

The complaint

Mr A 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 A made a claim under the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

Mr A 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 A was entitled to a pro-rata refund for unused and unopened aligners. The guarantee did not provide any assurances about the outcome of the treatment.

S supplied the aligners to Mr A. But shortly afterwards S entered bankruptcy and ceased its operations. Mr A was concerned over the impact on the treatment he was undertaking and the guarantee. He said one of the aligners wasn't a good fit, and he wouldn't now be able to get that problem resolved. Mr A 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 seeking a refund.

Healthcare Finance didn't agree that there had been a breach of contract. It said S had provided Mr A with the aligners and that he didn't meet the conditions of the Lifetime Smile Guarantee. Mr A was dissatisfied with Healthcare Finance's response and brought his complaint to us.

Our investigator wasn't persuaded that Mr A had demonstrated S was in breach of contract, either by evidencing S had supplied faulty aligners or in relation to the Lifetime Smile Guarantee. However, the investigator said Healthcare Finance had since accepted that Mr A hadn't met the guarantee conditions because S had ceased trading, and that it was agreeable to a pro-rate refund in line with the guarantee. As Mr A told us he'd opened all the aligners and couldn't now return them for a refund, by way of alternative Healthcare Finance offered to pay him £220, representing 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 A didn't agree. He wants a significantly higher amount.

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.

The finance arrangements between Mr A, 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 A. For the avoidance of any doubt, I've proceeded on the basis that his claim is one of breach of contract, as Mr A has stated.

According to the credit agreement between Healthcare Finance and Mr A, the agreement was to finance the supply of aligners by S to Mr A. There may have been other service elements to the arrangements between S and Mr A, but it is less clear that they were contractual obligations for which Healthcare Finance might be liable. It's not in dispute that S supplied all of the aligners to Mr A, and while he says that one or more of the supplied aligners were faulty, when asked he hasn't submitted persuasive evidence to support that.

From what I can see, any service-based failure by S would only be in respect of the check-in service S was offering. There's no clear description of this aftercare service, and it's difficult to say that it amounted to any more than the ability to talk with S during Mr A's course of treatment, with the assurance that if any touch-up aligners were needed, S would provide them. Mr A hasn't shown that he has needed touch-up aligners and absent this, I think it would be difficult for Mr A to make a case that the services he can't now get through S have a material value enabling him to claim.

I understand Mr A'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 A, that would leave the position much as it is now.

Of course, it isn't Mr A'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 A failed to meet the conditions of the Lifetime Smile Guarantee, however limited the benefits of that guarantee. What Mr A describes in respect of the guarantee has some of the hallmarks of a frustrated contract rather than one that has been breached, but I can't see that this would enable him to pursue recovery from, or change his contractual obligation to make payment to, Healthcare Finance.

Overall, I don't consider Healthcare Finance's response unreasonable. It was entitled to take the stance it has in response to Mr A's claim of breach of contract. It has acknowledged Mr A 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 A 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. After carefully considering all that's been said and provided, I can't fairly expect it to do more than this.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 9 December 2024.

Niall Taylor
Ombudsman