

The complaint

Miss S complains that Healthcare Finance Limited won't refund her money for dental aligners.

What happened

In October 2023 Miss S used finance provided by Healthcare Finance Limited (HFL for short) to pay for the provision of bespoke dental aligners and a service which ran alongside her treatment, both of which were provided by a company I'll call "S". Miss S said she received her aligners to straighten her teeth and started her treatment as required and has used all her aligners. Her treatment was for a course of approximately seven months. Miss S explained she chose to go with S as they offered a guarantee. Miss S says she was able to track the progress of her teeth via the application provided by S. Miss S says shortly after signing up to the service, S went into administration and the support through the app and the guarantee was no longer available. Miss S is unhappy with the outcome of the treatment she has received and isn't receiving support from S. So she took this dispute to HFL.

HFL considered her dispute with the supplier and considered it under a claim under section 75 of the Consumer Credit Act 1974 ("S75" and "CCA" respectively). It concluded that it didn't have to do anything further for Miss S. Feeling that HFL's position to be unfair Miss S brought her complaint to this service.

Our investigator looked into the matter. Overall, she felt that HFL had fairly treated Miss S. Miss S didn't agree. So the complaint has been passed to me to decide.

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.

I should make very clear that this decision is not about S who sold the aligners and support services, which isn't a financial services provider and doesn't fall within my remit regarding Section 75. Miss S has made very few arguments about how HFL treated her claim unfairly, but rather focussed her displeasure at S who is no longer extant (which I can understand considering the circumstances). Whatever the issues there maybe with S here, and just because Miss S says she has lost out, it doesn't necessarily follow that HFL has treated Miss S unfairly or that it should refund her. And this decision is solely about how HFL treated Miss S in her claim to it. I hope this key distinction is clear.

Miss S has said she's not been paying HFL and it has defaulted her. This was a three party arrangement where Miss S purchased goods and services from S and used money she borrowed from HFL to pay for this purchase. Just because S is no longer in existence doesn't mean she doesn't owe HFL the money she borrowed from it. I've seen evidence of Miss S not paying HFL and she's accepted that this is the case. So if HFL has defaulted her as she says then I'm not persuaded its treated her unfairly in that regard. She agreed to borrow money from it and also agreed to pay it back in instalments and she also agreed to

the terms of that borrowing. Which included information about what HFL would do if Miss S didn't pay. So I don't think HFL has treated her unfairly here by doing what was agreed.

I should also note that Miss S has raised a large number of issues in this dispute. I've considered them all. However I've chosen to address those arguments which she's raised which I see as key to this dispute and key to reaching a fair outcome on this matter.

The CCA

The CCA introduced a regime of connected lender liability under S75 that afforded consumers ("debtors") a right of recourse against lenders ("creditors") that provide the finance for the acquisition of goods or services from a third-party merchant (the "merchant"). S75 says:

"If the debtor under a debtor-creditor-merchant agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the merchant in respect of a misrepresentation or breach of contract, she shall have a like claim against the creditor, who, with the merchant, shall accordingly be jointly and severally liable to the debtor."

So the test is here, did HFL consider Miss S's S75 claim to it fairly, or in other words are the pre-requisites of the CCA in place (financial limits and Debtor Creditor Supplier arrangement) and is there a breach of contract or material misrepresentation made out here against S that HFL should fairly be held responsible for. I'm satisfied the financial limits test is made out here as well as the arrangement requirement. So I now consider breach and misrepresentation as I see these as the key aspects of Miss S's complaint.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that traders must perform the service with reasonable care and skill. The CRA also implies terms into the contract that goods supplied will be of satisfactory quality. The CRA also sets out what remedies are available to consumers if these rights under a goods or services contract are not met.

I've seen a sample copy of the "*Consent and History Form*" by HFL, which is issued to each customer of S and explains how their aligners system works. It explains the benefits and risks of the aligners and how the retainers should be used once the treatment plan has been completed. The customer is required to sign the form under a section entitled "Informed Consent". This includes the following explanation of the treatment "*I understand that S cannot guarantee any specific results or outcomes.*" I think it likely she did sign such a form and thus understood that no outcomes could be guaranteed.

Miss S isn't able to provide all of the contract between Miss S and S, nor can HFL. Both parties have said this is because it was held on the S application which they no longer have access to since S ceased trading. So, I don't know what it said about what Miss S could expect during the treatment or the end result once completed. But presumably it included things such as the provision of the aligners, ongoing support and the guarantee (subject to certain conditions being met). In bringing a claim under S75 it is for the claimant to show that there was a breach of contract or misrepresentation as they would have to in legal proceedings against S (if it were still in existence). HFL is also required to consider such claims to it fairly. So not having the contract does make concluding HFL has treated Miss S unfairly harder than otherwise would be the case. However she does have the extensive implied terms under the CRA to rely upon.

It is clear that Miss S did receive the aligners and did participate in the service required of her by using the aligners for some time. She says she used them all. Miss S hasn't shown

they didn't achieve the results she wanted but in any event no results were guaranteed. Accordingly it makes establishing any breach of contract difficult because we don't have the contract but do know she received what she was due to receive (the aligners) and did have access to the other services provided for some time, albeit briefly. Miss S says that she didn't receive the ongoing services she agreed to. However for HFL to have to do more not only does Miss S have to show that she didn't get the services but also that she's lost out as a result. And bearing in mind no results are guaranteed and Miss S hasn't shown she's lost out otherwise I'm not persuaded Miss S has shown that HFL has acted unfairly by not doing more.

Miss S says that the guarantee provided wasn't a guarantee and hasn't provided the return it should have. Before going into administration S provided some information to HFL which HFL has relied on in considering Miss S's claim. In order to benefit from the guarantee certain requirements had to be fulfilled in terms of sticking to the processes S set out. Miss S says she did meet these requirements. However one of the terms is that Miss S is up to date on her payments. I can see from the evidence provided that Miss S missed payments from the beginning of when they were due. So I'm not persuaded Miss S was treated unfairly by HFL in this regard as she didn't meet the requirements of the guarantee.

Miss S says that when she entered the agreement a related company in the USA was starting the process of failing as a company. She says if she'd known this she'd have not agreed to the finance here or bought the aligners. HFL is only responsible for misrepresentations or breaches of contract by S. I've not seen persuasive evidence that Miss S was told something untrue which she relied on in entering the purchase here. So I don't think HFL has acted unfairly. And in any event Miss S accepts she's used all the aligners and hasn't shown she's lost out due to the services not been provided.

I do appreciate that this isn't the decision Miss S wants to read. And that it leaves her disappointed. But that doesn't make it fair for HFL to do any more here because I'm not persuaded it has treated her unfairly in Miss S's S75 claim to it or its treatment of her payments which weren't made. So Miss S's complaint is unsuccessful.

My final decision

For the reasons set out above, I do not uphold the complaint against Healthcare Finance Limited. It has nothing further to do on this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 30 December 2024.

Rod Glyn-Thomas
Ombudsman