

The complaint

Mr K has complained about the way Healthcare Finance Limited (“HFL”) dealt with a claim for money back in relation to dental treatment which he paid for with credit it provided.

What happened

In February 2023, Mr K entered into a two-year fixed sum loan agreement with HFL to fund the provision of dental aligners from a third-party supplier that I’ll call “S” for a family member, Miss M. The treatment cost around £1,630 and the agreement was to be paid back over two years with monthly payments of around £70. After an initial course of treatment that lasted for five months or so, S supplied Miss M with two further ‘touch up’ treatments, but these didn’t work.

S went out of business in December 2023, so Mr K contacted HFL to make a claim. He said the treatment was incomplete. He requested the agreement was cancelled and a refund given.

HFL considered the claim as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 (“s.75”). It acknowledged S provided a lifetime guarantee. But it explained that one or more of the conditions for the Lifetime Smile Guarantee had not been met. As such It said eligibility for the Lifetime Smile Guarantee (including under the Money Back Promise) had not been met. And so, Mr K was not able to claim for a refund of the treatment under section 75 of the Consumer Credit Act 1974 against the lender, HFL.

Mr K decided to refer his complaint to the Financial Ombudsman. He reiterated that Miss M could no longer complete the treatment.

Our investigator looked into things but didn’t make any recommendations because he didn’t think the necessary conditions existed for a claim to be considered under s.75. Mr K asked for an ombudsman’s review.

As things weren’t resolved 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 want to acknowledge I’ve summarised the events of the complaint. I don’t intend any discourtesy by this – it just reflects the informal nature of our service. I’m required to decide matters quickly and with minimum formality. But I want to assure Mr K and HFL that I’ve reviewed everything on file. And if I don’t comment on something, it’s not because I haven’t considered it. It’s because I’ve concentrated on what I think are the key issues. Our powers allow me to do this.

I also want to say I'm very sorry to hear that Miss M is unhappy with the treatment. I can't imagine how she must feel, but I thank Mr K for taking the time to bring the complaint.

What I need to consider is whether HFL – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr K's request for getting money back. But it's important to note HFL isn't the supplier. I can't hold it responsible for everything that went wrong with S.

S.75 is a statutory protection that enables Mr K to make a 'like claim' against HFL for breach of contract or misrepresentation by a supplier paid using a fixed sum loan in respect of an agreement it had with him for the provision of goods or services. But there are certain conditions that need to be met for s.75 to apply. I think the cost of the treatment was within the relevant financial limits for a claim to be considered under s.75. But I don't think the necessary relationships exist under a debtor-creditor-supplier ("DCS") agreement.

One of the conditions for a claim to be considered under s.75 is that the borrower (debtor) needs to have used the credit to pay the same company which they have a like claim against for breach of contract or misrepresentation.

In this case, Mr K is the debtor and so he'd be the one who'd need to have a claim against S for breach of contract or misrepresentation. But it was Miss M who had a contract with S for the treatment.

The nature of the treatment is that it's very personal to Miss M. She was the one who had the scan, received the aligners, and was provided the ongoing support from S. I think it's difficult to argue that it's anyone other than Miss M that received the treatment and would be party to the contract with S. I think it's likely she would have signed a Consent and History Form, as is common in these sorts of treatment. The form was to be signed by the patient (Miss M) because it's the patient that needed to consent and share their medical history. If something went wrong with the treatment it would have been Miss M that could have taken S to court. While Mr K paid for the treatment through the loan, I don't think he had the type of claim against S that he's now seeking to bring against HFL under the 'like claim'. So, I therefore don't find I have the grounds to direct HFL to take further action in relation to the way it handled the claim.

In any event, it should be said that even if the DCS agreement wasn't an issue, I'm not sure there'd have been grounds to direct HFL to take further action either. I've not seen, and HFL wasn't supplied, any independent evidence or opinion that sets out the treatment Miss M received hadn't been carried out with reasonable skill and care. It's the manner in which the service was provided, rather than the results of the treatment, that would be the crucial issue for me in considering whether there's been a breach of an implied term in relation to the service. Moreover, I'm conscious Miss M received the core treatment (the initial set of aligners), and without sufficient evidence there was a breach of contract, I don't think it would have been fair to direct HFL to refund Mr K the value for what was supplied under that core treatment. So, I don't think there'd have been grounds to direct HFL to refund Mr K in full, given I think the total amount paid was substantially for the core treatment.

Therefore, while I'm sorry to hear Mr K and Miss M are unhappy, I don't find I have the grounds to direct HFL to take any further action.

My final decision

For the reasons given above, my final decision is that Healthcare Finance Limited has done enough to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 26 May 2025.

Douglas Sayers
Ombudsman