DRN-5061768

The complaint

Mr M complains that Healthcare Finance Limited failed to provide a full refund in response to a claim he made to it about the failure of a supplier to deliver the dental treatment which he paid for with credit it provided.

What happened

In September 2023 Mr M entered into a 25-month fixed sum loan agreement with HFL to fund the provision of dental aligners to straighten his son's teeth from a third-party supplier. It was expected that the treatment would last for a few months.

In December 2023, the supplier went into administration and so did not address concerns about a broken aligner and a, *"…lack of dental supervision…"* And so, in February 2024, Mr M contacted HFL to make a claim, highlighting that the lack of a lifetime guarantee and replacement aligner equated to a breach of contract on the supplier's part. He therefore believed he should be entitled to a full refund.

HFL ultimately offered a partial refund, provided that Mr M's son return the unused aligners. Unhappy with that response, Mr M brought a complaint to us.

Our investigator considered how HFL had acted in light of its responsibilities under Section 75 of the Consumer Credit Act 1974. However, she did not uphold the complaint and concluded, in summary, that Mr M had no basis on which to make a successful claim under Section 75 as he was not the recipient of the treatment for which he had paid.

Mr M doesn't accept that and asked an Ombudsman to look into things.

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.

Having done so, I'm not upholding it, and I'll explain why.

I know my decision will be disappointing for Mr M, so I want to explain from the outset that I can only consider this complaint on a relatively narrow basis – i.e. whether it is fair and reasonable for me to direct HFL to provide a full refund of the treatment costs under S.75 of the CCA. That is the only legal basis which gives me any authority in this situation. The supplier was not a financially regulated business. And HFL is not the supplier. So the only question I can address is HFL's statutory responsibilities under S.75.

S.75 enables Mr M to make a claim against HFL for breach of contract or misrepresentation by the supplier of the goods/service in question. But certain criteria apply to S.75 in respect of things like the cost of the goods or services and the parties to the agreement.

It's clear that Mr M paid for the treatment. However, in the particular circumstances I don't consider this is sufficient to mean Mr M 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 M was not the patient in receipt of that treatment.

It is not in dispute that the initial assessments were carried out on Mr M's adult son, and that he 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. 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. Indeed, Mr M himself says that it*, "…was clear from the outset…"*, and understood by all parties, *"…that the treatment was intended solely for…"* his son.

This means that it is ultimately only Mr M's son who would have the underlying claim against the supplier in court in regard to what went wrong. It follows that, although Mr M 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 S.75.

Mr M has raised various points in his submissions to us about determining his eligibility to raise a S. 75 claim on behalf of his son. However, that simply isn't a possibility. I appreciate this might seem somewhat technical. But I can only hold HFL liable here for issues with goods and services that it didn't supply under the lens of S.75. And that lens is a relatively narrow and certainly well-defined one. 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.

So, ultimately, because of what I have said above, and with S.75 in mind, I don't consider that HFL could fairly be directed to provide Mr M with the full refund he requested when he approached it.

I note that HFL maintained its offer of a partial refund to Mr M following our investigator's view. Whilst I cannot direct that it continues to do so, I would expect it to now.

My final decision

For the reasons I've explained, I don't uphold this complaint and HFL doesn't need to do anything else.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 March 2025.

Siobhan McBride
Ombudsman