

## **The complaint**

Mrs W complains about Healthcare Finance Limited's (HFL) response to her claim brought under section 75 Consumer Credit Act 1974 (s.75) in respect of dental aligner treatment she bought using a fixed sum loan from it.

## **What happened**

In September 2023 Mrs W bought a course of dental aligner treatment from a supplier I'll call S at a cost of £1,739. She paid a deposit of £73.73 and financed the remainder with a fixed sum loan from HFL.

S ceased trading in December 2023. Mrs W contacted HFL in January 2024 explaining that she'd cancelled her direct debit because she'd not long started her treatment and was no longer receiving a service from S.

HFL considered Mrs W's communication as a claim for a potential breach of contract under s.75. HFL said it acknowledged S provided a 'lifetime smile guarantee' (the guarantee) and acknowledged that Mrs W could have qualified to benefit from it. HFL said that under the terms of the guarantee Mrs W could return any unused aligners for a pro-rated refund so it offered to do the same. Mrs W did not accept this as a resolution to her complaint and instead decided to complete the full course of aligners. She referred her complaint to this service.

Following on from that, after the complaint had been referred, HFL offered to refund Mrs W what it said was the value of a set of touch up aligners – £220.

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.

Mrs W didn't agree. She said that although she used all of the aligners she was supplied with, she had not achieved the results S said she could achieve. She said that if S had still been trading, she could have received more support, such as additional aligners to help improve her results.

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.

What I need to consider in this complaint is whether HFL – as a provider of financial services – has acted fairly and reasonably in the way it handled Mrs W's request for getting money back. But it's important to note HFL isn't S. I can't hold it responsible for everything that went wrong with S.

S.75 is a statutory protection that enables Mrs W to make a 'like claim' against HFL for breach of contract or misrepresentation by a supplier paid using certain types of credit.

There are certain conditions that need to be met for s.75 to apply. From what I've seen, those conditions have been met. 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 Mrs W's claim in one sense because it's offered her £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 Mrs W'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.

### *Implied terms*

In cases such as this it is often complex to assess the quality of the service Mrs W 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 Mrs W is unhappy with the results of the treatment, she's not provided supporting evidence such as an independent, expert opinion that sets out the treatment she 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 unfairly declined the claim on the basis of a breach of an implied term of the contract. I've not seen enough to determine the service S offered wasn't carried out with reasonable care and skill. Furthermore, I've 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 Mrs W'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 Mrs W 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 Mrs W was due to receive a set of aligners when she entered into the contract in September 2023 and that she received and used all of them. I think the core contract was for those set of aligners.

I recognise that Mrs W has provided a computer-generated model of her expected results and pictures of her teeth at the end of the core treatment which look different to this. However, I've not seen sufficient evidence that the results in the computer image were guaranteed by S.

I think it's likely Mrs W signed an agreement with S which included a consent form, as is common with these sorts of treatments. There is no signed copy available, but I've seen an example copy. This sets out the various risks and uncertainties with such a dental treatment. And it indicates Mrs W 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 Mrs W didn't quite get the results she wanted, I don't think that would be considered a breach of contract.

While I appreciate Mrs W 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 Mrs W entered into the contract. This says most treatment lasts between four to six months. It says if the customer hasn't achieved or isn't achieving the results they want, and providing they've met certain conditions, the customer might be eligible for additional 'touch up' aligners under the lifetime smile guarantee.

The core treatment had not finished when S ceased trading. However, Mrs W has confirmed she used the full set of aligners after this and completed the course. Mrs W said that with more support she would have achieved her desired results. That's far from clear given the variables I have already identified relating to this kind of treatment, the lack of available evidence to support this, and given that the exact results that could be achieved did not appear to be guaranteed. In any event, as I've explained, because there is no contract available it's very difficult to know exactly what level of support S was contractually obliged to provide beyond anything contained in the guarantee that I will go on consider.

While I'm sympathetic Mrs W 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 she achieved.

### *The guarantee*

On S's website from the time Mrs W bought her course of treatment, the frequently asked questions ("FAQ") page has a section for further treatment under the guarantee. This suggests customers can request further aligner 'touch ups' either during or after the core treatment at no cost.

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 Mrs W registered her aligners; wore them as prescribed; completed check ins; stayed up to date on payments. And that, after treatment, she bought retainers every six 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.

HFL accepts Mrs W may have been eligible to be covered by the guarantee during her core treatment and it's made an offer for what it says is the value of an annual course of touch up aligners.

Mrs W thinks she should be provided with a full refund of the treatment costs. There is a potential breach of contract identifiable because Mrs W was unable to use the guarantee during her core treatment and can no longer use it now. However, given the stage of treatment she was at, the guarantee would never have given her 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 Mrs W began the treatment, and only if she 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 Mrs W with a full refund to compensate her for the potential breach that has happened when Mrs W used all of the aligners. I'm mindful also that HFL offered a pro-rated refund to Mrs W in respect of any unopened aligners in February 2024, but she chose to continue and complete the course of aligners. HFL didn't unreasonably decline 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 Mrs W

further down the line. She may not have done what was required in terms of buying retainers every six months or 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 this. 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 Mrs W received. But I think there's a possible loss because Mrs W may have been able to utilise the guarantee for touch up aligners during the core treatment (or after it) if she was not happy with the results she was achieving.

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 Mrs W would have definitely received any benefits under the guarantee such as refinement, or the extent of it and taking into account she's used all of the aligners, I think HFL is acting fairly by offering this price reduction to remedy any potential loss. It seems like a fair compromise in the circumstances.

While I am sorry to hear Mrs W is unhappy, with s.75 in mind, I don't find there are grounds to direct HFL to refund her the full costs of the treatment. I think its offer is broadly fair in the circumstances.

Finally, I note Mrs W 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 Mrs W 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 Mrs W is unhappy with how HFL treats her going forward, it may be something our service is able to consider separately.

### **My final decision**

For the reasons I've explained, I direct Healthcare Finance Limited, to the extent not already done so, to pay Mrs W £220.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 14 March 2025.

Michael Ball  
**Ombudsman**