

The complaint

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

What happened

In October 2023 Miss C entered into a two-year fixed sum loan agreement with HFL to fund the provision of dental aligners from a third-party supplier that I’ll call “S”. The cash price was around £1,650 and Miss C was due to pay back the agreement with monthly payments of around £70. I understand the aligners were delivered in early November 2023.

S went out of business in December 2023, so Miss C contacted HFL to ask for help. She said she would no longer receive the service she was paying for and so wasn’t happy to continue paying. HFL considered the claim as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 (“s.75”). HFL said in accordance with S’s terms and conditions Miss C could return unopened aligners for a pro-rata refund. It also told her where she could buy retainers from.

Miss C decided to refer her complaint to the Financial Ombudsman. She said she continued to wear the aligners and it wasn’t fair she could only receive a pro-rata refund. She said the options weren’t made clear to her when she raised the claim. She highlighted she wouldn’t receive the benefit of S’s lifetime guarantee. She also said she was at the stage she needed a retainer but couldn’t do so as S had gone out of business. She said she’d been to other dentists who told her she’d need further treatment to achieve the results she wanted. She also said her bite had been impacted and that she was unhappy with the results. She highlighted she wasn’t given support through the treatment, and that some of the aligners didn’t fit properly.

After the complaint was referred to the Financial Ombudsman, HFL contacted us to say it would be willing to provide Miss C £220 which it said was equal to the monetary value of a ‘touch up’ aligner set she may have been eligible for under the guarantee.

Our investigator looked into things and thought HFL’s offer was broadly fair.

Miss C didn’t agree. She said she didn’t think the offer was fair considering the parts of the service she didn’t receive. She also highlighted the service didn’t work.

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 Miss C 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 Miss C is unhappy with her treatment. I can't imagine how she must feel, but I thank her for taking the time to bring her 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 Miss C's request. But it's important to note HFL isn't the supplier.

S.75 is a statutory protection that enables Miss C 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 her 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.

HFL has broadly accepted Miss C's claim in one sense because it initially offered her a pro-rata refund, which it then amended to a £220 offer when Miss C finished her treatment. I've gone on to consider if there is persuasive evidence of a breach of contract or misrepresentation by S that means HFL should have offered more than it has when handling Miss C's claim. But I want to explain from the outset that I can only consider Miss C's complaint on that narrow basis – that is, whether it was fair and reasonable for HFL to respond to her claim by offering what it did.

Miss C entered into the agreement in October 2023, and it was expected to last a few months. She said she was not happy with the results of the treatment and that she didn't receive all the services she'd paid for. So she believes she should receive a full refund. I've therefore focussed on her complaint about how HFL dealt with her breach of contract claim.

Should HFL have made its offer sooner?

Miss C is unhappy HFL didn't set out all her options as soon as she wrote to it in December 2023. I can understand why she's said this because she says she may have taken a different course of action. She may have decided to stop wearing the aligners altogether. Miss C contacted HFL a few days after S went out of business. It acknowledged her complaint straight away, and I think it's fair to say it had to investigate off the back of that. While I appreciate the point she's making, I'm not sure I can say HFL was unfair not to have presented all the options to Miss C straight away. It needed to investigate the circumstances of her claim.

Miss C has indicated she thinks HFL should have told her to stop wearing her aligners straight away. But it's important to note HFL is a financial service provider. Its role is different to that of S's. I don't think I can fairly say it was required to advise Miss C straight away on what to do with regards to the treatment. As a financial services provider, its requirement was to deal with the claim within a reasonable amount of time, and it had another requirement to deal with any subsequent complaint within eight weeks. HFL treated the claim as a complaint, as lots of businesses do. It sent a holding letter as promised after four weeks, and it did ultimately respond within eight weeks, so it's difficult for me to say it acted unfairly here with regards to the overall way it handled the claim and complaint.

Miss C was in a difficult position because she was partway through treatment when S went out of business. Miss C, understandably, would have been unsure what to do, but I have to

bear in mind she decided to continue the treatment. When HFL responded it offered her a pro-rata refund based on what it thought was fair for someone partway through treatment. I don't think that was necessarily unreasonable as it was in line with what S would have offered other customers in a similar situation, which I'll come on to later. But I appreciate Miss C's point that by the time the offer was made, she'd nearly completed the treatment.

Miss C's concerns when she contacted HFL were that she wasn't sure if her plan was proceeding as it should and that she'd not had to carry out check ins. She said she wouldn't receive any 'touch up' aligners or be able to benefit from the guarantee, which she thought she would have sought to utilise. She said she'd need to order retainers but couldn't do so because S was out of business. At that stage, she didn't complain about the final results she achieved. But she later mentioned she was unhappy with the results. I primarily need to consider what happened up to the final response as those events relate to what HFL had the opportunity to consider. But it seems sensible to consider what happened next to some extent given HFL went on to amend the offer and Miss C completed the core treatment. So I've considered her other points and will set out my thoughts below.

Implied terms

In cases such as this it is often complex to assess the quality of the service Miss C 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.

Miss C has not provided supporting evidence such as an independent, expert opinion that sets out the treatment she 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 conscious that Miss C said she wasn't given the ongoing support when S went out of business. The aligners were made and intended to be worn sequentially to achieve the results and, in theory, Miss C may not have required any support from S throughout the treatment. When she initially contacted HFL she didn't say the aligners weren't fitting properly. But she later supplied photos of what she says were ill fitting aligners. But I'm not a dental expert, and neither is HFL. Without sufficient supporting evidence, I don't think HFL was unfair at the time to not uphold the claim on the basis of a breach of an implied term of the contract because I don't think it was supplied enough evidence the service S offered wasn't carried out with reasonable skill and care – although I appreciate Miss C's point that she may have asked for help during treatment had S not gone out of business.

While I'm sympathetic, for the reasons given above, I don't find there are the grounds to say HFL acted unreasonably by declining the claim in relation to a breach of an implied term based on what it had at the time.

Express terms

I also need to consider what I think Miss C's contract with S 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 Miss C 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 Miss C was due to receive a set of aligners when she entered into the contract in October 2023 and that she received and used them. I think the core contract was for those set of aligners that she was due to use for a few months.

Miss C is unhappy she wasn't given the ongoing dental support during the treatment. I can understand her point here because that doesn't seem to be in dispute. The problem I have is that I've not got the evidence that her treatment or overall position would have been different had she been able to do the check ins. For similar reasons to what I've said above, I don't think HFL was given sufficient evidence in relation to the ongoing support to show Miss C lost out on something that it could put a value on to offer a price reduction.

With regards to the results, I think it likely Miss C signed an agreement with S 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 Miss C would have understood S couldn't guarantee specific results or outcomes. The consent form also has a section for "bite adjustment" that said *Your bite may change during treatment and may result in temporary discomfort. Your bite may require adjustment after use of the aligners.* Given the nature of the treatment, I don't think those sorts of terms are unfair or unusual. So even if Miss C didn't quite get the results she wanted after the core treatment or required a bite adjustment I don't think that in itself would be considered a breach of contract.

While I appreciate Miss C 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 Miss C entered into the contract. This says most treatment lasts a few months. It says if the customer hasn't achieved the results they want, and providing they've met certain conditions, they *might* be eligible for additional 'touch up' aligners, which I'll come on to.

While I'm sympathetic Miss C wasn't happy with the results, I don't think HFL had persuasive enough evidence to show S breached express terms of the contract in respect of the results she achieved, or that it was required to make an offer in relation to the ongoing support.

Miss C also said she wouldn't be able to receive retainers from S because it went out of business. But HFL let Miss C know where she could buy retainers, which weren't included within the original contract. This seems reasonable because Miss C would have always needed to pay for them herself.

Guarantee

On S'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. As I said above, Miss C has indicated she would have sought this further support.

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 Miss C registered her aligners; wore them as prescribed; completed virtual check ins; and stayed up to date on payments. It also said after the core treatment Miss C was required to buy retainers every 6 months at her own cost 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.

Miss C thinks she should be provided with a full refund of the treatment costs. There is a potential breach identifiable because Miss C can no longer use the guarantee. However, given the stage of treatment she reached, the guarantee would never have given her the option of a refund of the core treatment cost. From what I've seen, a full refund was only available for the first 30 days after Miss C began her treatment around October 2023, and

only if Miss C had not opened or used the aligners. Outside of the 30 days S said it would offer a pro-rata refund for unopened and unused aligners – which is what HFL agreed to offer in its final response. I don't think it would be fair or reasonable for me to tell HFL that it should now provide Miss C with a full refund to recompense her for the potential breach that has happened given she went on to complete her treatment. I don't think it was unreasonable for HFL to not offer to refund the value for what was provided under the core contract, but I've thought about what it has now offered.

There are many ways in which the guarantee could have ceased to be of use to Miss C. Firstly, she may not have done what she needed to in terms of buying retainers. As I've said above, the retainers were not supplied under the original contract – Miss C needed to buy them separately. S 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.

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

HFL shared information from S 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. Taking into account she's received 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 Miss C is unhappy, with s.75 in mind, I don't find there are grounds to direct HFL to refund her the full cost of the treatment. I need to consider how HFL acted based on the information it was supplied. And even taking into account Miss C's testimony, along with the photos of her wearing aligners, I'm not persuaded that HFL's overall answer was unfair or that it should have offered more. If she were to obtain sufficient supporting evidence it may be something HFL can consider again, but I'm not going to direct it to do more than it's done in relation to this complaint. I should, however, point out Miss C doesn't have to accept this decision. She's also free to pursue the complaint by more formal means such as through the courts.

My final decision

For the reasons given above, my final decision is that I uphold this complaint and direct Healthcare Finance Limited, to the extent not done so already, to pay Miss C £220.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 28 January 2025.

Simon Wingfield
Ombudsman