded this sum to remedy the original breach of contract.

Miss E has indicated that she may have suffered personal injury as a result of the original surgery. She has said that since the surgery she has lost feeling on parts of her body and suffers from a burning sensation and pain.

This is an informal dispute-resolution service, and we do not have the same process and procedures as the courts. There is also a limit on the amount of any binding award that this

service can make. I am of the view that the courts would be better placed to consider any personal injury matters that may arise from the medical procedure due to the complex nature of the claim and also given the monetary limit on the amount of our binding awards.

In view of that, my investigation of Miss E's complaint and this decision has only considered whether Zebra Finance is responsible for covering the cost of removing and replacing the medical products - and does not include any consideration of any personal injury elements of Miss E's claim.

It is important that I inform Miss E that as I propose to uphold her complaint my award would be in settlement of her complaint against Zebra Finance. This means that, if Miss E accepted my award, she would not be able to bring any further claim that she may have against Zebra Finance for personal injury. So, for example, Miss E could not then bring a personal injury claim about the matter through the courts.

It is very important that Miss E considers the potential consequences of deciding to accept the award I propose to make in full and final settlement of her complaint. If she is unsure about the effect this may have on her legal rights, she may wish to seek independent legal advice before accepting my final decision.

my final decision

My final decision is that Zebra Finance Limited should pay Miss E £2,995 for the cost of the replacement surgery.

Mark Lancod
ombudsman