

The complaint

Mrs Y complains about Close Brothers Limited trading as Braemar Finance's ("Braemar") decision not to meet a claim she made under section 75 of the Consumer Credit Act 1974 ("section 75") in respect of a fixed sum loan agreement she took out with them.

What happened

Mrs Y entered into a fixed sum loan agreement with Braemar in June 2017 to fund dental treatment for her niece, Miss M, with a dental facility (who I shall refer to as "C").

Unfortunately, before the treatment could be completed on Miss M, C went out of business.

Miss M complained to Braemar about this, and they initially gave her two options. The first was for Miss M to choose a dentist to complete the treatment from their approved list, for which Braemar offered to cover that cost. And the second option was for Miss M to arrange for a dentist to complete the treatment, for which Braemar offered to refund money to her to help pay for this.

However, Braemar subsequently sent Mrs Y a letter explaining there was no section 75 provision because one of the requirements for a valid claim hadn't been met. They said the necessary debtor-creditor-supplier relationship had not been made out because the dental treatment was supplied to Miss M and not Mrs Y. Braemar though offered to write off the remaining balance of £1,879.77 from Mrs Y's agreement with them.

Our investigator felt Braemar's interpretation of their liability under section 75 was correct but said compensation was warranted for Mrs Y as they had given her and Miss M the impression they would settle the claim and put things right, only to withdraw this. She felt Braemar's offer to write off the remaining balance was a reasonable way to settle the complaint. But she recommended that Braemar return any payments to Mrs Y that she'd made since March 2023 and to ensure her credit file shows that the agreement was settled in March 2023 and to remove any adverse information recorded since then.

Braemar subsequently told our investigator they had acted on her recommendation as set out by her. Mrs Y didn't though agree with our investigator's view and said she would provide her reasons. However, these haven't been received by us despite our investigator extending the time to allow Mrs Y to provide them.

Mrs Y's complaint has been passed to me to review.

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'd first like to say that I appreciate that this has been a very difficult situation for Mrs Y and Miss M. I am aware of the reason why Miss M needed the dental treatment and understand this has continued to have a significant impact on her and on Mrs Y as the treatment hasn't

been completed. I truly empathise with them and I also understand why they would be frustrated with how Braemar has handled this situation.

In deciding though what I think Braemar should do to resolve Mrs Y's complaint, I must have regard to any relevant law. In this case, relevant law includes section 75. This provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is a breach of contract or misrepresentation by the supplier of goods or services.

But there are certain criteria that also need to be satisfied, which includes establishing a direct relationship between the debtor, the creditor and the supplier. The credit agreement here is clearly between Mrs Y and Braemar as she is named on it as the borrower. This means that the credit provided by Braemar must have financed a transaction between the debtor (Mrs Y) and the supplier (C).

The supply agreement with C shows that the treatment was for Miss M and, of course, that isn't in dispute. This means though that the supply contract was between C and Miss M, rather than between C and Mrs Y. Mrs Y may have had a hand in identifying and negotiating with C. But I've not seen enough to make me think this involvement was enough to join her in on the supply contract in this case. This is because of the nature of the service being provided which I cannot reasonably say was for Mrs Y.

As such, the necessary relationship between the debtor, creditor and supplier is not made out in this complaint. This means that Braemar's decision to decline Mrs Y's claim under section 75 wasn't ultimately unreasonable.

However, it's clear to me that Braemar didn't handle the claim appropriately. They corresponded with Miss M and made her and Mrs Y think they would help arrange for the treatment to be completed and to pay for that cost. Braemar accepts they didn't appropriately consider how section 75 applied (or more accurately, didn't apply).

I find that Braemar's actions in refunding Mrs Y the payments she made under the finance agreement from March 2023 and in writing off the remaining balance to be fair compensation for their poor handling of this situation. This was when Braemar told Mrs Y she had no valid claim under section 75. I realise this still leaves Miss M in a situation where her treatment hasn't been completed. I'm afraid I can't though direct Braemar to do anything in respect of this bearing in mind my finding on the requirements of section 75.

I'm unsure whether Braemar has also arranged to record information about this loan agreement on Mrs Y's credit file as our investigator recommended. If they haven't done so, they now need to as this is a fair way to resolve that particular aspect. Braemar should record the agreement as being settled as of March 2023 and to remove any adverse information recorded since then

In closing, I'll just add that I've seen that Mrs Y has mentioned a letter she received from Braemar about being incorrectly charged interest under the agreement. If Mrs Y wishes to pursue this matter, she needs to raise this to Braemar as a separate complaint in the first instance.

Putting things right

Braemar should, if they haven't already done so, refund the repayments Mrs Y made under the loan agreement from March 2023. They should also write off any remaining balance once this has been done. And they should ensure that Mrs Y's credit file is updated to show that this agreement was settled in March 2023 with no adverse information recorded since

then.

My final decision

I uphold this complaint and direct Close Brothers Limited trading as Braemar Finance to take the action I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Y to accept or reject my decision before 15 December 2023.

Daniel Picken
Ombudsman