

## **The complaint**

Mr C 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 December 2022 Mr 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 £1,550 and Mr C was due to pay back the agreement with monthly payments of around £65. He said he was initially provided aligners for five months’ treatment and he received a further two sets of ‘touch up’ aligners because he was unhappy with the results. He contacted S in November 2023 because he was still unhappy with the results. He wanted to know if his results could be improved and, if they couldn’t, he sought a full refund.

S went out of business in December 2023, so Mr C spoke to HFL about the claim, requesting a full refund. 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 but it didn’t think Mr C met the conditions for it because he’d not completed check ins, so it declined the claim. Mr C decided to refer his complaint to the Financial Ombudsman.

Following on from that, HFL looked into things further and accepted Mr C may have met the conditions for the guarantee because he was approved a ‘touch up’ treatment. It therefore offered to refund Mr C what it said was the value of one set of ‘touch up’ aligners – £220. Mr C, however, said he complied with the full treatment and his complaint was primarily about the results as opposed to the guarantee. He also said there was no evidence he hadn’t in fact completed the check ins.

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 C didn’t agree. He said there was clear evidence of misrepresentation because S told him it wouldn’t confirm a course of treatment if results couldn’t be achieved. He said he was happy to send pictures of his teeth to show they hadn’t moved as per the scan he had completed with S. He also questioned why HFL weren’t also required to supply evidence in the same way he’d been asked. He highlighted the evidence HFL relied on about the check ins was wrong. He also said the British Dental Association (“BDA”) didn’t think S met the level of expected and competent providers. He asked if he could take legal action.

Our investigator didn’t change her assessment. Mr C responded again to say HFL had already applied the refund. He said he didn’t recall seeing a Consent and History Form that our investigator referred to and didn’t think she’d taken on board all the evidence he’d submitted. I understand Mr C may have also stopped making payments towards the agreement.

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 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 Mr C 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 C'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. And I need to consider how it responded to the claim based on the evidence presented to it.

S.75 is a statutory protection that enables Mr 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 him for the provision of goods or services. 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.

I understand why Mr C was unhappy with the overall way HFL handled the claim, and why he didn't think it had properly answered his complaint. While it responded within around two months and was likely dealing with lots of enquiries, I can understand why Mr C would have expected a response sooner, particularly given he'd spoken to it before S went out of business. HFL has now broadly accepted Mr C'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 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 C'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 C entered into the agreement in December 2022, and it was expected to last a few months. He wasn't happy with the results of the treatment. Therefore, I understand S provided him with some further 'touch up' aligners to try and improve the results for him. Mr C's concerns are that the treatment hasn't worked and now cannot, as S is no longer in business. He also thinks it may have been mis-sold in the first place. He believes he should receive a full refund.

### *Implied terms*

In cases such as this it is often complex to assess the quality of the service Mr C 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 C is unhappy with the results of the treatment, he's not provided supporting evidence such as an independent, expert opinion that sets out the specific 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. Mr C has more recently supplied an extract from the BDA which does seem concerning. I can understand why Mr C would think that could show there was a wider issue. I do empathise. But I need to consider how HFL acted with the evidence Mr C presented it. And I think that evidence would need to relate to Mr C's personal circumstances.

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 don't think the fact that S 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*

I also need to consider what I think Mr 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 Mr C as I understand they were kept in an online application that's no longer available. There's a lack of evidence. But it's not in dispute Mr C was due to receive a set of aligners when he entered into the contract in December 2022 and that he received and used them. I think the core contract was for those set of aligners that he was due to use for a few months.

I therefore think Mr C completed the initial treatment he'd paid for in December 2022. But he was unhappy with the results and S agreed to supply further sets of aligners – at no cost. Mr C said he received two sets of extra treatment.

While I appreciate Mr 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 Mr C entered into the contract. I can't see anywhere that S guaranteed Mr C specific results. The website 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. S gave Mr C further aligners.

On balance, I think I can conclude the original treatment had ended. So I've thought 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). It's not clear whether S gave Mr C 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 C 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 result he achieved. Mr C said S told him if it couldn't deliver the results it wouldn't confirm the treatment, but I've not seen enough supporting evidence of that conversation. Mr C said he didn't recognise the Consent and History form. While I can't be certain because we don't have a signed copy, I think it's *likely* this form would have been signed because it's common with these sorts of treatment and I understand that was the usual process. The example copy I've seen sets out the various risks and uncertainties with such a dental treatment. And it indicates Mr C would have understood S couldn't guarantee specific results or outcomes. On balance, while not definitive, even taking into account what Mr C said, I don't think HFL had sufficient evidence to show that S misrepresented the service.

### *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. I appreciate issues relating to the aftercare were not the thrust of Mr C's complaint, but I think it's fair to consider what he may have lost out through the aftercare given what I've said above.

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

As I've explained, we know a dentist approved further treatment in 2023. HFL now accepts Mr C 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' aligner.

Mr C thinks he should be provided with a full refund of the treatment costs. There is a potential breach identifiable because Mr C 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 C began the treatment around December 2022, and only if Mr C 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 C with a full refund to recompense him for the potential breach that has happened. 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 C. 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.

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 C received. But I think there's a possible loss because Mr 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. Considering we'll never know if Mr C would have continued to receive any benefits under the guarantee; taking into account he's received the core treatment, and he was offered further treatment before S went out of business, 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 C 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 understand this payment may have already been made, so it won't need to take any further action if Mr C were to accept this decision. I should, however, point out Mr C doesn't have to accept this decision. He's also free to pursue the complaint by more formal means such as through the courts.

Finally, I note Mr C may have stopped making payments towards the agreement. I primarily need to consider what happened up to the point HFL issued its final response letter because those events are what it has had the chance to consider. Given the circumstances, HFL may wish to consider removing any adverse information if Mr C clears the arrears. But, for the avoidance of doubt, given I don't know exactly what's happened, and that these events primarily may have happened after HFL issued its final response, I'm not deciding that aspect within this final decision. If Mr C is unhappy with how HFL treats him going forward, it may be something our service is able to consider separately.

### **My final decision**

My final decision is that I direct Healthcare Finance Limited, to the extent not done so already, to pay Mr C £220.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 February 2025.

Simon Wingfield  
**Ombudsman**