

## **The complaint**

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

## **What happened**

In January 2023 Mr P 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 £1,500 and Mr P was due to pay back the agreement with monthly payments of around £65. He said he was initially provided aligners for a few months’ treatment which he completed. He said S supplied another set, but he still wasn’t happy with the results. Around November 2023 Mr P said he was arranging a third set of aligners from S.

S went out of business in December 2023, so Mr P contacted HFL to make a claim, requesting a refund and to stop making further payments. 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 P met the conditions for it because he’d not completed virtual check ins and he didn’t order retainers, so it declined the claim. Mr P decided to refer his complaint to the Financial Ombudsman. He said he did complete the check ins and wasn’t at the point to order retainers. He also said he’d have to spend around £3,000 for treatment elsewhere and said a dentist told him the plan from S was never going to work. He said the results weren’t what he was promised.

Our investigator looked into things and thought Mr P may have met the conditions for ‘touch up’ aligners under the guarantee that S offered, so she recommended HFL refund Mr P the value of a year’s worth of touch up aligners - £220. HFL ultimately accepted the assessment, but Mr P didn’t.

Mr P said he wasn’t seeking a refund for previous payments but requested the balance cancelled. He reiterated he was eligible for the guarantee. He said the ‘touch ups’ he was given were part of ongoing treatment rather than post-treatment ‘touch ups’. He said his initial treatment didn’t finish. He said he’d obtained a letter from his dentist showing a treatment plan. He also said he didn’t recall signing a consent form that our investigator referred to.

I understand Mr P had also stopped making payments towards the agreement. HFL agreed to put things on hold while our service considered the complaint.

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 P 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 Mr P 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 P'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 P 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 has now broadly accepted Mr P's claim in one sense because it's agreed to offer 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 do more.

Mr P entered into the agreement in January 2023, 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 further 'touch up' aligners to try and improve the results for him. Another set was agreed around November 2023, but S went out of business, so Mr P didn't receive those aligners. Mr P's concerns are that he hasn't finished his treatment, and now cannot, as S is no longer in business. He also questioned whether the treatment was suitable in the first place. He believes he should at least be able to stop making further payment.

### *Implied terms*

In cases such as this it is often complex to assess the quality of the service Mr P 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 P is unhappy with the results of the treatment and he's provided an invoice for dental treatment from a dentist, 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.

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 P'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 P 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 P was due to receive a set of aligners when he entered into the contract in January 2023 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 P completed the initial treatment he'd paid for in January 2023. But he was unhappy with the results and S agreed to supply further sets of aligners – at no cost. Mr P said he received a set of 'touch up' aligners. And he was expecting to receive more when S went out of business.

While I appreciate Mr P 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 P 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 S did.

Mr P has told us he thought S was providing him 'touch up' aligners essentially under the original core treatment. Mr P has shown us a webpage from S that mentioned 'touch ups' during treatment. This page is in relation to the guarantee, which I'll come on to in more detail later. For aligner touch ups during treatment, I think this likely relates to problems during the core treatment I've mentioned above. If the teeth weren't moving as expected during the core treatment S may have agreed to provide 'touch up' aligners. But it seems as though Mr P arranged 'touch ups' after the core treatment because he completed the course of the original aligners. I haven't seen sufficient evidence for Mr P that S would extend the original treatment. So 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.

While I'm sympathetic Mr P 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.

### *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.

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 P 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.

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 P registered his aligners; wore them as prescribed; completed check ins;

stayed up to date on payments. And that, after treatment, Mr P 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 November 2023. HFL didn't think Mr P initially met the conditions for the guarantee. We've seen other cases where S told HFL the customer did meet the conditions. So I don't think it's fair to completely disregard what HFL has told us, or the information it relied on. But in any event, HFL accepts he may have been eligible to be covered by the guarantee and it's agreed to pay £220 for what it says is the value of a year's touch up aligner.

Mr P thinks he should be able to stop making further payment. There is a potential breach identifiable because Mr P 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 P began the treatment around January 2023, and only if Mr P 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 P 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 P. He may not have done what was required in terms of buying retainers every six months. S may not have approved further aligners, although I appreciate Mr P said it had before it went out of business. The guarantee only gave the possibility of annual touch-up aligners – not the certainty that they would actually be provided.

Moreover, looking at things strictly, Mr P had already benefitted from the guarantee previously. Given the guarantee was only there to cover one set of treatment per year, it's not clear S was contractually obliged to have given Mr P the further set he was waiting for at that time. On the one hand, Mr P thinks the fact S agreed further aligners shows he was eligible for the guarantee. On the other hand S may have approved further treatment as a gesture of goodwill. The evidence is incomplete, but I'm conscious HFL has now broadly accepted Mr P may have been eligible.

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 P received. But I think there's a possible loss because Mr P 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 P would have continued to receive any further benefits under the guarantee; taking into account he's received the core treatment, and that he said 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 P 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 P 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 P 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 credit reference information if Mr P clears the arrears. But, for the avoidance of doubt, given I don't know exactly what's happened, and that these events happened after HFL issued its final response, I'm not deciding that aspect within this final decision. If Mr P 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 P £220.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 January 2025.

Simon Wingfield  
**Ombudsman**