

The complaint

Mr B complains about the way Healthcare Finance Limited trading as Tabeo handled a claim he made to it.

What happened

The parties are familiar with the background details of this case so I will only briefly summarise them. This reflects my informal remit.

Mr B took out a fixed sum loan with Tabeo to finance dental treatment. However, the company supplying the treatment ('the supplier') is no longer trading.

Mr B says because the supplier is no longer trading he isn't getting aftercare service. Specifically, he says he can't get replacement retainers, and going elsewhere will cost him more money. Mr B says the service has essentially been mis-sold and this is causing him a lot of stress and impacting his teeth.

Tabeo did not refund him when he contacted it so Mr B came to this service. Our investigator considered Tabeo's liability under Section 75 of the Consumer Credit Act 1974 ('Section 75') but she didn't think it should fairly refund Mr B because she was not persuaded that the supplier had breached or misrepresented its contract. She did think that Tabeo should provide Mr B with an apology for its customer service in delaying to respond to him.

Mr B has asked for an ombudsman to look into it. In summary he says he is going to have to pay more to get replacement retainers going forward than the supplier was charging. He says his teeth are moving back and he thinks that even if a full refund is not valid he should be able to have his future payments written off.

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 have taken into account the submissions by the parties – but I will only comment on the matters I consider key to resolving the matter fairly. This is not intended as a discourtesy but reflects my role resolving disputes informally.

It is important to note here that Tabeo is not the supplier of dental treatment. So in deciding what is fair and reasonable for it to do I consider its role as a finance provider. In that respect I consider Section 75 is particularly relevant here.

Part of Mr B's case concerns the ongoing detrimental impact on the look of his teeth resulting from the alleged breach of contract by the supplier. It is worth noting that this service is unable to make awards for 'loss of amenity' so if Mr B is concerned about this aspect he should seek independent legal advice – I won't be covering it here.

In certain circumstances Section 75 allows Mr B to hold Tabeo responsible for a 'like claim' for breach of contract or misrepresentation he has against the supplier of goods and

services financed by the fixed sum loan agreement.

There are certain technical criteria that need to be in place for Section 75 to apply – such as that relating to the cash price of the goods and the parties to the agreement. I have considered these and am satisfied they are in place for a valid claim against Tabeo. So I have moved on to consider if the supplier has breached or misrepresented its agreement with Mr B in order to decide if Tabeo is fairly liable to refund him.

Breach of contract

When considering breach of contract I have thought about the express terms in the contract Mr B had with the supplier and any implied terms under consumer law.

The Consumer Rights Act 2015 implies a term into a contract that it will be carried out with reasonable '*care and skill*'. However, I don't think that is relevant here because Mr B's claim does not appear to be focused on the way the treatment was carried out but the non-provision of a service. Furthermore, in the interest of completeness I am not an expert in dental treatment and there is not persuasive evidence there has been a lack of care and skill here (via something like an expert report) in any event.

I have therefore moved on to the express terms of the contract. Tabeo maintains that replacement retainers are not part of the original alignment treatment Mr B paid for so there is no breach. It says he would only be due money back if he had pre-paid for retainers he had not received.

It does not appear that Mr B has prepaid for retainers that were not delivered. It appears Mr B did get an initial retainer from the supplier. His issue is that he can no longer buy retainers from the supplier going forward.

I have considered the supplier's terms and conditions to get some clarity on the matter. But I cannot find anywhere in the terms and conditions that the supplier has included an ongoing programme of replacement retainers as part of the package he bought. Or that it has guaranteed it will sell him retainers in the future at a particular price point. The clause '4.21' that specifically mentions retainers simply says Mr B needs to wear the initial retainer it provides for so many hours in the initial two weeks after treatment and then at night after. And recommends he replaces the retainer with a new one every 6-12 months.

I know Mr B has indicated that the supplier's wording means that he must only wear retainers it sells. I don't think the wording clearly says that (nor is it supported by the fact that Mr B is able to get retainers elsewhere). But in any event I don't think a statement like this would constitute a contractual promise to sell retainers to him going forward indefinitely in any event.

So I don't think that there is a breach of a contract to provide ongoing retainer services to Mr B here. Furthermore, even if there was an obligation to provide this service, I don't think it is clear that Mr B would be at a financial loss as a result in any event. There is no guarantee he would pay less to the supplier had he sourced retainers from it in the future rather than a third party. While the initial retainer is stated at being a value of '£99' there is no mention that future retainers are available at that price or that further moulds/scans won't be required to provide these.

Misrepresentation

I know that Mr B says the agreement was mis-sold, but in order to determine misrepresentation I would need to be satisfied that the supplier made a false statement of

fact that induced Mr B into the agreement he otherwise would not have entered.

Mr B doesn't appear to dispute that he knew he would have to pay for replacement retainers – but he has pointed to the lack of availability (now the original supplier has ceased trading) to constitute a mis-sale. He says this because he was told at the initial consultation that he could re-order retainers on an ongoing basis.

However, it is important to point out that a false statement for the purposes of misrepresentation is not a statement that was true at the time it was made, even if it becomes untrue later. While I acknowledge that during the sales process the supplier likely told Mr B that after his treatment he could buy replacement retainers from it on an ongoing basis (as this is in the terms and conditions), it appears this was true at the time. It was only because the supplier later went out of business that it was no longer the case – however, this is not a point of sale misrepresentation.

In summary, I am not persuaded that there has been a clear breach of contract or misrepresentation by the supplier here. It follows that I don't consider Tabeo is fairly liable for refunding Mr B via Section 75.

I note when Mr B contacted this service he also pointed out Tabeo was not responsive to him when he initially expressed dissatisfaction to it. From what I can see Tabeo did acknowledge Mr B's contact and pointed out that it had a backlog and it might take a while to get back to him. But I can see that when he chased it for an update a few weeks later he didn't hear back from it and it led to Mr B contacting this service about 8 weeks after raising the initial issue. Tabeo has said it would issue Mr B an apology for not updating him and I think that is a fair way of putting this particular issue right as I don't think it was a significant error.

Putting things right

If it transpires that Tabeo has not issued the apology yet it should do – but I don't consider it needs to do more in the particular circumstances here.

My final decision

I direct Healthcare Finance Limited trading as Tabeo (if it has not already done so) to issue an apology to Mr B for its customer service mistake.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 April 2024.

Mark Lancod
Ombudsman