

The complaint

Mr S complains about Healthcare Finance Limited's (HFL) response to his claim brought under section 75 Consumer Credit Act 1974 (s.75) in respect of dental aligner treatment he bought using a fixed sum loan from it.

What happened

In August 2023 Mr S bought a course of dental aligner treatment from a supplier I'll call D, at a cost of £1,659. He paid a deposit of £70.38 and financed the remainder with a fixed sum loan from HFL.

Mr S said he received 18 aligners to be worn consecutively over a period of 24 weeks.

S ceased trading in December 2023. On 11 December 2023 Mr S emailed HFL asking for information about his loan having learned of D's demise. Later that day he emailed D explaining he was not happy with the way his treatment was progressing, explaining he was concerned with an overbite which was causing him discomfort, and asking if it would be possible to check in with a dentist and take a different course of action or change aligners.

HFL considered Mr S's communication as a claim for a potential breach of contract under s.75. It said Mr S had met the conditions for D's 'lifetime smile guarantee' (the guarantee) which meant he was able to return any unused unopened aligners for a pro-rated refund. HFL offered to do the same.

Dissatisfied Mr S referred his complaint to this service.

Following on from that, after the complaint had been referred, HFL looked into things further. It explained that as Mr S may have met the conditions for the guarantee and had no aligners to return having used them all, it would offer Mr S what it said was the value of a set of touch up aligners – £220.

Our investigator looked into the complaint and concluded that HFL's offer was fair.

Mr S did not agree with the investigator and asked an ombudsman to review his complaint. He said that if D was still trading he could have received new modified aligners that would have improved his results.

As things weren't resolved 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.

What I need to consider in this complaint is whether HFL – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr S's request for getting money back. But it's important to note HFL isn't D. I can't hold it responsible for everything that went wrong with D.

S.75 is a statutory protection that enables a consumer to make a 'like claim' against a lender (HFL) for breach of contract or misrepresentation by a supplier (D) paid using certain types of credit. There are certain conditions that need to be met for s.75 to apply. From what I've seen, those conditions have been met. The necessary relationships exist under a debtor-creditor-supplier agreement. And the cost of the treatment was within the relevant financial limits for a claim to be considered under s.75.

HFL has now broadly accepted Mr S's claim in one sense because it's offered him £220. So, I've gone on to consider if there is persuasive evidence of a breach of contract or misrepresentation by D that means HFL should have offered more than it has. But I want to explain from the outset that I can only consider Mr S's complaint on that narrow basis – that is, whether it was fair and reasonable for HFL to respond to the claim by offering what it did.

Implied terms

In cases such as this it is often complex to assess the quality of the service Mr S paid for. Results from such treatments are subject to many variables and there are generally disclaimers by the providers of such services, and accepted risks that results simply cannot be guaranteed.

While Mr S is unhappy with the results of the treatment, he's not provided supporting evidence such as an independent, expert opinion that sets out the treatment he paid for has not been done with reasonable care and skill as implied by the Consumer Rights Act 2015 (CRA). I'm mindful it is the manner in which the service was provided, rather than the results of the treatment, that is the crucial issue for me in considering whether there's been a breach of an implied term in relation to the service.

I'm not a dental expert, and neither is HFL. Without sufficient supporting evidence, I don't find HFL unfairly declined to meet a claim on the basis of a breach of an implied term of the contract. I've not seen enough to determine the service D offered wasn't carried out with reasonable care and skill and I've not seen evidence the goods element – i.e, the aligners, were not of satisfactory quality. I remind myself also that the treatment was largely self directed in the sense that a set number of aligners were provided and the expectation was that Mr S use the aligners in a prescribed way over a number of months. I note also that Mr S chose to continue using the aligners after learning that D has ceased trading.

Express terms

I also need to consider what I think Mr S's contract with D agreed to provide in terms of treatment so I can determine whether there has been a breach of an express term of it. I don't have a contract signed by Mr S as I understand they were kept in an online application that's no longer available. So, there's a lack of evidence. But it's not in dispute Mr S was due to receive a set of aligners when he entered into the contract in August 2023 and that he received and used all of them. I think the core contract was for those set of aligners.

Mr S said that after D ceased trading he never received any of the support he was supposed to get in addition to this – such as an opportunity to speak with a dentist when he wasn't happy with his progress. He thinks this affected the results he achieved from the treatment.

Because of the lack of evidence in this case it's very difficult to know what kind of support (if any) D was contractually obliged to provide in addition to the core treatment. But even if the support Mr S said he was supposed to receive was part of the contract, I've not seen sufficient persuasive evidence that a failure to provide it meant Mr S's results at the end of the core treatment were worse than they would have been if he'd received it.

I think it's likely Mr S signed an agreement with D which included a consent form, as is common with these sorts of treatments. We don't have a signed copy, but I've seen an example copy. This sets out the various risks and uncertainties with such a dental treatment. And it indicates Mr S would have understood D couldn't guarantee specific results or outcomes. Given the nature of the treatment, I don't think those sorts of terms are unfair or unusual. So even if Mr S didn't quite get the results he wanted after the core treatment I don't think that would be considered a breach of contract.

While I appreciate Mr S is put in a difficult position because some of the evidence isn't available, I can only consider how HFL acted based on what was able to be supplied. In the absence of a specific signed contract, I've looked at S's website from around the time Mr S entered into the contract. It says if the customer hasn't achieved the results they want during or after treatment, and providing they've met certain conditions, the customer might be eligible for additional 'touch up' aligners (which I'll consider under the heading 'the guarantee').

The core treatment had not finished when D ceased trading, but Mr S has confirmed he used all of the aligners after this. While I'm sympathetic Mr S was unhappy with the results, I don't think HFL had sufficient evidence to show D breached the express terms of the contract in respect of the results he achieved.

Mrs S said that he couldn't get retainers because D ceased trading. From looking at D's website from the time of sale, it appears Mr S had to purchase these towards the end of his treatment. It is possible to purchase retainers from another dentist, so I don't find Mr S has been prevented from obtaining them because D ceased trading.

The guarantee

On D's website from the time of the sale, the frequently asked questions ("FAQ") page has a section for further treatment under the guarantee. This suggests customers can request further aligner 'touch ups' either during or after the core treatment at no cost.

From what I can see the availability of a 'touch up' isn't the same as saying that particular results will be achieved. It seems like it's intended for refinement if possible. What the guarantee offered was the possibility of having further aligners provided that during treatment Mr S registered his aligners; wore them as prescribed; completed check ins; stayed up to date on payments. And that, after treatment, Mr S bought retainers every six months and wore them as prescribed. A dentist also had to approve the treatment. My understanding is that a dentist would only do so if they assessed that further progress to straighten the teeth would be possible.

As I've explained, HFL seems to accept that Mr S may have been eligible to be covered by the guarantee and it's made an offer for what it says is the value of a year's touch up aligners.

Mr S thinks his refund should be more than this. There is a potential breach of contract identifiable because Mr S can no longer use the guarantee. However, given the stage of treatment he was at, the guarantee would never have given him the option of a refund of the core treatment costs. From what I've seen, a full refund was only available for the first 30 days after Mr S began the treatment around August 2023, and only if Mr S had not opened or used the aligners. I don't think it would be fair or reasonable for me to tell HFL that it should now provide Mr S with a full refund to compensate him for the potential breach that has happened when he used all of the aligners. I don't think it was unreasonable for HFL to not offer to refund the value for what was provided under the core contract.

Mr S contacted D after he found out it had ceased trading explaining he was unhappy with his treatment and explaining the aligners were causing him discomfort. Whether that would have resulted in D providing touch up aligners under the guarantee is unclear– as I've explained, the provision of them was subject to dentist approval. And no other evidence has been provided to show the aligners were not fitting as they should. Further doubt is cast over this also given Mr S was able to continue with the treatment and use all of the aligners.

It is also possible that the guarantee could have ceased to be of use to Mr S further down the line. He may not have done what was required in terms of buying retainers every six months or D may not have approved further aligners. The guarantee only gave the possibility of touch-up aligners – not the certainty that they would actually be provided.

I accept there's a potential loss, but it's not straight-forward to establish the value of this. And I'm required to resolve the complaint quickly and with minimum formality. As I've explained, I don't think HFL is required to remedy a failure in relation to the core treatment or results Mr S received. But I think there's a possible loss because Mr S may have been able to utilise the guarantee.

HFL has shared information from D previously saying the financial value of a 'touch-up' treatment is £220. It's difficult to know for certain if that's accurate. But this represents a refund of over 10% of the cost of the treatment. Considering we'll never know if Mr S would have continued to receive any benefits under the guarantee and taking into account he decided to complete the core treatment, I think HFL is acting fairly by offering this price reduction to remedy any potential loss. It seems like a fair compromise given I think the total amount paid was substantially for the core treatment.

While I am sorry to hear Mr S is unhappy, with s.75 in mind, I don't find there are grounds to direct HFL to refund him the full costs of the treatment. I think its offer is broadly fair in the circumstances. I should, however, point out Mr S doesn't have to accept this decision. He's also free to pursue the complaint by more formal means such as through the courts.

My final decision

For the reasons I've explained above, my final decision is that I direct Healthcare Finance Limited, to the extent not done so already, to pay Mr S £220.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 March 2025.

Michael Ball
Ombudsman