DRN-5095132

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 October 2022 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 his partner. The treatment cost around £1,550 and the agreement was to be paid back over two years with monthly payments of around £65. He said he thought the initial course of treatment was for six months. He said he thought S supplied his partner with two further 'touch up' treatments for around six weeks each, 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 full refund.

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. And it agreed to refund Mr K what it said was the value of one set of 'touch up' aligners – £220.

Mr K decided to refer his complaint to the Financial Ombudsman. He reiterated his partner could no longer complete the treatment, and also explained she shouldn't have been sold it in the first place because it wasn't suitable. He said the correct treatment would cost around £4,000.

Our investigator looked into things but didn't make any recommendations because she 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 Mr K's partner 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 a 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 his partner who had a contract with S for the treatment.

The nature of the treatment is that it's very personal to Mr K's partner. 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 Mr K's partner 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 (Mr K's partner) 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 Mr K's partner 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.

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 Mr K's partner 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 Mr K's partner 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.

Mr K's partner may have been eligible for further 'touch up' aligners under the guarantee. although I appreciate Mr K said his partner shouldn't have been sold the treatment in the first place. The availability of a 'touch up' isn't the same as saying that particular results will be achieved. It seems like it's intended for refinement if possible. The guarantee provided the *possibility* of having further aligners on a once a year basis provided that Mr K's partner met certain conditions, and the dentist approved it. HFL shared information from S saying the financial value of a 'touch-up' treatment is £220. It's difficult to know for certain if that's accurate. But this represents a refund of over 10% of the cost of the treatment. Taking into account Mr K's partner received the core treatment, there's a lack of evidence demonstrating a breach of contract, and Mr K's partner may or may not have been eligible for further 'touch up' treatment, even if there was no issue with the DCS agreement I think HFL acted fairly by offering this price reduction to remedy any potential loss. It would seem like a fair compromise given I think the total amount paid was substantially for the core treatment.

Therefore, while I'm sorry to hear Mr K and his partner 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 14 March 2025.

Simon Wingfield
Ombudsman