DRN-5299073

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 January 2023 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 that I'll call "S". I understand the treatment started at the end of February 2023 and it was due to last 10 months. The cash price was around £1,600 and Mr R was due to pay back the agreement with monthly payments of around £70.

S went out of business in December 2023, so Mr R contacted HFL to make a claim. He said he was half-way through treatment and requested a full refund.

HFL considered the claim as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ("s.75"). It acknowledged S provided a lifetime guarantee but it didn't think Mr R met the conditions for it because he'd not completed virtual check ins, registered his aligners or ordered retainers, so it declined the claim. Mr R decided to refer his complaint to the Financial Ombudsman. He said the conditions referred to were never outlined in a document sent to him. He said he did register his aligners and undertake check ins. He said he was on aligner number 16 out of 20 when S went out of business, so he was not at the stage to order retainers. He acknowledged the treatment was due to end towards the end of December 2023 but said his teeth were moving slower than expected and so he had to wear each set of aligners for longer than 2 weeks. He said he updated the expected completion date regularly on S's website and it updated the corresponding dates for him to switch his aligners. He also said he had no option but to continue with the aligners, albeit slowly so that his teeth didn't return to their original position.

Mr R also said there were no set dates provided for check ins to be completed, and S's online application didn't always work and was poorly reviewed prior to S going out of business.

Our investigator looked into things but didn't make any recommendations.

Mr R said he was still within treatment when S stopped trading. He said he wasn't seeking redress under the guarantee that S offered but he said he did meet the conditions for it. He said he was no longer able to order retainers from S and that he'd need to order them elsewhere. He highlighted he'd never seen a Consent and History Form our investigator referred to. He said he wasn't claiming that the treatment didn't work, but that he was still in treatment and wasn't provided the full service advertised by S. He questioned why it was fair for him to pay for something when neither S nor HFL could provide a contract other than the loan agreement. He reiterated the loan should be cancelled and monies refunded.

I issued a provisional decision that said:

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.

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. I can't hold it responsible for everything that went wrong with S.

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.

HFL didn't accept Mr R's claim. 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 acted differently.

Mr R entered into the agreement in January 2023, and it was expected to last around 10 months. Mr R's concerns are that S went out of business part-way through his treatment. So he thinks he should receive a full refund.

I primarily need to consider what happened up to when HFL issued its final response because those events relate to what it has had the chance to consider. At the point Mr R put in his claim and complaint he was still part-way through treatment. He didn't complain about the results he'd achieved at that stage, so I've not considered that as part of this decision.

<u>The core contract</u>

I need to consider what I think Mr R'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 R as I understand they were kept in an online application that's no longer available. There's a lack of evidence. But it's not in dispute Mr R was due to receive a set of aligners when he entered into the contact in January 2023 and that he received and went on to use them. I think the core contract was for those set of aligners.

While I appreciate Mr R 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 contact, I've looked at S's website from around the time Mr R entered into the contract. This says most treatment lasts between 4 to 6 months. Although I think Mr R's was due to last longer because of the type of aligners he bought.

Mr R said had the treatment gone at the pace originally expected it would have been due to finish towards the end of December 2023. S's website says any deviation from the prescribed treatment plan isn't advised. But Mr R said his teeth moved slower than expected so it was due to last a few months more, and that he updated the expected completion date on the online application. I think that seems plausible.

S's website says its dental experts would be with Mr R every step of the way, using virtual

check-ins to track progress. It also said its customer care team would be available to answer questions. So I can understand why Mr R was very concerned when he heard S went out of business and wasn't available.

I'm conscious that Mr R is indicating he wasn't given the ongoing support when S went out of business. I think the aligners were made at the outset and intended to be worn sequentially, so in theory Mr R may not have required any support from S throughout the treatment. Mr R seems to have been very organised with his treatment plan and I've not seen he needed any support from S's dentists or customer care team. He seems to have mitigated the situation when S went out of business and decided to carry on his treatment plan, albeit at a pace that he found more suitable, presumably to completion.

I think S breached the contract when it went out of business part-way through Mr R's treatment because it was unable to offer the ongoing support. He decided to continue the treatment, and I've not seen sufficient evidence the breach led to detriment or loss with regards to the core treatment. I haven't seen that Mr R's overall results or position with regards to the core contract would have been fundamentally different had S not gone out of business. Mr R hasn't demonstrated that, and he said himself he wasn't complaining the treatment didn't work. I don't think HFL was given sufficient evidence to show Mr R lost out on something it could put a value on to offer a price reduction. However, I'm conscious that S may have offered a pro-rata refund for any unopened aligners if it was still trading so I think HFL perhaps should have offered this to Mr R when he contacted it. Although given he went on to continue his treatment it doesn't need to offer that now.

I've also thought about what was due to happen after the core contract was completed. I haven't seen sufficient evidence S would extend the original treatment. But I think there's a possible loss through Mr R not being able to utilise the aftercare. The website 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. While not the thrust of his original complaint, I've gone on to think about what he may have lost out.

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.

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 R registered his aligners; wore them as prescribed; completed check ins; stayed up to date on payments. And that, after treatment, Mr R bought retainers every 6 months and wore them as prescribed. Mr R was always required to buy the retainers separately – they weren't provided under the contract paid for under the HFL agreement. A dentist also had 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.

HFL didn't think Mr R had met the conditions for the guarantee when he contacted it because it said he'd not registered is aligners, completed virtual check ins, or ordered retainers. We've seen other cases where S has told HFL the customer did meet the conditions. So I can't completely disregard what HFL has told us. But even putting that to one side, on balance, I don't think Mr R was at the stage to order retainers. He's provided detailed testimony and supporting evidence that his plan was taking longer than originally anticipated. He provided photos of unopened aligners from around the time S went out of business so I don't think he should be classed as being ineligible for not ordering retainers.

Moreover, I note S's website from around the time had a section relating to missed check ins, aligner re-registration, and details for how customers can re-qualify for the guarantee. This says:

> *I missed a check-in (or forgot to register my aligners or order retainers), and I'm not sure my [Guarantee] is still in effect. Is there anything I can do to become eligible again?*
>
> *Things come up. We get it.*
>
> *If you are currently in treatment, you will become eligible again as long as you:*
>
> *1. Check in your aligners (check your email or the app to do this)*
> *2. Complete your future Smile Check-ins (via email or our app)*
> *3. Are current on your payments*
> *4. Purchase retainers after treatment, replace them every 6 months, and wear them as prescribed*

I think when Mr R first contacted HFL he was up to date on payments. And Mr R has provided evidence he was still within treatment when he contacted HFL. While it's not definitive I think there's a strong chance he likely would have been able to requalify for the guarantee had S not gone out of business. Bearing in mind I need to resolve the complaint quickly and informally by deciding what I think is fair and reasonable, I think HFL should have either offered a pro-rata refund or treated Mr R as if he'd met the conditions for the guarantee.

Mr R thinks he should be refunded. For the aftercare, there is a potential breach identifiable because Mr R can no longer use the guarantee. However, the guarantee would never have given him the option of a full refund of the core treatment costs at the stage he was at. From what I've seen, a full refund was only available for the first 30 days after Mr R began the treatment around February 2023, and only if Mr R 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 R with a full refund or to end the agreement 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 R. He may not have done what was required in terms of buying retainers every six months. 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 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 R received. But I think there's a possible loss because Mr R 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 over 10% of the cost of the treatment. Considering we'll never know if Mr R would have received any benefits under the guarantee; taking into account he went on to utilise the core treatment, I think HFL should offer this £220 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.

HFL responded to say the guarantee conditionality are mutually exclusive and independent

and one of those was the requirement to register aligners within 30 days of receipt. It said Mr R didn't do that according to the data it received from S. It said irrespective of any other conditionality Mr R didn't qualify so he's not due the reimbursement.

Mr R responded to say, in summary, he was now 13 months beyond the expected treatment completion date and despite following the guidelines and wearing the aligners longer than recommended the final aligner (number 20) doesn't fit properly. He said he also had issues with aligners 15 – 19. He said it's reasonable to suggest he'd have required multiple 'touch ups'. He said the treatment hadn't achieved the expected results. He also mentioned he was experiencing a bite issue.

Mr R also said the retainers supplied by S cost £80 but professional alternatives cost more, so he'd face a loss. He referred to another case he thought was similar where the complainant was awarded a 70% price reduction. Mr R requested a 70% price reduction; removal of interest and fees; a staggered payment plan; correction of any negative credit file marks. He also supplied two photos of him wearing the number 20 aligners.

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'd like to thank the parties for their responses.

With regards to the guarantee conditions, as set out in my provisional decision, I'm conscious the FAQs set out that if the customer missed a check-in *or* forgot to register their aligners (or order retainers), there's steps they could take to become eligible again. If the customer was within treatment (as I think Mr R was) they needed to check in their aligners on the app; complete future check ins; stay up to date on payments; and go on to follow the retainers' conditions. If the customer had just finished treatment they need to be up to date on payments and also follow the retainers' conditions. So I think either way, there's a good chance Mr R could have become eligible again for the guarantee around the time S went out of business. If S had been trading, he could have check in his aligners on the app and completed the other steps, and even if HFL considered he'd completed his treatment he'd only needed to have ordered retainers.

With regards to Mr R's points, I'm conscious that I mainly considered how HFL handled the claim that led to its final response. At that point the main thrust of Mr R's claim was not to do with the results. Even considering that aspect, I'm not a dental expert. Mr R has 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 don't find I can reasonably use the photos he's now supplied and his testimony without something independent to back up his claim to demonstrate S's service hadn't been carried out with reasonable skill and care. Moreover, I'll never know if he'd have been agreed multiple 'touch ups' for further refinement. And I'm conscious that to maintain the eligibility for the annual 'touch ups' he'd have been required to continue to pay for retainers twice a year. I still think the outcome I proposed in the provisional decision seems like a fair compromise.

With regards to the retainer cost, these weren't provided under the agreement that HFL funded. In any event, I think there are other online providers that supply retainers for a

similar price to S.

With regards to the previous decision Mr R has referred to, I should point out that the Financial Ombudsman decisions don't have precedent value as certain court judgments do. I need to consider Mr R's complaints by deciding what I think is fair and reasonable in the individual circumstances. Even saying that, it's important to note that while the financial arrangement and services supplied had similarities in the decision Mr R referred to, the circumstances were very different.

Overall, while I'm sorry to hear Mr R is unhappy, for the reasons given, I'm not going to depart from the conclusions I reached in my provisional decision. I should, however, point out Mr R 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 R mentioned entering into a payment plan, and he may have stopped making payments towards the agreement. As I've said, I primarily need to consider what happened up to the point HFL issued its final response letter because those events relate to what it has had the chance to consider. Given the circumstances, HFL may wish to consider removing any adverse information if Mr R clears any arrears. But, for the avoidance of doubt, given I don't know exactly what's happened, and that these events, if relevant, likely happened after HFL issued its final response, I'm not deciding that aspect within this final decision. If Mr R is unhappy with how HFL treats him going forward, it may be something our service is able to consider separately. And I'd remind HFL to treat him with forbearance and due consideration if required.

My final decision

My final decision is that I uphold this complaint and direct Healthcare Finance Limited to pay Mr R £220.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 28 February 2025.

Simon Wingfield
Ombudsman