DRN-5272134

The complaint

Mr R 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 September 2022 Mr R entered into a two-year fixed sum loan agreement with HFL to fund the provision of dental aligners from a third-party supplier ("the supplier"). The cash price was around £1,500 and Mr R was due to pay back the agreement with monthly payments of around £65. He said the first course of treatment didn't work so he was supplied 'touch up' aligners. He said he also ordered two sets of retainers. He said he didn't order a final retainer after the 'touch up' plan because the treatment hadn't worked but he tried to contact the supplier.

The supplier went out of business in December 2023. Mr R contacted HFL in November 2024 to make a claim. He said he'd been paying for a service which hadn't been completed and so he requested a refund.

HFL considered the claim under Section 75 of the Consumer Credit Act 1974 ("s.75"). It said it acknowledged the supplier provided a guarantee, but it didn't think Mr R met all the conditions for it because he'd not ordered all the required retainers, so it declined the claim. Mr R decided to refer his complaint to the Financial Ombudsman. He said he made additional payments for retainers which couldn't be used because the aligners didn't work. He said his teeth were no different to when he started.

Our investigator looked into things and didn't think HFL's answer was unfair.

Mr R didn't agree. He said he understood there was no guarantee with using the service, but he thought he'd be supplied further 'touch up' aligners if he'd not achieved the desired outcome. He said he was still going through this process when the supplier went out of business. He said his treatment wasn't complete, and he'd argue the initial treatment he did receive wasn't successful.

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 R 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 R is unhappy with the treatment. I can't imagine how he must feel, but I thank him for taking the time to bring his 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 R's request for getting money back. But it's important to note HFL isn't the supplier.

S.75 is a statutory protection that enables Mr R 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.

Mr R has indicated he's unhappy with the results of his treatment, and that his treatment is incomplete. I've gone on to consider if there is persuasive evidence of a breach of contract by the supplier that means HFL should have offered to take any action. But I want to explain from the outset that I can only consider Mr R's complaint on that narrow basis – that is, whether it was fair and reasonable for HFL to respond to the claim in the way it did.

Mr R entered into the agreement in September 2022, and it was expected to last a few months. Mr R was not happy with the results of the treatment. And he tells us the supplier provided him with some further 'touch up' aligners to try and improve the results.

I've focussed on Mr R's breach of contract claim. Even if the supplier couldn't provide all the services it promised because it went out of business, it's not clear this would be a misrepresentation because I don't think it would have been aware it would go out of business when it sold Mr R the treatment.

Implied terms

In cases such as this it is often complex to assess the quality of the service Mr R paid for. Results from these sorts of treatments are subject to many variables and there are generally disclaimers by the providers of such services, and accepted risks that results cannot be guaranteed.

Mr R has not provided supporting evidence such as an independent, expert opinion that sets out the treatment he paid for has not been carried out 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 the supplier offered wasn't carried out with reasonable skill and care, and I've not seen evidence the goods element – i.e, the aligners, were not of satisfactory quality. I also don't think the fact that the supplier 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

To decide whether there's likely been a breach of an express term of the contract I've looked

at the supplier's documentation from around the time Mr R bought the treatment which has been made available by HFL. And I've thought about Mr R's testimony and his supporting evidence.

It's not in dispute Mr R entered into a contract for aligner treatment and that he received and used those aligners. There's a lack of signed documentation, but I think the core contract was for a set of aligners Mr R was due to use for a few months. S's website from around the time says most treatment lasts between 4 to 6 months.

I think it likely Mr R signed an agreement with the supplier which included a consent form, as is common with these sorts of treatments. We don't have a signed copy, but I've seen an example copy. This sets out the various risks and uncertainties with such a dental treatment. And it indicates Mr R would have understood the supplier couldn't guarantee specific results or outcomes. Given the nature of the treatment, I don't think that sort of term is unfair or unusual. So even if Mr R didn't quite get the results he wanted after the core treatment I don't think that would be considered a breach of contract.

Mr R has said the supplier provided further sets of aligners at no cost. As I've said above, I don't think the fact the supplier gave Mr R further aligners shows there was a breach of contract. Further aligners seem to be part of the supplier's aftercare offering for further refinement (subject to dentist approval). It's not clear whether the supplier gave Mr R 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 R wasn't happy with the results, I don't think HFL had persuasive enough evidence to show the supplier breached the contract in respect of the results Mr R achieved. And I've not seen enough to show the core contract would be extended.

Guarantee

While I think Mr R received the goods and service under the core contract, Mr R said the treatment was incomplete. Mr R's argument therefore seems to mainly focus on the supplier breaching the contract by not being able to offer him what he says he was due under the guarantee.

On the supplier'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.

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. The guarantee provided the *possibility* of having further aligners, provided that Mr R registered his aligners; wore them as prescribed; completed virtual check ins; and stayed up to date on payments. It also said after the core treatment Mr R was required to buy retainers every 6 months and wear them as prescribed. Moreover, a dentist was required to approve the further treatment. My understanding is that a dentist would only do so if they assessed that further progress to straighten the teeth would be possible.

On the one hand, HFL said Mr R didn't buy the retainers that were required to qualify for the guarantee because part of the qualifying conditions is that retainers need to be bought every six months (and worn as prescribed). HFL highlighted Mr R was due to buy another set of retainers in October 2023 – when the supplier was still trading. Moreover, Mr R said he bought the retainers but didn't wear them. On the other hand, Mr R did buy retainers in December 2022 and April 2023. And he said he didn't wear them because he'd not achieved

the results he wanted. He's also shown evidence of a conversation with the supplier which looks like it's from around the time it sent him the impression kit for the 'touch up' aligners where it suggested he continue wearing his aligner rather than the retainer he'd bought.

Mr R isn't disputing the information HFL said it received from S. He's given reasons for not wearing the retainers or ordering another set in October 2023. But as I've said above, I need to bear in mind what HFL can fairly be held responsible for. It doesn't seem to be in dispute that Mr R didn't meet the qualifying requirements to benefit from the guarantee. He'd not ordered the required retainers. He's shown details of where he was told not to wear a set of retainers while he was waiting for 'touch up' treatment. But the 'touch up' treatment he showed HFL he was approved was in January 2023. This could explain why he didn't wear the December 2022 retainers, but I think HFL hadn't seen enough to know why the April 2023 retainers weren't worn as prescribed or why the October 2023 set wasn't ordered. To be clear, I'm not saying something definitely hasn't gone wrong, I'm only deciding how I think HFL handled the claim based on the evidence presented. The evidence is incomplete, but I do appreciate it might've been difficult for Mr R to supply evidence now the supplier was no longer trading.

I'm conscious there might've been ways for customers to requalify for the guarantee. But I think the requalification process was for customers who were within treatment or who'd just finished treatment. I don't think HFL had sufficient information to have determined Mr R sought help from the supplier when he either was within treatment or he'd just finished it.

Overall, and on balance, the problem I have is that I can't now point to a term of the contract that's been breached that HFL is responsible for. Even without a signed contract, based on the FAQs it seems as though Mr R didn't meet the relevant requirements to continue benefitting from the guarantee. There's also a very large gap between when Mr R entered into the agreement (in September 2022) and when he contacted HFL to raise his claim (in November 2024). Having looked at the documentation Mr R presented to HFL, aside from a December 2023 email about the status of the supplier, the timeline relating to the treatment seemed to mostly end with the April 2023 retainer order. I don't think HFL had sufficient evidence Mr R was still going through treatment when the supplier went out of business. The treatment and 'touch ups' tend to last a few months at a time. It's less clear what happened leading up to the end 2023, when the supplier went out of business.

Mr R has requested a refund, or to stop making payments. But even if I'd identified a breach of contract in relation to the guarantee, these weren't remedies the contract offered in this sort of scenario. I'm conscious Mr R has received the core treatment, and I think the total amount of credit was substantially for that treatment, so I don't think HFL is acting unfairly by asking him to pay back the credit. HFL hasn't made an offer to Mr R for a potential loss through him not being able to utilise the guarantee. I don't think there's the grounds to say HFL should offer him a price reduction for something I can't see the supplier was contractually required to provide him under the guarantee.

While I am sorry to hear Mr R is unhappy, with s.75 in mind, I don't find there are grounds to direct HFL to refund him.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 8 April 2025.
Simon Wingfield
Ombudsman