

The complaint

Mr S says Omni Capital Retail Finance Limited ('Omni') has unfairly declined his claim under section 75 of the Consumer Credit Act 1974 ('CCA').

What happened

In January 2018, Mr S borrowed £15,000 from Omni to pay for some dental procedures for his friend, Mr K. He borrowed a further £5,500 from Omni in February 2019. Mr S says he set up this loan to pay the balance of Mr K's treatment and for some dental procedures for himself. However, he says the dental practice activated this second loan prematurely and without his consent. And, before Mr S received any treatment and Mr K's treatment was complete, the dental practice went into administration.

In August 2019, Mr S contacted Omni to make a claim under section 75 of the CCA.

Omni declined his claim. It said section 75 doesn't apply in this case because the specific relationship that's required between Mr S, the dental practice and Omni doesn't exist.

Mr S then referred his complaint to our service. And he contacted Omni in February 2020 to say he hadn't signed the second loan agreement.

Our investigator didn't think the second loan had been activated prematurely and without Mr S's consent, and she didn't think it was unfair for Omni to decline Mr S's claim for the first loan because she didn't think section 75 applied either. However, she recommended that Omni reduce the second loan by the cost of Mr S's treatment on the basis that section 75 applied to this element of the loan, and Mr S hadn't received the treatment he'd paid for.

Mr S disagrees with our investigator's conclusions. He says the dental practice should have told him not to borrow the money for Mr K if it meant he couldn't claim under section 75. And, understandably, Mr K doesn't think it's fair either – he wants Omni to pay for his treatment to be completed at another dental practice.

Omni also disagrees with our investigator. First, it explained that Mr S's testimony about his treatment plan doesn't reflect what's said in the emails he's provided between himself and the dental practice. Second, the loan agreement includes a 'Description of Goods and Services to be financed by credit'. This says, 'Teeth in a Day Bridge', which is a reference to Mr K's treatment only – it doesn't mention any treatment for Mr S. However, in the absence of a treatment plan or invoice for Mr S, Omni contacted a dental practice for the average cost of the procedures mentioned in the emails between Mr S and the dental practice (£1,045) – and it's offered to reduce the second loan by this amount.

As the parties disagreed with our investigator's conclusions, the case was passed to me for a final decision.

I issued a provisional decision on 4 May 2022, which explained why I thought Omni's offer to reduce the second loan by £1,045 fairly compensated Mr S for the supplier's breach of contract. It included the following provisional findings:

Was the second loan activated prematurely and without Mr S's consent?

Above, I've explained that Mr S says the second loan was activated prematurely and without his consent. However, it's clear from his testimony and the emails I've seen that he agreed to borrow the money to pay the balance of Mr K's treatment and for some treatment for himself. Omni has explained that the loan agreement was emailed to Mr S for him to sign electronically – and it's provided an audit trail which indicates that's what he did. It's also provided the audit trail for the first loan – and there's no discernible difference between the process followed for the first loan, which Mr S accepts he signed, and the second loan. Omni says an employee from the dental practice would need access to Mr S's email account and password for the loan agreement to have been signed electronically without his consent.

All things considered, I've seen insufficient evidence that the second loan was activated prematurely and without Mr S's consent.

Mr K's treatment

Section 75 of the CCA protects consumers who buy goods and services on credit. It says, in certain circumstances, that the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier.

However, for section 75 to apply, there must be a debtor-creditor-supplier agreement under section 12(b) or (c) of the CCA.

Mr S is the debtor and Omni is the creditor. However, the dental practice, which is the supplier, almost certainly entered into an agreement with Mr K not Mr S for the treatment financed by the first loan and part of the second loan. I say this because, although there's limited paperwork available, it's clear the loans financed dental procedures for Mr K and only the patient can consent to and receive such treatment.

I know Mr S and Mr K will be very disappointed, but this means there isn't a debtor-creditor-supplier agreement falling within section 12(b) or (c) for the first loan or the part of the second loan that financed Mr K's treatment – which means section 75 doesn't apply.

I have a great deal of sympathy for Mr S and Mr K – they're in a very difficult situation through no fault of their own. However, because of what I've said above about the absence of a valid debtor-creditor-supplier agreement, Omni isn't responsible or legally answerable for the supplier's breach of contract with Mr K or any potential misrepresentation about this contract. Therefore, I don't think it was unfair for Omni to decline this element of Mr S's section 75 claim.

Mr S's treatment

Based on the emails I've seen between Mr S and the dental practice, I think it's clear some of the money he borrowed was to pay for treatment for himself. To this extent, I'm satisfied that there is a debtor-creditor-supplier agreement, and that section 75 of the CCA applies to this element of Mr S's borrowing. This means Omni is legally answerable for any breach of contract by the supplier. It's accepted by all sides that the dental practice went into administration before Mr S received any treatment and there was, therefore, a breach of contract.

Two questions remain: what did Mr S pay for and how much did it cost?

Mr S says he was supposed to have teeth whitening, one or some fillings, a veneer and a tooth removed. I've reviewed the emails between Mr S and the dental practice. One simply

refers to 'crown/filling/teeth whitening'. Another says:

'[Mr S] was originally going to his [sic] crown done, fillings and get free teeth whitening...he has I believe a false tooth so we just need to review what was done by the previous dentist...'

Omni contacted a dental practice to ascertain the average cost of the procedures mentioned either by Mr S or in the emails. I've included this information below:

• 1 x crown	£850
• Filling	£130
• Tooth removal	£120
• 1 x veneer	£850
• Teeth whitening	£480
• False tooth investigation/examination	£65

In the absence of a costed treatment plan or invoice for Mr S, I think this is a fair way of calculating the cost of the various procedures.

Omni, relying on the email I've quoted above, has offered to reduce the second loan by £1,045 – which is the cost of one crown (£850), one filling (£130) and a false tooth examination (£65). As the email specifically says the teeth whitening is 'free', I don't think it's unfair for Omni to exclude this. I note that Mr S mentions a veneer but not a crown, whereas the emails refer to a crown but not a veneer. As they cost the same, I don't think this matters – but, to be clear, I think he paid for one, not both. And as the emails don't mention a tooth removal, I don't think Omni needs to reduce the loan by the cost of a tooth removal too.

I appreciate that one email refers to 'fillings' (plural) and the other refers to 'filling' (singular). In an email to us, Mr S also used 'filling' (singular) but when he spoke to our investigator, he said he was supposed to have 'some fillings'. Given the ambiguity, I don't think it's unfair for Omni to reduce the second loan by the cost of just one filling. However, if Mr S has any additional evidence which shows he paid for more than one filling, he can send it to me when he replies to this provisional decision.

Based on what I've seen so far, I think Omni's offer to reduce the second loan by £1,045 fairly compensates Mr S for the supplier's breach of contract.

Mr S has confirmed that he's received my provisional decision. He says he doesn't think it's fair, but he hasn't asked me to consider any further comments or evidence.

Omni has confirmed that it's received and accepts my provisional 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.

As Omni has accepted my provisional decision, and Mr S hasn't asked me to consider any further comments or evidence, I confirm my provisional findings. My reasons remain the same.

My final decision

For the reasons given, I direct Omni Capital Retail Finance Limited to reduce Mr S's second loan balance by £1,045.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 June 2022.

Christopher Reeves
Ombudsman