

## **The complaint**

Miss H complains that Healthcare Finance Limited (“HFL”) failed to pay out on a claim she made to it about the failure of a supplier to deliver the dental treatment which she paid for with credit it provided.

## **What happened**

In October 2022 Miss H entered into a 25-month fixed sum loan agreement with HFL to fund the provision of dental aligners from a third-party supplier to straighten her teeth. Miss H says it was expected that the treatment would last for seven months and that she began using the aligners in November 2022.

It seems clear that Miss H was not happy with the progress of the treatment and indeed that the supplier provided several ‘aligner touch ups’ in April, June and August 2023 to try and improve the outcome. In November 2023 Miss H seems to have requested a further aligner touch up, and the supplier twice declined that request, before seemingly agreeing to it. In any event that supplier went into administration in early December 2023, and Miss H did not receive the aligner touch up that had apparently been approved.

In December 2023, Miss H therefore contacted HFL to make a claim, requesting a full refund of all treatment costs, which it considered as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 (‘Section 75’). Ultimately, HFL accepted that Miss H had suffered a loss and offered her what it said was the value of one set of touch up aligners, which it considered would have been provided by the supplier, and to which it believed Miss H had a contractual right. This was in the amount of £220. Unhappy with that response, Miss H brought a complaint to us.

Our investigator considered how HFL had acted in light of its responsibilities under Section 75. However, she did not uphold the complaint and concluded that HFL’s offer was fair and it was not unreasonable of it to decline to refund the full cost of treatment.

Miss H doesn’t accept that, saying that she should be refunded the outstanding balance on the loan at the point that the supplier ceased trading in December 2023, and asked an Ombudsman to look into things.

## **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.

Section 75 enables Miss H to make a claim against HFL for breach of contract by the supplier of the goods/service in question, or a misrepresentation. Certain criteria apply to Section 75 in respect of things like the cost of the goods or services and the parties to the agreement. I am satisfied there are no concerns in respect of these criteria, and indeed HFL has accepted Miss H’s claim in this regard. So I have moved on to consider if there is persuasive evidence of a breach of contract or misrepresentation by the supplier that means HFL should have offered more than it has when handling Miss H’s claim.

But I want to explain from the outset that I can only consider Miss H's complaint on that narrow basis – i.e. whether it was fair and reasonable for HFL to respond to her claim by offering what it did. I cannot hold it responsible for Miss H's experience with the supplier or her feelings about the treatment. HFL simply has a legal duty to consider whether she has a valid claim under Section 75 and to respond fairly to that claim if so.

Miss H's concerns are that she hasn't finished her treatment, and now cannot, as the supplier is no longer in business. Following the investigator's view, she said that she should receive a refund of what she owed HFL when the supplier went into administration in December 2023. This is because the service she has paid for has only been partially received. She would also like the cost of a set of retainers that she had to buy from an alternative supplier refunded. She says the original supplier had agreed to provide retainers to her free of charge, so it's not fair that she should have to meet that cost herself.

To be clear, I don't accept that Miss H hadn't finished her core treatment. From the information I have (primarily Miss H's own testimony) I am satisfied that, on balance, the fundamental service paid for was the provision of a set of aligners used for straightening teeth over a relatively short term. As mentioned, that treatment began in November 2022 and was expected to last a matter of some seven months. The treatment itself is *not* something that is ongoing until the customer is satisfied with the results. Nor is it ongoing while the loan from HFL is being repaid.

What is clearly the case is that she is not happy with the results of the treatment. Therefore, the supplier had provided her with some further aligners to try and improve the results for her. I don't have the details of why the supplier apparently twice rejected her request for further aligners in November 2023. But it is important to note that there was no guarantee that customers would continue to receive aligner touch ups ad infinitum – and I will return to that within the context of the supplier's lifetime guarantee scheme later in this decision.

In cases such as this it is often complex to assess the quality of the service Miss H paid for. Results from such treatments are, of course, subject to many variables and there are generally disclaimers by the providers of such services, and accepted risks that results simply cannot be guaranteed. I, of course, am not a dental expert. And Miss H has not provided an independent, expert opinion that sets out that the treatment she paid for has not been done with reasonable 'care and skill', as implied by the Consumer Rights Act 2015 ('CRA'). It is that, rather than the *results* of the treatment, that is the crucial issue for me in considering whether it was fair and reasonable for HFL to respond to her claim as it did.

But I need to consider what I think Miss H's contract with the supplier agreed to provide in terms of treatment. In that way, I can determine whether there has been a breach of an explicit term of it. I don't have a contract signed by Miss H as I understand they were housed in an online application which no longer holds that content since the supplier went into administration. However, HFL has been able to provide a sample document called a "*Consent and History Form*". This document is not dated, but is noted to be 'v3.7'. HFL says it would have been in use at the time that Miss H commenced her treatment in 2022. Where there are evidential uncertainties, as here, it is my role to determine what I think is more likely than not to have happened, or been the case.

In the absence of anything else, I think it is more likely than not that Miss H would have been provided with a document sufficiently similar in layout and content to the sample I have for me to be able to rely on it. So I have considered the content of it carefully.

In fact, I think Miss H accepts that there is a key final section of the document before the customer was required to sign that sets out:

*“I understand that [the supplier] cannot guarantee any specific results or outcomes.”*

So I'm satisfied the supplier never said that it could guarantee her satisfaction with the results of the treatment, the core aspect of which I have already found was completed. That means I don't find a breach of any explicit terms of the contract between Miss H and the supplier. This is the first question I have had to consider when reviewing this complaint.

As set out above, the CRA says that there are also implied terms of contracts – not everything has to be fully spelled out. In this scenario, the implied terms of this contract are that the supplier would provide the service Miss H paid for with reasonable care and skill. I've already set out why I don't have the evidence to reach a conclusion that it didn't.

However, HFL accepts that Miss H was eligible to be covered by the supplier's lifetime guarantee scheme. And so that is also an important consideration. From what Miss H says, I'm not clear that she was eligible, as she has repeatedly and forcefully said that she never bought a set of retainers. Ordinarily, those would need to be paid for, as an additional cost to the treatment, before a customer could benefit from the lifetime guarantee scheme. Miss H says that she had been promised retainers for free, but ultimately had to buy them from a different supplier. I don't know why she would have been promised that, nor do I have any proof. And without buying retainers, some uncertainty persists in my mind as to whether she technically would qualify for the guarantee scheme. However, as HFL has accepted that Miss H is eligible, and that is ultimately to her advantage, I'm not going to pursue that issue any further.

Crucially, what that lifetime guarantee offered was the *possibility* of having aligner touch-ups every year, provided that Miss H carried on buying retainers from the supplier, and that a dentist approved the provision of the touch-up aligners. My understanding is that a dentist would only do so if s/he assessed that further progress to straighten the teeth would be possible through a touch-up aligner. It is for this reason that ideally I would want to know the basis on which the supplier twice declined Miss H's request for a touch-up aligner in November 2023. However, ultimately, that doesn't have any impact on the outcome of this case. What it does do is underline the point that requesting aligners under the guarantee did not automatically mean they would have been provided.

Because HFL accepted that Miss H was eligible for that guarantee, it identified that she had lost out as the supplier was no longer trading and could not provide her with a new touch-up aligner at the end of 2023 when she asked. That means it essentially accepted that there was a breach identifiable because Miss H could no longer use the lifetime guarantee. And so it offered the cost of a set of aligners, estimated at £220.

But Miss H initially thought she should be provided with a full refund of the treatment costs, and now says that she should be refunded the balance she owed HFL under the loan agreement when the supplier ceased trading in December 2023. I will deal with her original request first.

I have set out why I don't find that there has been a breach of an explicit contract term in respect of treatment results, or indeed those terms implied in the contract. And that Miss H received and completed the core treatment she paid for using the loan from HFL. Moreover, given the stage she was at, the lifetime guarantee would never have given her the option of a refund of the treatment costs in any event. It's clear from the information I have that a refund was only available for the first 30 days after Miss H began her treatment in 2022, and only if Miss H had not opened or used the aligners. For completeness, and despite Miss H not having raised any concerns about it, I have also thought about whether there is any evidence of a misrepresentation by the supplier under the terms of Section 75. In short, there isn't. So it would not be fair or reasonable for me to tell HFL that it should now provide

Miss H with a full refund to recompense her for the breach that it accepts has happened.

Turning now to her later request for a refund of the balance she owed on her loan in December 2023, plus the cost of the retainers which she had to source elsewhere. To be clear, Miss H's monthly instalments to HFL did not equate to a monthly cost of treatment paid to the supplier, such as may be the case in the supply of household services like internet or streaming services. HFL had paid the total cost of the treatment to the supplier effectively on Miss H's behalf at the end of 2022. So there is no rational basis on which to say that she should no longer have to repay those costs once the supplier ceased trading. By that time, she had received what HFL had paid for on her behalf, that is the core treatment.

Additionally, in all the circumstances of this case, I don't think it would be fair for me to add the cost of retainers to what HFL has offered. I say that for several reasons. I remain unclear as to whether the original supplier would, in fact, have provided them for free to Miss H. If it did, I think that is most likely to have been an informal offer and not something written into a contract for which I could therefore say HFL ought to be liable under the provisions of Section 75. And finally, given my uncertainty as to whether Miss H would actually have been contractually eligible for the lifetime guarantee scheme (on the basis of which HFL has offered her £220) I don't think it would be fair or reasonable for me to direct it to additionally recompense Miss H for the cost of a set of retainers.

Finally, I have thought in some detail about the monetary amount HFL has offered Miss H so far. I am satisfied that the £220 is a fair estimate of the cost of a set of touch-up aligners, as I have seen evidence provided by the supplier to HFL to confirm that. So essentially it has compensated her for the loss of one year's 'use' of the lifetime guarantee. Hypothetically, it is possible that Miss H could have requested and received a set of aligners every year for the rest of her life. Which we all hope will be many years. But that hypothetical possibility doesn't lead me to conclude that HFL has been unfair in what it has offered.

There are many ways in which the lifetime guarantee could have ceased to be of use to Miss H. Firstly, she may not have done what she needed to in terms of continuing to buy retainers from the supplier. Perhaps more importantly, and as I've already discussed, the supplier may not have approved providing her with touch-up aligners if its dentists had assessed that they would not be beneficial. The guarantee only gave the possibility of annual touch-up aligners – not the certainty that they would actually be provided.

So taking that into account, and noting the informal remit of this service to resolve disputes, I don't find that it was unfair or unreasonable of HFL to offer Miss H what it has. Identifying exactly how many annual touch-up aligners Miss H *may* have asked for; *may* have qualified for; and *may* have been approved for, is pretty much impossible.

Although I am sorry to hear of Miss H's disappointment with this situation, with Section 75 in mind, I don't think it would be fair or reasonable to conclude that HFL should refund her the costs of this treatment. What it has already offered is fair and it need not do anything else.

I am not certain whether HFL has already paid Miss H the £220 it offered. If not, I require it to honour that offer now.

### **My final decision**

For the reasons I've explained, I don't uphold this complaint and Healthcare Finance Limited need only pay Miss H the £220 it has already offered her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept

or reject my decision before 25 December 2024.

Siobhan McBride  
**Ombudsman**