

The complaint

Mr V complains that Healthcare Finance Limited won't refund him his money for dental aligner treatment.

What happened

In August 2022 Mr V used finance provided by Healthcare Finance Limited (HFL for short) to pay for the provision of bespoke dental aligners and a service which ran alongside his treatment, both of which were provided by a company I'll call "S". Mr V said he received his aligners to straighten his teeth and followed the treatment as required. His treatment was for a course of approximately six months. Mr V says he was able to track the progress of his teeth via the application provided by S. Mr V said in March 2023 the results weren't as he had hoped. He talked to S and it said he could have a review process. But Mr V says he was never able to book the appointment for this. Then Mr V says in December 2023 S went into administration and the support through the app and the guarantee is no longer available. Mr V is unhappy with the outcome of the treatment he has received and isn't receiving 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 V. Feeling that HFL's position to be unfair Mr V brought his complaint to this service.

Our investigator looked into the matter. Overall, she felt that HFL had fairly treated Mr V. Mr V 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. It isn't/wasn't a financial services provider and doesn't fall within my remit regarding Section 75. Mr V 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 V says he has lost out, it doesn't necessarily follow that HFL has treated Mr V unfairly or that it should refund him. And this decision is solely about how HFL treated Mr V. I hope this distinction is clear.

I should also note that Mr V has raised a large number of issues in this dispute. I've considered them all. However I've chosen to address 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 V’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 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 V’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 and that satisfactory quality is a ‘reasonable person’ test which must take into account relevant considerations such as the description of the goods, the price, age of the good and all the other relevant considerations. The CRA also sets out what remedies are available to consumers if statutory 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.*” 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 V isn’t able to provide the contract between Mr V 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 V 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 V unfairly a murkier business than otherwise would be the case.

Mr V has made a number of arguments along the lines of because he didn’t get the results he hoped for then it must be because either S didn’t perform its role with reasonable care and skill or that the goods provided (the aligners) were not of satisfactory quality. Mr V’s essential argument which he makes repeatedly is that as he didn’t get the results he wanted then there must have been a breach of the contract either through its express terms or as a result of a breach of contract through the breaching of the terms implied into the contract through the CRA. I simply do not agree. Mr V agreed to a contract which doesn’t have any guarantee of results. Nor is this a process of teeth straightening through expensive surgery or other forms dental treatment conducted in person by dentists which Mr V suggests he

should have received. This was an aligner based process using incrementally different aligners which had no guarantee of success which was clearly explained to him at the start.

In the assessment of whether the aligners were of satisfactory quality, their description, cost and other relevant factors are key factors here to consider under the requirements of the CRA and those relevant factors includes that there was no commitment to specific results in the sales process here. Mr V has pointed to evidence about aligners generally from dental authorities which notes that such aligners aren't guaranteed and can be ineffective. Its also clear that there are other methods of straightening teeth which can be more successful and substantially more expensive. These facts simply do not demonstrate that or equate to Mr V having shown that HFL has considered his claim to it unfairly. Simply put, Mr V's argument hasn't demonstrated that either these aligners were of unsatisfactory quality or that the service was provided without reasonable care and skill. In fact Mr V has provided no persuasive evidence of this. And I say so because Mr V hasn't shown that the contract was breached in this manner nor has he shown causation from the aligners provided to him led to his teeth not being corrected. And it is of note that Mr V does accept that the aligners did make a difference and he'd seen improvement in his teeth. Just because there maybe other methods of straightening teeth and or more effective methods doesn't equate to demonstrating that these goods were of unsatisfactory quality or the service was not provided with reasonable skill and care.

Mr V argues that because S was willing to review his teeth means to some level it agreed it had breached the contract. Mr V asks why it would take such action unless it accepted there was an issue with the aligners. S could simply be acknowledging that Mr V was unhappy with progress and was trying to provide good customer service. Such an offer simply is not the same as acknowledging that its service or goods breached the relevant considerations in the CRA.

It is clear that Mr V did receive the aligners and did participate in the service required of him by using the aligners for some time. Mr V hasn't evidenced they didn't achieve the results he wanted, but simply says that's the case, 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 some time.

Mr V 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 V'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 V says he did meet these requirements. However I've seen the information from S and it shows that the requirements were not met by Mr V (as has been explained to him). So I'm not persuaded Mr V was treated unfairly by HFL in relying on this information to conclude he hadn't satisfied the requirements of the guarantee.

For the sake of completeness I'll address some of Mr V's other arguments.

Mr V says just because there was the guarantee that doesn't mean that impacts his "*statutory rights to receive a satisfactory service and to receive a service with reasonable care and skill*". I completely agree. However Mr V hasn't shown that the aligners or the services provided alongside them weren't provided with reasonable care and skill. Nor has he demonstrated any loss suffered as a result of any breach.

Mr V says he should have received treatment of "*a fully qualified dentist. The failure to conduct in person assessments on its own means S did not confirm to basic dentist standards, not to mention the aligner not fitting.*" Mr V didn't pay for such a service and nor

was such service advertised here. And the CRA can only generally be implied based on the contract agreed between parties. Mr V wishes to have a level of service and a different service here that wasn't advertised to him and which he didn't agree to or pay for. Mr V receiving betterment here in such circumstances would clearly be unfair.

Mr V says under the CRA there is a remedy of repeat performance if there is a breach of contract. I agree. However Mr V hasn't demonstrated such a breach. So the remedy doesn't apply. And nor do alternative remedies apply either.

Lastly I should repeat that although Mr V is doubtlessly disappointed with S, his only complaint I can consider here is whether HFL has considered his claim to it unfairly. And based on what Mr V has said and the limited evidence he's pointed to, and everything I've considered in the round, I'm not persuaded it has treated him unfairly.

I do appreciate that this isn't the decision Mr V 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 his claim to it. So Mr V'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 V to accept or reject my decision before 30 December 2024.

Rod Glyn-Thomas
Ombudsman