

The complaint

Miss S complains about Healthcare Finance Limited's (HF) response to a claim she made under section 75 Consumer Credit Act 1974.

What happened

In November 2022 Miss S bought a course of dental aligner treatment from a supplier I'll call D. The cash price of the treatment was £1,639. Miss S paid a deposit of £69.44 and paid for the remainder using a fixed sum loan from HF.

Miss S said the treatment included her first taking an impression of her teeth which she sent off to D and based on that impression 12 aligners were produced and sent to her to be used consecutively over the course of around three months.

Miss S said that once she had progressed to around the fifth aligner, it did not fit. She sent some photographs of the ill-fitting aligner to D in February 2023. Shortly after this D emailed Miss S and told her *"your dentist...has approved your new 3-month aligner touch up treatment plan"*. Miss S sent new impressions of her teeth to D in February 2023.

Miss S said that on 3 March 2023 D told her the touch up aligners had been delivered. However, she said she didn't receive them. Miss S said she logged a complaint with D on 8 March 2023.

On 2 April 2023 Miss S said she received a communication from D congratulating her on completing the treatment. She said this was clearly automated and had not taken account of the fact she was still awaiting touch up aligners. The email asked Miss S to purchase retainers as this was a condition of its 'lifetime smile guarantee' – a guarantee that Miss S could receive touch up aligners during and after completing her treatment subject to meeting certain criteria.

Miss S said she spoke with a representative of D over an online live chat on 13 May 2023 to complain again and following this D agreed to send three sets of touch up aligners to see how she got on with them.

Miss S said these fitted her better but when she asked D for the remaining aligners four weeks later it told her it had no record of her touch up plan.

Miss S said D entered liquidation in December 2023 with her never having received more aligners.

Miss S asked HF to consider its liability to her as finance provider under section 75 Consumer Credit Act 1974 (s.75) and provide a refund. She said HFC had breached the terms of its contract with her by failing to supply the full course of aligners and failing to provide the lifetime smile guarantee.

An administrator acting on HF's behalf treated Miss S's claim as a complaint and issued a final response letter. It said Miss S had not met the necessary conditions to qualify for the

lifetime smile guarantee (including the 'moneyback promise') as she didn't complete the required 'check-ins' during the course of her treatment and didn't order retainers on time. So, it didn't consider Miss S had a valid claim under s.75.

Dissatisfied, Miss S referred her complaint to this service.

An investigator here didn't think Miss S's complaint should be upheld. She said it wasn't clear enough that D had failed to provide what it had agreed to. She also thought there was insufficient evidence to show Miss S had met the conditions to benefit from the lifetime smile guarantee. So, she didn't think the failure of the guarantee as a result of D's liquidation in December 2023 was a breach of contract.

Miss S disagreed with the investigator and asked an ombudsman to review her complaint. She said (in summary):

- She was promised her treatment would be overseen by a UK registered dentist, but she found out the dentist was registered in Australia.
- The initial 12 aligners she was sent were not fit for purpose because after the fifth aligner they no longer fit.
- It was impossible for her to meet the conditions of the lifetime smile guarantee by ordering retainers because her treatment was never completed. She only received eight aligners when she was supposed to get 12.

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.

It's important to note I'm not considering a complaint against D, I'm considering a complaint against HF – a financial service provider – about how it handled Miss S's claim.

In doing so I must take into account relevant law. In this case, s.75 makes HF responsible for a breach of contract or misrepresentation by D under certain conditions. I think those conditions are present in this case, including the necessary relationships between the parties and the cash price of the goods is within the relevant financial limits.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implied terms into the contract that D must perform any service being provided with reasonable care and skill. And that services should be performed within a reasonable amount of time. The CRA also implied terms into the contract that any goods supplied would be of satisfactory quality. The CRA sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

Not all of the terms of the contract between Miss S and D are available – particularly those outlining Miss S's precise treatment plan. It appears these were likely stored on D's app which unfortunately has been inaccessible since it ceased trading. It is of course more difficult to evidence a breach of express terms of the contract when those terms are not known.

What does seem clear from what Miss S said is that she received the aligners she initially expected from D. She has also been able to evidence that when she told D some of these did not fit properly, D agreed to provide a *'3-month aligner touch up plan'*.

Miss S said she had only used five of around 12 aligners when this happened, so she expected to receive the remaining aligners again as part of the touch-up plan – especially as D had said it was a 3-month plan. She said however that she only received three aligners and when she asked D for the rest it told her it had no record of the plan. So, she believes D did not provide everything it was supposed to under the contract.

I can see from the available evidence that D told Miss S in February 2023 that it would provide a 3-month touch-up plan. And in a text message sent just before this it told her a new prescription would be created with new aligners based on that. So, perhaps the natural conclusion to draw from this was any remaining aligners on the original plan would be re-sent based on the new impressions Miss S provided of her teeth in February 2023.

What happened after this however is not entirely consistent with this. Miss S provided photographs of the packaged aligners she was sent under the touch up plan and they all say the plan is for one month, not three. And Miss S doesn't have a record of the communication where she said D told her it would send three aligners first "to see how she got on". So, while it appears D initially said the touch up plan would be for three months, the details as to the precise nature of the final plan, including how many aligners would be provided, aren't exactly clear.

That being said, even if I accept that D agreed to send more than three touch up aligners, it's not clear enough from the available evidence that it failed to do this.

D did not cease trading until December 2023. So, there is a gap of around 5 months that appears to be unaccounted for after Miss S said she completed the one month touch up plan at the end of June 2023. If Miss S had not received what she expected after this, it's reasonable that she would have brought this to D's attention. However there doesn't appear to be very much evidence of any such attempts from Miss S.

Miss S said she did try to resolve things during this period but all communication with D was on the app, so it's gone now. She has also shared some personal reasons for not persisting with matters between July 2023 and December 2023. I won't repeat these in this decision, but I have taken them into account.

With everything considered, it's not clear enough to me that Miss S made D aware of any problems with the treatment between 13 May 2023 and December 2023. Given the lack of other available evidence as to what exactly D agreed to provide as part of the touch up plan, this means there's not enough for me to conclude that D didn't provide something it was supposed to under the contract. It appears unlikely therefore that D breached its contract in this respect.

I've also considered Miss S's point that the initial 12 aligners provided to her weren't fit for purpose because they didn't fit her after the fifth aligner. However as was explained by the investigator, aligning teeth is unique to each individual and even if a course of treatment is followed, it wouldn't be unusual if the results expected could not be guaranteed or that adjustments might be required. It appears this information would most likely have been communicated before Miss S agreed to buy the treatment – for example it looks like it was included on the form customers had to sign to agree to receive the treatment. I don't find therefore D was in breach of contract as a result of the fifth set of aligners not fitting correctly, particularly seeing as it agreed to provide a touch up plan when it was informed of this.

Miss S said D was also in breach of contract because the lifetime smile guarantee was no longer available after D ceased trading. I've looked at the details of the lifetime smile guarantee which explains that further aligners can be arranged, subject to meeting specific

terms and conditions. These were listed on D's website and detailed in their FAQ.

"To remain eligible for the Lifetime Smile Guarantee, follow these steps:

During treatment

- *Register your aligners when you receive them*
- *Wear your aligners for the prescribed amount of time*
- *Complete your regular Smile Check-ins*
- *Stay up to date on payments*

After treatment

- *Replace retainers every 6 months*
- *Wear your retainers every night as prescribed*
- *Approval from your treating doctor"*

HF said Miss S failed to complete check ins or purchase retainers in time so she would not have been eligible for the guarantee.

I accept that having not finished her plan yet in April 2023 it would not have been reasonable to expect Miss S to purchase retainers – their purpose after all is to maintain the 'finished' position of the teeth. And given Miss S was waiting on D to send new aligners from February 2023 until May 2023, neither would she have been able to complete the necessary check in. So, her failure to do these things at this particular point in time should not have disqualified her from the guarantee.

Returning however to the lack of information about what happened after June 2023, there's not enough for me to conclude that Miss S did meet the eligibility criteria of the guarantee during any new treatment period that may have been agreed. It doesn't appear therefore that Miss S has lost out on the benefit of a guarantee she would otherwise have received but for D ceasing trading. It appears unlikely that when D ceased trading it was in breach of contract by failing to offer the benefits of the guarantee.

I've noted Miss S's concerns about where the dentist that oversaw her treatment plan was registered and how she thinks this was a misrepresentation. I do understand why Miss S might be concerned about this. However, even if D did promise Miss S her overseeing dentist was registered in the UK I've not seen evidence of any actual impact it had on matters that he/she wasn't. Miss S said she might not have bought the treatment had she known the dentist was registered in Australia but I've not seen enough to persuade me of this. Miss S hasn't said the dentist that directed her treatment was not in fact a qualified dentist. And I can't see that any mention was made in the pre-treatment communications Miss S received from D of one-to-one time with a dentist. So, I don't think that the dentist's location would have been the difference between Miss S buying or not buying the treatment in this case.

Overall, while I acknowledge Miss S's frustration that D is no longer trading, I don't find HF unfairly declined her s.75 claim based on the evidence that was available to it when Miss S made her claim. It's not clear enough from this evidence that D had either misrepresented or breached its contract with Miss S.

My final decision

For the reasons I've explained above, I do not uphold Miss S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 4 February 2025.

Michael Ball
Ombudsman