

The complaint

Miss P complains that Healthcare Finance Limited won't refund her the money she paid for services including dental aligners.

What happened

In July 2023 Miss P used finance provided by Healthcare Finance Limited (HFL for short) to pay for the provision of bespoke dental aligners and the service which ran alongside her treatment, both of which were provided by a company I'll call "S". Miss P said she received twenty such aligners to straighten her teeth and followed her treatment as required. Miss P says she was able to track the progress of her teeth via the application provided by S. Miss P says after aligner eleven she started having problems with her aligners and in December 2023 S went into administration and the support through the app and the guarantee is no longer available to her. Miss P is unhappy with the outcome of the treatment she has received and isn't receiving any support from S. So she took this dispute to HFL.

HFL considered her dispute with S 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 P. Feeling that HFL's position to be unfair Miss P brought her complaint to this service.

Our investigator looked into the matter. Overall, she felt that HFL had fairly treated Miss P. Miss P 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 P 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 is understandable considering the circumstances). Whatever the issues there maybe with S here, and just because Miss P says she has lost out, it doesn't necessarily follow that HFL has treated Miss P unfairly or that it should refund her. And this decision is solely about how HFL treated Miss P. I hope this crucial distinction is clear.

I should also note that Miss P has raised a number of issues in this dispute. I've considered them all. However I've chosen to address only 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 affords 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 P'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 then 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 P'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 their rights under a goods or services contract are not met.

Miss P isn't able to provide the contract between Miss P and S, nor can HFL. 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 P could expect during the treatment. 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 to some degree 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 required to consider such claims to it fairly. And it is clear that Miss P can point to the implied terms under the CRA to make her claim.

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.*” Bearing in mind what we know of this sales process from similar complaints, I think it likely Miss P did sign such a form and thus understood that no outcomes in terms of teeth straightening could be guaranteed. Miss P has latterly said she needs to see a dentist to get the results she wants. But I don't think this means HFL treated her unfairly in considering her claim. This is because she was informed at the time of the limits of these aligners and that they were not guaranteed to produce results. It is also of note that the retainers that were to be used at the end of the treatment weren't part of the contract which was agreed here. So Miss P was always going to have to purchase them at her expense separately.

It is clear that Miss P did receive the aligners and did participate in the service required of her by using the aligners for some time. 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 at least some time.

Before going into administration S provided some information to HFL which HFL has relied on in considering Miss P'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 P says she did meet these requirements. However I've seen the information from S and it shows that some of the

requirements (including 'check in') was not met by Miss P. Miss P says she did meet the criteria required of her. However Miss P hasn't been able to show the information HFL relied on was incorrect. And bearing in mind HFL has shown this information was taken direct from S' systems, I'm not persuaded Miss P was treated unfairly by HFL in this regard when it relied on this information to say she didn't qualify for the guarantee.

Miss P says it's unfair she's left paying for something that she can't use anymore. And I can see her point of view. But HFL loaned her the money to pay S here and I can't see that HFL has treated Miss P unfairly. So it's my decision that Miss P's complaint about HFL doesn't succeed.

Miss P has said *"If at the time I could of spoke to a dentist as promised, I wouldn't have had the trouble with my aligners as they would of resolved it or replaced the aligner, if it wasn't made right."* This may be true, but as Miss P agreed at the beginning of the process that there was no guarantee of results then even if she's lost out in this support it doesn't mean she would have got the teeth straightening benefit she wanted.

Miss P also says *"I should not be penalized for not being able to supply evidence when you know from myself and (the broker) that all documents were kept on (S') personal profile which is no longer available."* However S75 is clear the onus is on Miss P to show her case as well as HFL to treat her fairly. And it should be remembered that Miss P borrowed money from HFL to make this purchase and HFL and S are different companies. It wouldn't be fair for HFL to lose out when it's done nothing wrong.

I do appreciate that this isn't the decision Miss P 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 considering Miss P's S75 claim to it. So Miss P'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 P to accept or reject my decision before 6 January 2025.

Rod Glyn-Thomas
Ombudsman