

The complaint

Mr F is unhappy with Healthcare Finance Limited's response to a breach of contract claim he raised with it in relation to orthodontic treatment from a third party "S". Healthcare Finance provided funding for the treatment and Mr F made a claim under the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

Mr F entered an agreement with S under which he would receive remote orthodontic treatment involving the provision of plastic aligners intended to incrementally adjust the position of his teeth.

As I understand it, S also provided what it called a Lifetime Smile Guarantee. Under this guarantee and subject to certain conditions including regular medical check-ins to assess progress, further 'touch-up' aligners could be provided if deemed necessary, and Mr F was entitled to a pro-rata refund for unused and unopened aligners in the event he decided not to continue with the treatment after 30 days. The guarantee did not provide any assurances about the outcome of the treatment.

In February 2023 S supplied the aligners to Mr F and he commenced his course of treatment. Mr F contacted S in December 2023 to say he wasn't satisfied with the way his treatment was progressing. After reviewing photographs Mr F submitted to it, S agreed to move forward with the touch-up process, which required a new set of tooth impressions. But very soon afterwards S entered bankruptcy and ceased its operations.

Mr F was concerned he wouldn't now be able to get the problem resolved under the guarantee and felt he wouldn't be receiving what he'd paid for. He contacted Healthcare Finance, expressing the view that S was in breach of contract and that he was holding Healthcare Finance liable under section 75. He sought a refund and said he would be suspending further payments.

Healthcare Finance responded to Mr F through a third party "T". It didn't agree that it was liable in breach of contract. It said S had provided Mr F with the aligners and that while he had registered these, he didn't meet other conditions of the Lifetime Smile Guarantee; namely, the regular check-in requirement.

Mr F was dissatisfied with Healthcare Finance's response and brought his complaint to us. He maintained that the failure to carry out the corrective work under the guarantee placed S – and by extension, Healthcare Finance – in breach of contract. He disputed Healthcare Finance's assertion that that he hadn't met the guarantee conditions, pointing to the confirmation he received from S of his entitlement to the touch-up treatment.

While the complaint has been with us Healthcare Finance has expected Mr F to continue with his payments under the credit agreement. He believes payments should be suspended and has not made payment since raising the claim. I understand Healthcare Finance has recorded his account as being in default and the balance is with a recovery agent.

Our investigator noted that neither party had been able to supply the express terms of the contract between Mr F and S. Based on what was available, the investigator wasn't persuaded that Mr F had demonstrated S was in breach of contract in relation to the supply of the original aligners or its initial response to his claim under the Lifetime Smile Guarantee, which had been based on limited information it had obtained from S.

However, the investigator said Healthcare Finance had since accepted that Mr F had done enough to meet the guarantee conditions. As Mr F told us he'd opened all the aligners and couldn't return them for a refund, Healthcare Finance offered to pay him £220, representing what it said was the value of a set of touch-up aligners for one year.

The investigator considered Healthcare Finance had made a fair proposal in resolution of the complaint. But Mr F didn't agree. He feels he should receive a higher amount and instead proposed an alternative resolution, the essence of which was that he receive an overall cost reduction of £500. Healthcare Finance didn't agree to this proposal and the dispute has been referred to me for review and determination.

Mr F has included in his submissions the following points:

- He adhered to all terms and conditions outlined under the contract between himself, S, and Healthcare Finance. All payments and check-ins were made on time prior to the liquidation of S, demonstrating his commitment to the contract.
- S reviewed his progress and approved additional treatment, confirming his compliance with check-ins. This suggests that the contract's performance obligation was not fully satisfied, giving him the 'Right of Redress' as stipulated in the contract.
- Healthcare Finance has not provided evidence to support its claim of non-compliance with check-ins. There was no indication that he was informed of any non-compliance, and S's approval of additional aligners contradicts Healthcare Finance's claim.
- The offer of a £220 discount on a £1,805.19 bill for incomplete treatment¹ is unfair, as the value does not cover the cost of necessary additional treatment. The Lifetime Smile Guarantee valuation does not accurately reflect the market value of braces/aligners and does not compensate for services owed.
- The 'no guarantee of results' clause under the contract with S/Healthcare Finance is inappropriate, as it applies an unfair limit to statutory liability. S's decision to provide additional aligners must be considered as an indicator of whether the contract was breached if these aligners were not provided.
- It is inappropriate to assess the Lifetime Smile Guarantee separately from the contract. Cosmetic results cannot be delivered in part, and it should not be deemed appropriate to break up the obligations of a contract for teeth straightening. The results are either satisfactory or not. Therefore, the approval of additional aligners confirms that the goods/services were only delivered in part, not in full.
- His position remains that S's expertise and assessment should be respected, and this should form the basis of how to assess whether there has been a breach of contract. He believes it is clear that he is being made to pay for goods/services not received and, therefore, he is paying for a contract not satisfied by the supplier.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable

¹ This figure represents the total amount payable under the credit agreement, rather than the cost of treatment, which is specified as £1,639.

in the circumstances of this complaint.

The finance arrangements between Mr F, Healthcare Finance and S were such that he was entitled under section 75 to claim from Healthcare Finance for breach of contract or misrepresentation by S. I don't understand there to be any suggestion here over whether S misrepresented its products or services to Mr F. For the avoidance of any doubt, I've proceeded on the basis that his claim is one of breach of contract, as Mr F has stated.

Neither party has supplied a copy of the terms of the contract between S and Mr F. According to the credit agreement between Healthcare Finance and Mr F, the agreement was to finance the supply of aligners by S to Mr F. There is no question that Mr F was supplied with a full set of aligners. However, that isn't the basis on which he has sought to bring his claim. His action is founded on a failure by S to perform actions under the Lifetime Smile Guarantee, and that this is a breach of contract for which Healthcare Finance is liable.

I'm conscious Mr F has said it would be inappropriate to view the Lifetime Smile Guarantee as separate from the contract to supply the aligners. He may be right in this respect. But while the treatment might not have achieved the results Mr F was hoping for, it was made sufficiently clear from the outset that results were not guaranteed. I don't find that what Mr F has argued demonstrates that the refusal to guarantee results amounts to a limit on any (unspecified) statutory liability S had towards him.

I do understand Mr F's point of view here. He thinks that S's failure leads to a breach that ought to entitle him to a good deal, if not all, of his money back. But I think it's far from clear that this is a remedy he'd be able to obtain were he to pursue a claim. Even if he did so, the responding party would no doubt be entitled to argue that it can make a deduction from any refund to reflect the value that was provided under the contract. As the aligners were provided to Mr F, that would leave the position much as it is now.

Of course, it isn't Mr F's fault that the check-ins weren't undertaken, and it's only right that Healthcare Finance has acknowledged that it wouldn't be fair to say Mr F failed to meet the conditions of the Lifetime Smile Guarantee, however limited the benefits of that guarantee.

Overall, I don't consider Healthcare Finance's response unreasonable. It is entitled to take the stance it has in response to Mr F's claim of breach of contract. It has acknowledged Mr F wasn't responsible for the failure to meet the guarantee conditions, and it has sought (albeit a little belatedly) to make amends for that by offering him £220 compensation.

I understand this is comparable to what Mr F might have to pay for a set of touch-up aligners of this type (clear plastic) as he might have expected to receive under the guarantee. Any subsequent sets of aligners would have been conditional on a further assessment by a dental practitioner, rather than being a judgement call to be made by me. After carefully considering all that's been said and provided, I can't fairly expect Healthcare Finance to do more than it has proposed.

I'm conscious Mr F has his views about whether he should be required to make payment under the credit agreement, and of Healthcare Finance charging interest while the underlying dispute has been ongoing.

Mr F's complaint does not arise from the terms of his credit agreement with Healthcare Finance, which while connected to the services S undertook to provide, is an arrangement he entered into creating separate contractual obligations in respect of payments. The fact a consumer makes a claim under section 75 doesn't oblige a lender to suspend interest or repayments, and I'm not persuaded to require Healthcare Finance to do so in this case.

My final decision

In light of my findings, my final decision is that Healthcare Finance Limited has made a reasonable proposal to pay Mr F £220 to settle his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 12 March 2025.

Niall Taylor
Ombudsman