

The complaint

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

What happened

In November 2022 Mrs L 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". Mrs L said she received aligners to straighten her teeth and followed her treatment as required. Mrs L says she was able to track the progress of her teeth via the application provided by S. Mrs L says after using some aligners she started having problems with her aligners and ordered and received further aligners. In December 2023 S went into administration and the support through the app and the guarantee is no longer available to her. Mrs L is unhappy with the outcome of the treatment she has received and that she 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 Mrs L. Feeling that HFL's position to be unfair Mrs L brought her complaint to this service.

Our investigator looked into the matter. Overall, she felt that HFL had fairly treated Mrs L. Mrs L 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. Mrs L 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 Mrs L says she has lost out, it doesn't necessarily follow that HFL has treated Mrs L unfairly or that it should refund her. And this decision is solely about how HFL treated Mrs L. I hope this crucial distinction is clear.

Mrs L has said she's not been paying HFL and it has sent her notices that she needs to pay. 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. So if HFL has put negative information on her credit file 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 Mrs L 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 Mrs L'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 Mrs L'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.

Mrs L isn't able to provide the contract between Mrs L 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 Mrs L 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 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 Mrs L 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 she did sign such a form and thus understood that no outcomes from the treatment were guaranteed. Mrs L has latterly pointed to online comment about the services of S from dental experts. 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 any particular results. And knowing that she entered the contract here for these services.

It is clear that Mrs L 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. And it's also clear she received further support in terms of new aligners when she raised issues with S about the treatment she had received.

Before going into administration S provided some information to HFL which HFL has relied on in considering Mrs L'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. Mrs L 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') were not met by Mrs L. Mrs L says she did meet the criteria required of her. However Mrs L hasn't been able to show the information HFL relied on was incorrect. This service has seen a number of similar complaints relating to S and we understand how the check in process worked and based on that knowledge I'd have expected Miss L to have done a number of check ins more than those she's evidenced. And bearing in mind HFL has shown this information was taken direct from S' systems, I'm not persuaded Mrs L was treated unfairly by HFL in this regard when it relied on this information to say she didn't qualify for the guarantee.

Mrs L 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 Mrs L unfairly in expecting her to pay it back. And I don't think it's considered her claim unfairly either.

Mrs L says the product never worked or could work so she doesn't see why she should pay for it. However she wasn't paying S, she was repaying HFL from whom she'd borrowed the money. S75 does require claimants such as Mrs L to show their case as a 'like claim'. Here there was no guarantee of results in these aligners and knowing that Mrs L entered this contract. So I don't see that Mrs L has shown that HFL has treated her unfairly.

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

Rod Glyn-Thomas
Ombudsman