

## **The complaint**

Mr J complains that Healthcare Finance Limited won't refund him his money for services including dental aligners.

## **What happened**

In June 2023 Mr J used finance provided by Healthcare Finance Limited (HFL for short) to pay for the provision of bespoke dental aligners and the service which ran alongside his treatment both of which were provided by a company I'll call "S". Mr J said he received fourteen such aligners to straighten his teeth and started his treatment as required. His treatment was for a course of approximately six months. Mr J explained he chose to go with S as they offered a guarantee. Mr J says he was able to track the progress of his teeth via the application provided by S. Mr J says in December 2023 S went into administration and the support through the app and the guarantee is no longer available to him. Mr J is unhappy with the outcome of the treatment he has received and isn't receiving any support from S. So he took this dispute to HFL.

HFL considered his dispute with the supplier and considered it under a claim under section 75 of the Consumer Credit Act 1974 ("S75" and "CCA" respectively). It concluded that it didn't have to do anything further for Mr J. Feeling that HFL's position to be unfair Mr J brought his complaint to this service.

Our investigator looked into the matter. Overall, she felt that HFL had fairly treated Mr J. Mr J didn't agree. So 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 should make very clear that this decision is not about S (who sold the aligners and support services) which isn't a financial services provider and doesn't fall within my remit regarding Section 75. Mr J has made very few arguments about how HFL treated his claim unfairly, but rather focussed his displeasure at S who is no longer extant (which is understandable considering the circumstances). Whatever the issues there maybe with S here, and just because Mr J says he has lost out, it doesn't necessarily follow that HFL has treated Mr J unfairly or that it should refund him. And this decision is solely about how HFL treated Mr J. I hope this crucial distinction is clear.

I should also note that Mr J has raised a large number of issues in this dispute. I've considered them all. However I've chosen to address only those arguments which he's raised which I see as key to this dispute and key to reaching a fair outcome on this matter.

## ***The CCA***

The CCA introduced a regime of connected lender liability under S75 that afforded consumers ("debtors") a right of recourse against lenders ("creditors") that provide the finance for the acquisition of goods or services from a third-party merchant (the "merchant"). S75 says:

*"If the debtor under a debtor-creditor-merchant agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the merchant in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the merchant, shall accordingly be jointly and severally liable to the debtor."*

So the test is here, did HFL consider Mr J's S75 claim to it fairly, or in other words are the pre-requisites of the CCA in place (financial limits and Debtor Creditor Supplier arrangement) and then is there a breach of contract or material misrepresentation made out here against S that HFL should fairly be held responsible for. I'm satisfied the financial limits test is made out here as well as the arrangement requirement. So I now consider breach and misrepresentation as I see these as the key aspects of Mr J's complaint.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that traders must perform the service with reasonable care and skill. The CRA also implies terms into the contract that goods supplied will be of satisfactory quality. The CRA also sets out what remedies are available to consumers if their rights under a goods or services contract are not met.

I've seen a sample copy of the "Consent and History Form" by HFL, which is issued to each customer of S and explains how their aligners system works. It explains the benefits and risks of the aligners and how the retainers should be used once the treatment plan has been completed. The customer is required to sign the form under a section entitled "Informed Consent". This includes the following explanation of the treatment "*I understand that S cannot guarantee any specific results or outcomes.*" Mr J says he doesn't have such a document. He says he went into store and did everything there. Bearing in mind what we know of this sales process from similar complaints, I think it likely he did sign such a form and thus understood that no outcomes could be guaranteed. Mr J has latterly said he's got a report saying that the aligners weren't suitable for his needs. He's said he's provided this report but it hasn't been received. However even if this report does say what Mr J says it does, that doesn't mean he's been treated unfairly. This is because he was informed at the time of the limits of these aligners and that they were not guaranteed to produce results. And just because a third party says these aligners were not suitable doesn't mean or equate to that there was a breach of contract or misrepresentation by S which HFL can fairly be held liable for.

Mr J isn't able to provide the contract between Mr J and S, nor can HFL. Both parties have said this is because it was held on the S application which they no longer have access to since S ceased trading. So, I don't know what it said about what Mr J could expect during the treatment or the end result once completed. But presumably it included things such as the provision of the aligners, ongoing support and the guarantee (subject to certain conditions being met). In bringing a claim under S75 it is for the claimant to show that there was a breach of contract or misrepresentation as they would have to in legal proceedings against S (if it were still in existence). HFL is required to consider such claims to it fairly. So not having the contract does make concluding HFL has treated Mr J unfairly a murkier business than otherwise would be the case. But it is clear that Mr J can point to the implied terms under the CRA to make his claim.

It is clear that Mr J did receive the aligners and did participate in the service required of him by using the aligners for some time. Mr J hasn't shown they didn't achieve the results he

wanted but in any event no results were guaranteed. Accordingly it makes establishing any breach of contract difficult because we don't have the contract but do know he received what he was due to receive (the aligners) and did have access to the other services provided for at least some time.

Mr J says that the guarantee provided wasn't a guarantee and hasn't provided the return it should have. Before going into administration S provided some information to HFL which HFL has relied on in considering Mr J's claim. In order to benefit from the guarantee certain requirements had to be fulfilled in terms of sticking to the processes S set out. Mr J says he did meet these requirements. However I've seen the information from S and it shows that two of the requirements ('check in' and ordering retainers) were not met by Mr J. So I'm not persuaded Mr J was treated unfairly by HFL in this regard when it relied on this information to say he didn't qualify for the guarantee.

Mr J has pointed to the Consumer Duty here as a reason for his complaint to be upheld but Mr J's agreement with S predates the Consumer Duty and it isn't retrospective. So it doesn't make a difference to the actual sale of these services and goods. It does apply to how HFL considered Mr J's claim to it but I'm not persuaded it makes a difference because I'm satisfied HFL has considered his claim fairly.

I see that Mr J makes comments about the Investigator's assessment of the matter and comments about that assessment. I am broadly in agreement with the investigator's findings not because I wish to treat Mr J unfairly (as he seems to imply) but rather because the investigator has assessed Mr J's complaint correctly and comprehensively. Mr J's arguments in the round are far from persuasive that HFL has acted unfairly here bearing in mind he's not demonstrated a breach of contract or misrepresentation which has led to him losing out. And as Mr J hasn't lost out then HFL doesn't have to do any more.

I do appreciate that this isn't the decision Mr J wants to read. And that it leaves him disappointed. But that doesn't make it fair for HFL to do any more here because I'm not persuaded it has treated him unfairly in considering Mr J's S75 claim to it. So Mr J's complaint is unsuccessful.

### **My final decision**

For the reasons set out above, I do not uphold the complaint against Healthcare Finance Limited. It has nothing further to do on this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 31 December 2024.

Rod Glyn-Thomas  
**Ombudsman**