DRN-5314111

The complaint

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

What happened

In August 2023 Mr M bought dental aligner treatment from a supplier I'll call S at a cost of £1,659. He paid a deposit of £70.38 and paid the remainder using a fixed sum loan from HFL.

Mr M said he received several aligners which he used in sequence. S ceased trading in December 2023. Mr M contacted HFL in January 2024 explaining he'd not received a 60-day dentist consultation or the final retainers from S. He questioned why he should continue to pay as in his view S hadn't kept to the terms of its contract with him.

An agent of HFL treated Mr M's communication as a complaint and issued a response in February 2024. It said Mr M had met the conditions of S's lifetime smile guarantee which meant he could return unused aligners in return for a pro-rated refund. Mr M said this did not help him as he'd used all of the aligners.

Dissatisfied Mr M referred his complaint to this service.

Before the case came to me for determination, HFL offered to pay Mr M £220 for the loss of some of the aftercare services he was supposed to benefit from because of S ceasing to trade. Mr M did not accept this offer and said he was still looking for a refund of around £700.

I issued a provisional decision in January 2025 explaining why I thought HFL's offer was fair in the circumstances. I said:

> *"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 Mr M'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.*
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> *S.75 is a statutory protection that enables Mr M to make a 'like claim' against HFL for breach of contract or misrepresentation by a supplier in respect of an agreement it had with him for the provision of goods or services. But there are certain conditions*
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> *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.*
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> *Mr M entered into the agreement in August 2023, and it was expected to last a few months. He wasn't happy with the results of the treatment. And believes S has not*

met the terms of its contract with him because he wasn't able to utilise the lifetime smile guarantee to try and improve his results.

Implied terms

In cases such as this it is often complex to assess the quality of the service Mr M 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 cannot be guaranteed.

While Mr M is unhappy with the results of the treatment, he's 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'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.

Express terms

I also need to consider what I think Mr M's contract with the supplier 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 M as I understand it would have been kept in an online application that's no longer available. So, there's a lack of evidence. But it's not in dispute Mr M was due to receive a set of aligners when he entered into the contract in August 2023 and that he received and used them. I think the core contract was for those set of aligners that he was due to use for a few months.

I think it likely Mr M 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 M would have understood the supplier 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 Mr M didn't quite get the results he wanted after the core treatment I don't think that would be considered a breach of contract.

While I appreciate Mr M 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 the supplier's

website from around the time Mr M entered into the contract. This says most treatment lasts between four to six months. It 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.

Taking into account Mr M entered into the agreement in August 2023 and the core treatment was due to last around five months, I think I can conclude that the original

core treatment was due to finish shortly after S went out business. However, Mr M has said that he did complete the treatment and used all of the aligners he was sent.

So, it appears he received the treatment due under the core contract. Mr M said he didn't receive a dentist consultation that was promised when he bought the treatment or his retainers. As I've said, it's not clear exactly what Mr M was due to receive in addition to the core treatment as the terms of his contract with S are not available. And Mr M hasn't elaborated on what his actual loss was as a result of not receiving this consultation anyway. If Mr M is saying that he lost out on potential corrections or touch ups, there is insufficient evidence to show this was required at any point over the course of treatment. Nevertheless, I've addressed any potential loss as a result of the possibility of adjustments/touch ups not being available later in this provisional decision under the heading 'guarantee'.

I've also considered Mr M's point that he didn't receive his retainers. From the information I've seen on S's website from the time Mr M bought the treatment, aligners typically had to be purchased around four to five weeks before treatment was due to end and were not provided at no cost. HFL said the records it received from S show Mr M didn't do this. Once S went out of business, I recognise Mr M was no longer able to purchase retainers from it. However, I understand that retainers can be purchased from many dentists. So, I think Mr M was able to mitigate any regression from his treatment by purchasing aligners elsewhere.

I'll go on to think about what services the supplier was required to offer after the initial treatment, and whether there's been a breach of contract. Further aligners seem to be part of the supplier's aftercare offering for further refinement (subject to dentist approval). While I'm sympathetic Mr M was unhappy with the results, I don't think HFL had sufficient evidence to show the supplier breached the express terms of the contract in respect of the results he achieved.

Guarantee

On the supplier's website from the time Mr M bought the 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' 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 M registered his aligners; wore them as prescribed; completed check ins; stayed up to date on payments. And that, after treatment, Mr M bought retainers every 6 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.

Mr M thinks he should be provided with a refund of half of the treatment costs. There is a potential breach identifiable because Mr M can no longer use the guarantee.

However, given the stage of treatment he was at, the guarantee would never have given him 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 Mr M began the treatment around August 2023, and only if Mr M 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 M with a refund of half the value of the treatment to compensate 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 M. He may not have done what was required in terms of buying retainers every six months. The supplier 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 in respect of the guarantee, but it's not straightforward 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 M received.

But I think there's a possible loss because Mr M may have been able to utilise the guarantee, and HFL accepts he had met the conditions of it. HFL has previously shared information from the supplier 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 Mr M would have continued to receive any benefits under the guarantee and taking into account he's received the core treatment, I think HFL is acting fairly by offering this 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 accepted my provisional decision.

Mr M asked for a final decision. He said he believes a promise to speak to a dentist every 60 days was included in the contract and would have been factored into the price he paid. So, he still thinks he should receive a refund of half of the cost of the treatment.

The complaint has therefore been passed back to me for a final decision.

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've considered Mr M's response to my provisional decision, particularly his comments about seeing a dentist. I explained in my provisional decision that I hadn't seen evidence in this specific case of a contractual promise that Mr M could see a dentist every 60 days. But even if there was one, it's not clear whether Mr M had to initiate this or whether he would be contacted by S. There's no evidence to show either way that S did or did not contact him or that he did or did not contact S. And even then, there's no evidence Mr M's course of treatment was affected by not having such appointments. So overall, I've still not found that there was a breach of contract in this respect which meant HFL should have met Mr M's claim for a refund of half the cost of the treatment.

I've looked at the other documents Mr M supplied after my provisional decision. These mostly relate to the insolvency of the US parent company of S and were sent after he had entered into a contract with S. I don't find the documents offer any support to Mr M's claim against HFL under s.75. Mr M said he's provided the contract that I said in my provisional decision wasn't available. When I said there was no signed contract available, I meant the one between him and S not the loan contract. This document still appears to be unavailable.

Overall, I still find that HFL's offer to pay Mr M £220 plus interest from when it responded to his claim is fair in the circumstances for the reasons I gave in my provisional decision. I've not seen anything that makes me think HFL needs to pay him any more than this.

My final decision

My final decision is that I direct Healthcare Finance Limited to pay Mr M £220 plus interest on that sum of 8% simple per year from 6 February 2024 until the date of settlement*.

*If Healthcare Finance Limited to considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 March 2025.

Michael Ball
Ombudsman