DRN-4905387

The complaint

Mr R complains about how Healthcare Finance Limited ('HFL') responded to a claim he made to it in respect of dental treatment he paid for using the fixed sum loan it provided.

What happened

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.

Mr R purchased orthodontic dental treatment from a remote supplier ('the supplier') for his son using a fixed sum loan from HFL in May 2023 .

Mr R says the supplier has now gone out of business, and he is unhappy because:

- The aligners have never fit properly and have caused his son gum damage and extensive pain;
- he has continued to pay for a product which his son cannot wear and there is no longer customer services to replace these.

Mr R says his son still needs replacement aligners which he cannot afford to give him until this matter is resolved and all the payments are refunded.

Mr R made a claim to HFL for a refund under Section 75 of the Consumer Credit Act 1974 ('Section 75') – but it did not agree to this. Mr R escalated a complaint about the claim outcome to this service.

Our investigator said Mr R did not have a valid claim against HFL under Section 75 because (in summary) although he took out the finance – the service was supplied to his son.

The matter has come to me 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 note here that HFL had another entity respond to this complaint on its behalf. However, my references to HFL are taken to include representations made on its behalf.

I am sorry to hear Mr R is unhappy with the dental treatment he bought from the supplier for his son. I am also sorry to hear about the impact he says it has had on his son's wellbeing and his own finances. However, it is important to note that my decision here is about the actions of HFL– and what it should fairly have done for Mr R in its position as a provider of financial services. In looking at how it handled the claim Mr R brought to it I consider the

information reasonably available to it at the time, along with the relevant protections available to Mr R. I consider Section 75 to be particularly relevant here.

Limited information

It is worth noting there are challenges presented by limited information in respect of the individual treatment plan and contract. However, I have looked to decide what is fair based on the information reasonably available to HFL when considering this Section 75 claim. This includes a blank copy of the supplier 'Consent & History' form, archived copies of the supplier FAQs, what limited information HFL was able to get from the supplier, and Mr R's testimony.

No valid Section 75 claim

I think it is fair to say that Mr R's Section 75 claim relates primarily to a breach of contract in respect of the quality of the treatment that his son received from the supplier. Mr R has explained that despite having his son's mouth scanned to create a custom fit the aligners (and replacements) did not fit properly and this led to 'pain and gum damage'. And now that the supplier is no longer trading it cannot rectify these issues.

Section 75 can allow Mr R in certain circumstances to hold HFL liable for a 'like claim' in respect of breach of contract or misrepresentation by the supplier of goods or services it financed for him. However, there are certain technical criteria which have to be met in order for Section 75 to apply. One of these criteria is that Mr R has a claim against the supplier under a 'debtor-creditor-supplier' agreement.

I note Mr R paid for the treatment. And he was heavily involved in the communications with the supplier on behalf of his son (to the point that they mistakenly referred to Mr R's name in email communications as if he were having treatment). However, in the particular circumstances I don't consider this is sufficient to mean Mr R has a relevant claim against the supplier in respect of the 'debtor-creditor-supplier' agreement. I say this because, the claim ultimately concerns alleged breach of contract in respect of a personalised medical treatment, and Mr R was not the patient in receipt of said treatment. I will expand on this.

It is not in dispute that Mr R's adult son had the initial scans carried out on his person and received the personalised treatment. And although I don't have a copy of the specific contract here – it is clear the supplier's contractual documentation relates to consent and agreement for treatment with the patient, rather than the person who paid for the treatment or who carried out the negotiations. This stands to reason, as (apart from exceptions involving minors for example) it is the patient who will agree to the relevant risks and variables that come with such a procedure which is carried out on their person.

I am sorry to hear the treatment caused Mr R's son discomfort and pain. I can see that Mr R wrote to the supplier about it. But although Mr R was involved in arranging the treatment and acting on behalf of his son when things went wrong it is ultimately his son who has the underlying claim against the supplier in court in regard to what went wrong and the damage that is alleged in relation to his gum and mouth health. It follows that although Mr R took out the finance in good faith to fund the treatment – he does not have the relevant agreement with the supplier in order to make a valid '*like claim'* against HFL under Section 75. Mr R has not provided any information that would persuade me otherwise.

I appreciate this might seem somewhat technical. But HFL can only be liable here for issues with goods and services that it didn't supply under the lens of Section 75. So it would not be fair and reasonable for me to look beyond the limits of its liability to cover claims made against it by third parties. And while I am aware that Mr R has mentioned other hypothetical examples of contracts that he might finance I can only fairly consider the contract in question here – which is highly personalised and relates to a patient/practitioner relationship rather than something like a relatively simple contract for goods.

So, ultimately, because of what I have said above, I don't consider that HFL would fairly be expected to provide Mr R with the refund he requested when he approached it with the Section 75 claim.

For completeness, even if I were to agree that Mr R had a valid Section 75 claim against HFL here (which I don't), it is worth noting that from what I have seen I wouldn't have necessarily expected it to have upheld a claim in respect of whether the treatment was carried out with reasonable 'care and skill' or if the goods were of 'satisfactory quality' (as set out in the Consumer Rights Act 2015). This is because the allegations here are in respect of a complex cosmetic/medical product where specific expert knowledge is necessary to understand it. I am not an expert in this area (nor is HFL) and (despite photos and emails about replacement aligners) without an expert report that explains what has gone wrong here and why or some other similarly persuasive evidence it is difficult to fairly conclude that the treatment was provided in such a way that would constitute a breach of contract in any event.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 3 February 2025.

Mark Lancod
Ombudsman