

## **The complaint**

Miss M complained about how her claim under Section 75 of the Consumer Credit Act 1974 was handled by Omni Capital Retail Finance Limited (OCRFL).

## **What happened**

Miss M said she entered into a contract for dental treatment with a supplier I'll call P in March 2022.

She said she agreed to dental aligners with teeth whitening and retainers. In order to pay for the treatment, she also entered into a fixed sum loan agreement for the cash price of £1,590 with OCRFL. The total amount of interest payable was around £162, and she agreed to make 24 payments of around £73.

Miss M said the treatment didn't achieve the results she was promised and also damaged her teeth and caused gaps to appear. She said that she didn't receive the follow up care, retainers and teeth whitening that were part of the contract. Miss M said she contacted P about this in April 2023 and found out that they were no longer trading, and another dental provider had taken on their contracts. I'll call this supplier S.

Miss M said that S was based in another country, and she called several times and emailed to let them know about the issue. She said she asked for a copy of her invoice and agreement with P as she wasn't able to retrieve any information from their website or application.

Miss M said that S took three weeks to respond and said that due to data protection they had no access to P's patient records and asked for pictures of her teeth. Miss M supplied the pictures as requested and explained that her treatment included aligners and teeth whitening. She said that S legally had a duty of care to all of P's patients.

Miss M said that S eventually replied and told her that the pictures of her teeth matched the simulated projection from her records. Miss M tried to take the matter further with S but she said she didn't get a response.

In September 2023 Miss M contacted OCRFL to claim a refund on the basis that the promised results hadn't been fulfilled and she didn't receive the whitening or retainers that should have been included.

OCRFL let Miss M know that they had passed on her claim to the broker who I'll call C. Miss M said there were delays in dealing with her complaint and eventually she received a response concluding that C didn't uphold her complaint.

Miss M said she entered into the contract with P on the basis that there would be ongoing care provided by dentists in the UK. She said that she provided evidence that the treatment hadn't worked as promised. She said that S hadn't responded to her complaint and C hadn't shown any interest in investigating her case.

OCRFL responded to the complaint in February 2024. It said that it didn't have enough evidence to show a breach of contract. OCRFL also noted that the loan was in arrears following an indemnity claim.

An investigator here considered the complaint. He said that the invoice showed that the contract included aligners and a treatment plan. But there was no evidence the contract included whitening and retainers.

The investigator said Miss M had made a claim for breach of contract or misrepresentation under Section 75 (s75) of the Consumer Credit Act 1974 (CCA) against OCRFL. He explained that in certain circumstances the finance provider might be liable in the place of the supplier. But having considered the evidence he didn't agree there was a misrepresentation or breach of contract.

Miss M disagreed. She said that the evidence from the finance provider and S was flawed because they weren't suitably qualified to say the treatment has gone as planned based solely on a picture and not a physical examination. Miss M said the supplier guaranteed results or a refund and she has received neither.

The complaint was passed to me to make a decision. I issued a provisional decision which said:

*I've read and considered the evidence submitted by both parties, but I'll focus my comments on what I think is relevant. If I don't comment on a specific point, it isn't because I haven't considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes.*

*Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.*

*I'm sorry to hear Miss M is unhappy with the treatment she received. I'm sympathetic to what she's told us about the impact it has had on her.*

*What I need to consider is whether OCRFL – as a provider of financial services – has acted fairly and reasonably in the way it handled Miss M's request for a refund. It's important to note that OCRFL is not the supplier, and I'm not considering a complaint about P or S.*

*S75 is a statutory protection which enables Miss M to make a "like claim" against OCRFL for breach of contract or misrepresentation by the supplier paid using a fixed sum loan for an agreement it had with her for the provision of goods and services. There are certain conditions that need to be met for s75 to apply, and I think they are in place here. I think the necessary relationships exist under a debtor-creditor-supplier agreement. The cost of the treatment was also within the relevant financial limits for a claim to be considered.*

*I want to explain from the outset that I can only consider Miss M's complaint on that narrow basis – that is, whether it was fair and reasonable for OCRFL to respond to the claim in the way it did. OCRFL simply has a legal duty to consider whether Miss M had a valid claim under s75 and to respond fairly to that claim if so.*

*Miss M's concerns are that she didn't get the treatment that she paid for and that the results weren't what she was promised to the extent she believes her teeth have been damaged. So she believes she should receive a refund and for the rest of the loan balance to be waived. She has also suggested that damages might be payable and that the matter has impacted*

*her mental health.*

*Miss M entered into the agreement in March 2022, and there isn't a clear account of how long the initial treatment was expected to last for. P's website from the time said that treatment plans generally last between four and ten months. What is clearly the case though, is that Miss M was not happy with the results of the treatment. And she tells us that she hasn't been provided with all the goods and services set out under the contract.*

*According to information provided by OCRFL, Miss M started her treatment in April 2022 but experienced fitting issues, so a new scan was conducted, and a new treatment plan started in September 2022. The treatment plan summary said that the prescribed treatment was intended to span 20 weeks and included six lower jaw aligners and ten upper jaw aligners.*

*But it isn't clear whether this refers to the plan that started in April or September. Either way this means that Miss M was expected to finish her treatment by the end of January 2023. P ceased trading around mid-December 2022. I haven't seen any contemporaneous evidence from the time which indicates that Miss M thought she was experiencing an issue during the treatment or when the expected treatment period had ended.*

*Miss M had a problem with her direct debit in April 2023 and she reached out to OCRFL to discuss this. Miss M contacted S in July 2023 to make a complaint about the outcome of the service and that she hadn't received part of the goods and services.*

#### *Implied terms*

*In cases such as this it is often complex to assess the quality of the service Miss M paid for. Results from such treatments are subject to many variables and there are generally disclaimers by the providers of such services, and accepted risks that results simply cannot be guaranteed. Miss M's physiology, medical history, and the way she used the aligners could all impact the results.*

*On P's website from the time the terms and conditions state "We cannot guarantee the results. Any before and after simulation prepared based on the Network Partner's assessment serves as a prognosis of the results of following the programme. By following the programme, including any advice in relation to having your teeth professionally cleaned, you increase the chances of success, but, as with any cosmetic or medical treatment, the ultimate results cannot be guaranteed, and we will not be responsible if upon completion of your programme the results are not as envisaged in the initial prognosis". These terms don't override statutory protections which is what I've gone on to consider next.*

*Miss M said that she needs to have corrective work undertaken with another provider and has provided a quotation for what she said was the cost of putting things right. But Miss M has not provided supporting evidence such as an independent, expert opinion that sets out the treatment she paid for with P has not been done with reasonable care and skill as implied by the Consumer Rights Act 2015 ('CRA'). I'm mindful it is the manner in which the service was provided, rather than the results of the treatment, that is the crucial issue for me in considering whether there's been a breach of an implied term in relation to the service.*

*Without sufficient supporting evidence, I don't think OCRFL was unfair to not uphold the claim on the basis of a breach of an implied term of the contract because I've not seen enough to determine the service P offered wasn't carried out with reasonable care and skill.*

*I also have to be clear that I'm not directing Miss M to get this evidence now. My consideration of the complaint is limited to the evidence OCRFL were provided at the time of the claim. Should she want to provide an expert report she'll need to ask OCRFL to consider*

*the claim afresh.*

### *Express terms*

*Miss M also said that P breached the contract by not offering her the goods and/or services set out in her contract. So I also need to consider what I think Miss M's contract with P agreed to provide in terms of treatment so I can determine whether there has been a breach of an explicit term of it.*

*I don't have a contract signed by Miss M as I understand they were kept in an online application that's no longer available. Neither party has been able to supply a copy of a signed contract. So there's a lack of evidence. But it's not in dispute Miss M was due to receive a set of aligners when she entered into the contract in April 2022 and that she received and used them. There is further evidence that a revised set was provided, but it is not clear on what basis P did this.*

*While I appreciate Miss M is put in a difficult position because some of the evidence isn't available, I can only consider how OCRFL acted based on what was able to be supplied. In the absence of a specific signed contract, I've looked at P's website from around the time Miss M entered into the contract, and the other documents that have been provided.*

*In particular I think that the invoice provided by Miss M is relevant. It is dated April 2022 and indicates the goods and services that will be supplied and the cost. The invoice states the goods and services include aligners and a treatment plan at a cost of £1,590. It doesn't show that teeth whitening or retainers will be provided. So I can't fairly conclude that there has been a breach of contract here because it doesn't show those goods and services were part of the contract Miss M entered into.*

*Miss M has highlighted that the patient booklet also set out what would be included. This includes "progress monitored throughout your treatment by our dentists". She said that as S is based in another country it isn't possible for them to offer this and she doesn't think that the professionals were suitably qualified.*

*But I don't think S was offering a continuation of the contract for Miss M. It seems that by the time S became involved in the dispute the core contract would have reasonably been expected to be finished. I think Miss M has raised this point as she doesn't think S is suitably qualified to give a medical opinion on the outcome of her treatment. But I don't need to consider whether S is suitably qualified, although I must say I have no evidence to show that they aren't. It was for Miss M to provide suitable expert evidence to support her claim. I only need to consider OCRFL's response to her claim, and I don't think it was unfair to assert, in the absence of a suitably qualified expert opinion to the contrary, that it believed there hadn't been a breach of contract.*

*I have also considered that OCRFL might have upheld the claim if there was persuasive evidence of misrepresentation by the supplier. In order to show misrepresentation there would need to be evidence the supplier had made a false statement of fact to Miss M which induced her to enter the contract. But the evidential issues around the breach of contract are similar here in respect of misrepresentation too. Overall there is a lack of persuasive evidence of false factual claims made by the supplier either in writing or otherwise here. So I don't think OCRFL acted unfairly in declining the claim in respect of misrepresentation.*

*I note part of Miss M's claim appears to be about the ongoing impact of the treatment on her mental health. I am sorry to hear about this, however, as a starting point I would need to be satisfied there was a fundamental breach of contract or misrepresentation, and I haven't been able to reach that conclusion. It is worth noting our service is unable to consider*

compensation for 'loss of amenity' in any event. And Miss M should seek independent legal advice about this aspect of her claim – it isn't something I have looked at in respect of her claim against OCRFL here.

#### *Aftercare*

Miss M said that P guaranteed results or a refund, so I've considered the limited information that I have about the Smile Guarantee. Miss M has provided an email which states "If you do not achieve the desired result of your treatment plan, we assume the costs of your desired subsequent treatment with our invisible aligners. This requires that you wear your invisible aligners for the prescribed 22 hours a day and that you document this in the app". The website from the time said "for peace of mind our satisfaction promise is included if you use the app correctly and wear your aligners for 22 hours a day. If the results you've achieved deviate from your treatment plan, we'll offer you a refinement, which comes at no extra cost".

The smile guarantee provided the possibility of having further refinement aligners, provided that Miss M wore the aligners for at least 22 hours a day, used the app as prescribed and informed P of the refinement request in a timely manner (within six weeks of the final check). Moreover, a dentist was required to approve the further treatment. It's likely that a dentist would only do so if they assessed that further progress to straighten the teeth would be possible.

Given the limited nature of the guarantee and the evidence available that the results haven't been achieved it is difficult for me to conclude there has been a breach of contract here.

Miss M had a second set of aligners in September 2022. It isn't clear if this was a repeat performance or aftercare. But I think the plan was due to end in January 2023. I can't see evidence that Miss M raised the aftercare request within six weeks. So even if she met the other conditions, it isn't clear that she met them all.

The core contract was substantially for the aligners that were provided in either April or September. Miss M is unhappy that she's not getting the aftercare, which I can't be certain she was eligible for. So a full refund wouldn't be fair – even if I were satisfied she was unfairly not given further aftercare. So based on all the evidence it wasn't unreasonable for OCRFL to decline the claim.

#### *OCRFL's handling of the claim*

I've noted that Miss M initially reached out to OCRFL in September 2023. OCRFL forwarded her complaint to C as it said they had a closer relationship with P and S, and were better able to investigate. I would have expected OCRFL to be more pro-active and manage the claim overall, considering they might be liable for the like claim. It also should have taken steps to explain making a complaint about the claim would be their responsibility too. Miss M had to contact us in order to progress her complaint against OCRFL, which then took a further period of time to respond. Miss M finally got a final response from OCRFL in February 2024 and was able to bring her complaint to us.

I can see that C considered offering compensation for their handling of the claim. I don't have any information about whether that was paid, but ultimately I'm deciding a complaint against a different party and I'm considering whether they acted fairly. So I make no direction on any compensation from C.

While I don't disagree with the outcome OCRFL reached I think their handling of the matter caused delays and frustration to Miss M. So I think it would be fair for OCRFL to pay £100 in compensation.

*While I am sorry to hear Miss M is unhappy, with s75 in mind, I don't find there are grounds to direct OCRFL to refund her or to waive the outstanding balance.*

*Finally, I note Miss M may have stopped making payments towards the agreement. For the avoidance of doubt, I'm not deciding that aspect within this final decision. If Miss M is unhappy with how OCRFL treats her regarding arrears, it may be something our service is able to consider separately. If either party disagrees, they can let me know in response to this provisional decision.*

OCRFL agreed and said they would pay the £100 for the delays the retailer had caused.

Miss M didn't agree with the provisional decision. In summary she said:

- She hadn't received the treatment advertised and paid for as P had ceased trading
- P failed to provide the expected professional care and follow-ups
- S was based in another country and showed a blatant lack of care with no interest in investigating her concerns or offering to resolve the matter.
- OCRFL acted as an agent to provide finance only and were not equipped in providing dental expertise.
- An independent and impartial dentist provided x-rays to prove the damage was sustained due to negligence under the care of P the principal with OCRFL acting as the agent.
- OCRFL hadn't contacted her but had enlisted a third party to harass her about payment.

### **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.

For clarity I need to explain the award is not for the actions of the retailer, it is because I don't think OCRFL managed the claim effectively without delays, and this caused frustration to Miss M.

Miss M has said she is also unhappy with how OCRFL have treated her while in arrears, and particularly the manner in which a third party contacted her about payment. This isn't something I have considered as part of my decision so Miss M will need to contact OCRFL to raise this.

Miss M has said that an independent and impartial dentist provided x-rays which prove the damage was sustained due to negligence by P and OCRFL are their agent. Miss M has indeed provided us with x-rays from another dentist who has given her a quotation for further treatment. But the quotation and the x-rays are not sufficient to persuade me, as a non-expert, that there was a lack of reasonable care and skill from P and therefore a breach of contract.

I understand Miss M is disappointed by my findings. I can assure her that I've carefully taken into consideration all the information and evidence she's provided along with that provided by OCRFL. Having considered Miss M's response, I don't consider she has provided any new information or evidence that would change my overall outcome. I've already addressed the points she's raised in my provisional decision, so I don't intend to repeat them again here.

On the basis I don't consider I've been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances.

As a reminder Miss M doesn't have to accept my decision. She's free to pursue the complaint by other means, such as through the courts, if she wishes.

My final decision is the same for the reasons set out in my provisional decision.

### **My final decision**

My final decision is that I uphold this complaint in part and direct Omni Capital Retail Finance Limited to pay Miss M £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 5 February 2025.

Caroline Kirby  
**Ombudsman**