

## **The complaint**

Mr S has complained about the way Healthcare Finance Limited (“HFL”) dealt with a claim for money back in relation to dental treatment which he paid for with credit it provided.

## **What happened**

In September 2022 Mr S entered into a two-year fixed sum loan agreement with HFL to fund the provision of dental aligners from a third-party supplier (“the supplier”). The cash price was around £1,500 and Mr S was due to pay back the agreement with monthly payments of around £65. He said the supplier initially supplied 12 aligners and the treatment was due to last around 6 months. Mr S said he used his aligners but required further treatment. He said the supplier was meant to provide further ‘touch up’ aligners as part of a ‘lifetime’ guarantee.

The supplier went out of business in December 2023, so Mr S contacted HFL to make a claim under Section 75 of the Consumer Credit Act 1974 (“s.75”). He said he was waiting for more aligners as his treatment wasn’t finished and that there’d been a breach of contract. He said he shouldn’t be expected to pay more for something he would no longer receive.

HFL said it acknowledged the supplier provided a guarantee, but it didn’t think Mr S met all the conditions for it, so it declined the claim. Mr S decided to refer his complaint to the Financial Ombudsman.

Our investigator looked into things and didn’t think HFL’s answer was unfair.

Mr S didn’t agree. He said he didn’t have the aligners he needed or retainers. He said he couldn’t order the retainers until the end of the treatment. He said his teeth had started to go back into their old positions, so he felt he’d wasted his money and he was paying for a product he didn’t have after being promised a lifetime guarantee. He said it was unfair that some of the supporting evidence was missing because it was stored on the supplier’s online application that wasn’t available. He said he was still paying for a service he no longer had access to and that he couldn’t afford to go elsewhere to continue treatment. He said HFL should have done its due diligence before agreeing to the finance.

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.

I want to acknowledge I’ve summarised the events of the complaint. I don’t intend any discourtesy by this – it just reflects the informal nature of our service. I’m required to decide matters quickly and with minimum formality. But I want to assure Mr S and HFL that I’ve reviewed everything on file. And if I don’t comment on something, it’s not because I haven’t considered it. It’s because I’ve concentrated on what I think are the key issues. Our powers allow me to do this.

I also want to say I'm very sorry to hear that Mr S is unhappy with the treatment. I can't imagine how he must feel, but I thank him for taking the time to bring his complaint.

What I need to consider 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 the supplier.

S.75 is a statutory protection that enables Mr S to make a 'like claim' against HFL for breach of contract or misrepresentation by a supplier paid using a fixed sum loan in respect of an agreement it had with him for the provision of goods or services. But there are certain conditions that need to be met for s.75 to apply. From what I've seen, those conditions have been met. I think 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.

Mr S has indicated he's unhappy with the results of his treatment, and that he can no longer use the guarantee. I've gone on to consider if there is persuasive evidence of a breach of contract by the supplier that means HFL should have offered to take any action. 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 in the way it did.

Mr S entered into the agreement in September 2022, and it was expected to last a few months. What is clearly the case though is that Mr S was not happy with the results of the treatment. And he tells us the supplier provided him with some further 'touch up' aligners to try and improve the results.

I've focussed on Mr S's breach of contract claim. Even if the supplier couldn't provide all the services it promised because it went out of business, it's not clear this would be a misrepresentation because I don't think it would have been aware it would go out of business when it sold Mr S the treatment.

### *Implied terms*

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

Mr S has not provided supporting evidence such as an independent, expert opinion that sets out the treatment he paid for has not been carried out 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 think HFL was unfair to not uphold the claim on the basis of a breach of an implied term of the contract because I've not seen enough to determine the service S offered wasn't carried out with reasonable skill and care, and I've not seen evidence the goods element – i.e. the aligners, were not of satisfactory quality. I also don't think the fact that the supplier provided further treatment for refinement or 'touch up' in itself shows the original core treatment wasn't carried out with reasonable care and skill in line with the implied terms of the contract.

### *Express terms*

To decide whether there's likely been a breach of an express term of the contract I've looked

at the supplier's documentation from around the time Mr S bought the treatment which has been made available by HFL. And I've thought about Mr S's testimony and his supporting evidence.

It's not in dispute Mr S entered into a contract for aligner treatment and that he received and used those aligners. There's a lack of signed documentation, but I think the core contract was for a set of aligners Mr S was due to use for a few months. Mr S said it was for six months.

I think it likely Mr S signed an agreement with the supplier 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 the supplier couldn't guarantee specific results or outcomes. Given the nature of the treatment, I don't think that sort of term is 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.

The timeline for what happened after the initial treatment isn't clear. But Mr S has said the supplier provided further sets of aligners at no cost. And that he was waiting for more when the supplier went out of business. As I've said above, I don't think the fact the supplier gave Mr S further aligners shows there was a breach of contract. Further aligners seem to be part of the supplier's aftercare offering for further refinement (subject to dentist approval). It's not clear whether the supplier gave Mr S further aligners because it thought the results could be improved upon or whether it was for some sort of failing on its side. We don't have sufficient evidence to conclude.

While I'm sympathetic Mr S wasn't happy with the results, I don't think HFL had persuasive enough evidence to show the supplier breached the contract in respect of the results Mr S achieved.

### *Guarantee*

While I think Mr S received the goods and service under the core contract, Mr S said 'the treatment didn't work as expected and [the supplier] were meant to provide replacement aligners as part of the guarantee'. Mr S's argument therefore seems to mainly focus on the supplier breaching the contract by not offering him what he says he was due under the guarantee.

On the supplier's website from the time, the frequently asked questions ("FAQ") page has a section for further treatment under the guarantee. This suggests customers can request further aligner 'touch ups' after the core treatment at no cost on an ongoing once a year basis.

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. The guarantee provided the *possibility* of having further aligners, provided that Mr S registered his aligners; wore them as prescribed; completed virtual check ins; and stayed up to date on payments. It also said after the core treatment Mr S was required to buy retainers every 6 months and wear them as prescribed. Moreover, a dentist was required to approve the further treatment. My understanding is that a dentist would only do so if they assessed that further progress to straighten the teeth would be possible.

On the one hand, HFL said Mr S didn't buy the retainers and he didn't complete the check ins. There are also some gaps in the timeline which means we haven't seen details of all the follow up treatment Mr S said he was supplied after the core treatment. On the other hand,

Mr S said he couldn't complete the check ins because the link didn't work; he hadn't ordered retainers because he'd not finished his treatment; and some of the evidence about the treatment was no longer available.

Mr S isn't disputing the information HFL said it received from S. He said he couldn't complete the check ins and he's given his understandable reasons for not ordering retainers. But as I've said above, I need to bear in mind what HFL can fairly be held responsible for. It doesn't seem to be in dispute that Mr S didn't meet the requirements to benefit from the guarantee. It's curious that S provided him further treatment and may have agreed to provide further 'touch up' aligners when he may not have met those qualifying requirements. Perhaps, as our investigator pointed out, it was done as a gesture of goodwill. But the problem I have is that I can't now point to a term of the contract that's been breached that HFL is responsible for. Even without a signed contract, based on the FAQs it seems as though Mr S didn't meet the relevant requirements to continue benefitting from the guarantee.

Mr S has requested a refund, or to stop making payments. But even if I'd identified a breach of contract in relation to the guarantee, these weren't remedies the contract offered in this sort of scenario. I'm conscious Mr S has received the core benefit through the initial treatment, and I think the total amount of credit was substantially for that treatment, so I don't think HFL is acting unfairly by asking him to pay back the credit. HFL hasn't made an offer to Mr S for a potential loss through him not being able to utilise the guarantee. I don't think there's the grounds to say HFL should offer him a price reduction for something I can't see the supplier was required to provide him under the guarantee.

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 or to waive the outstanding balance.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 December 2024.

Simon Wingfield

**Ombudsman**