

The complaint

Mrs K complains Healthcare Finance Limited trading as Tabeo (“HCF”) has treated her unfairly in relation to a connected lender liability claim for dental treatment which was not completed.

What happened

Mrs K has an adult daughter, “N”. N was due to have dental treatment carried out by “Dr GN”, through his company “MCL”. Mrs K took out a £6,000 loan with HCF in April 2019 to pay for the treatment, under which she was expected to make payments of £190.62 per month for 35 months. The loan funds were paid directly to MCL.

Dr GN was suspended from practising dentistry in November 2021 and MCL ceased to be registered with the Care Quality Commission from September 2021. At this stage, N’s treatment hadn’t been completed and her care was passed to another dentist. However, Mrs K has said Dr GN failed to pay the new dentist and that his work had needed to be started from scratch in any case as it was of a poor standard.

Mrs K fell into arrears on the loan agreement and began making repayments via a debt management company. In response to an arrears letter she received from HCF in July 2023, she wrote back outlining the issues with Dr GN and MCL, and requesting all the money back she had paid under the agreement.

HCF rejected Mrs K’s request, reasoning that the protection given by section 75 of the Consumer Credit Act 1974 (“CCA”) did not apply to her case because she was not the patient receiving treatment. Mrs K complained about this decision, but HCF stood by its position in a final response dated 4 August 2023. Dissatisfied with this reply, Mrs K referred the matter to the Financial Ombudsman Service for an independent assessment.

One of our investigators looked into the matter. In December 2023 he issued an assessment in which he made the following key findings:

- Section 75 provided an equal right for a borrower to claim against their credit provider if there is a breach of contract or misrepresentation by a supplier of goods or services paid for using credit, in certain circumstances.
- For Section 75 to be applicable, there needed to be an agreement between the debtor (Mrs K) and the supplier of the goods or services in question (MCL).
- N had been the patient receiving treatment from MCL, not Mrs K. Mrs K didn’t have an agreement with MCL and couldn’t be said to be contracting jointly with N due to the personal nature of the services provided.
- The criteria for Mrs K to make a section 75 claim against HCF had not been met, therefore it had not acted unfairly or unreasonably in declining her claim.

Mrs K disagreed with our investigator’s assessment. She contended that there was an

agreement in place between herself and MCL, and in fact no contract in place between N and MCL. The agreement had been between herself and MCL, for MCL to carry out dental treatment on her daughter. HCF had been acting as Mrs K's agent.

Ultimately no agreement could be reached, and the case has been passed to me to decide. Mrs K has recently provided some further pieces of evidence relevant to the matter of the section 75 claim: an invoice where she is described as "Patient", and a letter from N stating she had no contract with MCL.

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.

When someone buys goods or services using a point of sale loan such as the one provided by HCF here, section 75 of the CCA gives a legal right to claim against the lender in respect of breaches of contract or misrepresentations by the supplier of the goods or services, so long as certain technical criteria have been met.

As our investigator noted, one of the technical criteria is the need for there to be a valid debtor-creditor-supplier ("DCS") agreement in place. This is a technical term, but in practice it means that in order to be able to make a successful section 75 claim, the borrower (debtor) needs to have used the loan to pay the same entity *they* have a claim against for breach of contract or misrepresentation.

In this case, Mrs K is the borrower. She needs to have a claim against MCL for breach of contract or misrepresentation in order for HCF to have liability under section 75. The dispute in this case boils down to whether or not Mrs K does in fact have such a claim.

Our investigator observed that this was a contract of a personal nature, and everybody appears to agree that it was N who had dental treatment from MCL paid for by the loan from HCF, and not Mrs K. N says she didn't have a contract with MCL. This may or may not be correct in the sense it's possible there was nothing in *writing* between N and MCL, but the fact that MCL carried out dental work on her teeth is in my view strongly indicative of a contract for the treatment existing between her and MCL. Given the personal nature of the contract, I think this is more likely than the alternative which Mrs K has contended is the case – which is that it is *she* (Mrs K) who had a contract with MCL for the supply of dental treatment to her daughter. I think Mrs K, as she initially told our investigator, took out the loan to help her daughter pay for the treatment. Paying for the treatment does not make her a party to the contract which it is alleged was subsequently breached.

I appreciate the way the (very limited) available paperwork has been worded is somewhat unhelpful. Mrs K's name appeared under or next to the word "Patient" in more than one place on HCF's paperwork.¹ But that doesn't mean she was the person receiving dental treatment as a result of the loan having been taken out, nor does it give her a right to claim for breach of contract if that treatment was not completed. I note N's name also appears on the same paperwork, next to a description of the services to be carried out.

Ultimately, I conclude Mrs K was not a party to the contract for the dental treatment. There's a general legal principle that a person who is not a party to a contract can't make a claim on it. There are some exceptions to this, such as where a contract is made for someone else's benefit, but I don't think this is the case here. It follows that I consider Mrs K does not have a claim against the supplier MCL for breach of contract, and therefore she has no claim

¹ We have received no paperwork from Dr GN or MCL or the dental practice.

against HCF either under section 75 of the CCA. It was therefore not unfair or unreasonable of HCF to decline her request for a refund.

Mrs K has argued that she should have been better informed by those involved prior to taking out the loan, of the potential limitations in terms of section 75 coverage if she was not the person receiving the treatment. Unfortunately, there was no requirement to inform Mrs K of this at the time, and so I don't find HCF has failed to provide the appropriate information to her.

I will say here that I don't lack in sympathy for Mrs K or her family. Plainly she has done nothing wrong and is understandably aggrieved at what has happened. However, I am deciding a complaint about HCF, and HCF has done nothing wrong either (in respect of the section 75 claim at least). It appears the wrongdoer in this situation has been Dr GN, who I understand remains suspended from practising dentistry due to misconduct.

Finally, I note Mrs K has expressed concerns during our investigation of her case about HCF failing to register payments from her debt management company. These concerns do not form a part of the complaint I am deciding today – and Mrs K will need to take these up separately with HCF if wishes to do so and hasn't already.

My final decision

For the reasons explained above, I do not uphold Mrs K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 29 March 2024.

Will Culley
Ombudsman