

## **The complaint**

Mr H 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 October 2022 Mr H 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 £1,600 and Mr H was due to pay back the agreement with monthly payments of around £70. He said he was initially provided aligners for four months’ treatment. Mr H said having completed his plan he requested further ‘touch up’ aligners because he wasn’t happy with the results. He said he requested the ‘touch up’ aligners in February 2023 which he received in March 2023. He said he contacted S because he still wasn’t happy around July 2023, after having completed the ‘touch up’ treatment in June 2023. Mr H said S offered him a 25% refund but he wasn’t happy with this.

S went out of business in December 2023, so Mr H contacted HFL to make a claim. He requested details of the procedures for refunds. HFL considered the claim as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 (“s.75”). HFL said it acknowledged S provided a lifetime guarantee and accepted that Mr H may have met the conditions for it. It therefore offered to refund Mr H what it said was the value of one set of ‘touch up’ aligners – £220.

Mr H decided to refer his complaint to the Financial Ombudsman. He requested a refund so he could continue treatment elsewhere. Our investigator looked into things and concluded that HFL’s offer was fair, and it was not unreasonable of it to decline to refund the full cost of treatment.

Mr H didn’t agree. He said S offered a lifetime guarantee he was no longer able to use. He said he would have continued but that option had been taken away from him. He said he was unable to buy a retainer from another company and reiterated he thought a full refund was fair so he could go elsewhere.

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 H 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 H is unhappy with the treatment. I can't imagine how he must feel, but I thank him for taking the time to bring the 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 H's request for getting money back. But it's important to note HFL isn't the supplier. I can't hold it responsible for everything that went wrong with S.

S.75 is a statutory protection that enables Mr H 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.

HFL broadly accepted Mr H's claim in one sense because it offered him £220. So 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. But I want to explain from the outset that I can only consider Mr H'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.

Mr H entered into the agreement in October 2022, and it was expected to last a few months. He wasn't happy with the results of the treatment, and he tried to resolve things with S. It went out of business, and Mr H said he's lost out.

#### *Implied terms*

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

While I appreciate Mr H has supplied us evidence of the complaint he'd raised with S that set out he was unhappy with the results, 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. I've also not seen evidence the goods element – i.e, the aligners, were not of satisfactory quality.

#### *Express terms*

I also need to consider what I think Mr H'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 Mr H 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 H was due to receive a set of aligners when he entered into the contract in October 2022 and that he received and used them. I think the core contract was for that set of aligners that he was due

to use for a few months.

I think it likely Mr H 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 Mr H would have understood S 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 H didn't quite get the results he wanted after the core treatment I don't think that in itself would be considered a breach of contract.

While I appreciate Mr H 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 H entered into the contract. This says most treatment lasts between 4 to 6 months. It says if the customer hasn't achieved the results they want, and providing they've met certain conditions, the customer might be eligible for additional 'touch up' aligners, which is what happened for Mr H.

While I'm sympathetic Mr H was unhappy with the results, I don't think HFL had sufficient evidence to show S breached the express terms of the contract in respect of the results he achieved.

I'll go on to think about what services S was required to offer after the initial treatment, and whether there's been a breach of contract. Further aligners seem to be part of S's aftercare offering for further refinement (subject to dentist approval).

### *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.

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 H registered his aligners; wore them as prescribed; completed check ins; stayed up to date on payments. And that, after treatment, Mr H bought retainers every 6 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.

Mr H thinks he should be provided with a full refund of the treatment costs. There is a potential breach identifiable because Mr H 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 H began the treatment around October 2022, and only if Mr H 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 H with a full refund to compensate him for the potential breach that has happened based on the very limited evidence available. I don't think it was unreasonable for HFL to not offer to refund the value for what was provided under the core contract.

There are many ways in which the guarantee could have ceased to be of use to Mr H. He may not have done what was required in terms of buying retainers every six months. S may not have approved further aligners. The guarantee only gave the possibility of annual touch-

up aligners – not the certainty that they would actually be provided. Mr H highlighted he could no longer buy retainers from S. It's important to note the retainers weren't provided under the contract that HFL funded. And there are other suppliers of retainers on the market if Mr H wishes to buy further sets.

I accept there's a potential loss, but 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, I don't think HFL is required to remedy a failure in relation to the core treatment or results Mr H received. But I think there's a possible loss because Mr H may have been able to further 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. Considering we'll never know if Mr H would have continued to receive any benefits under the guarantee; taking into account he's received the core treatment, I think HFL acted 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 H 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 H 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 given above, my final decision is that Healthcare Finance Limited has done enough to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 March 2025.

Simon Wingfield

**Ombudsman**