

## **The complaint**

Mr G 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 March 2023 Mr G 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”. The cash price was around £1,600 and Mr G was due to pay back the agreement with monthly payments of around £70. He said he was initially provided 15 sets of aligners for five months’ treatment. He said he got two thirds through the treatment but started to have fitting issues, so he tried contacting S but didn’t hear back. He also said the online application stopped working.

S went out of business in December 2023, so Mr G contacted HFL to make a claim. He said the product he received from S didn’t work as intended and he could now no longer receive a fix from it. He said he’d been trying to contact it for months with no reply.

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 G met the conditions for it because he’d not completed virtual check ins or ordered retainers, so it declined the claim. Mr G decided to refer his complaint to the Financial Ombudsman. He said he’d been following his treatment without too many issues and that he was told if he needed to wear his aligners for longer, he could do so but he’d need to update the app. He said he had to do this several times. He said in around October or November he had issues with aligners after wearing 11 of the sets. He said he found out in December 2023 S had gone out of business, and he was left unable to finish the treatment. He acknowledged he didn’t complete a check in. He also said he didn’t order the retainers because he’d not got to the stage he needed to.

Our investigator looked into things and didn’t think Mr G met the conditions for the guarantee so made no recommendations.

Mr G said the aligners didn’t fit properly and if S didn’t go out of business it would have been able to help. He said he met most of the conditions for the guarantee, and reiterated S didn’t respond to him. He said although he thought a full refund would be fair he would accept being able to stop making further payments.

I decided to write to HFL to let it know Mr G had supplied evidence he had four sets of unopened aligners. I wanted to know if it would reconsider its position and whether it would agree to offer Mr G a pro-rata refund for the sets of aligners he hadn’t used.

HFL agreed to offer Mr G a pro-rata refund if he were to return the unopened aligners.

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 G 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 G'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 G 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 initially accept Mr G's claim. But it's now agreed to offer a pro-rata refund for unopened aligners. I've gone on to consider if there is persuasive evidence of a breach of contract or misrepresentation by S and whether the most recent offer is fair.*

#### *Implied terms*

*In cases such as this it is often complex to assess the quality of the service Mr G 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.*

*Mr G said the product worked initially but he then had issues. He said he'd been trying to resolve things with S for months before it went out of business. He's indicating he was unhappy with the results he was achieving. But I'm mindful 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 S offered wasn't carried out with reasonable skill and care. It's very hard to know if the issues Mr G faced were because of an issue with the aligners, or as a result of him not wearing them as prescribed. The evidence is inconclusive.*

### Express terms & guarantee

*I also need to consider what I think Mr G'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 G 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 G was due to receive a set of aligners when he entered into the contract in March 2023 and that he received and went on to use at least some of them. I think the core contract was for those set of aligners that he was due to use for a few months.*

*While I appreciate Mr G 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 Mr G entered into the contract. This says most treatment lasts between 4 to 6 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. Moreover, I understand S should have been there to support the customer if there were issues during treatment.*

*Mr G has said he ran into fitting issues when he was about two thirds of the way through the treatment. He's recently shown us four sets of unopened aligners which indicate that he stopped part way through the treatment. He's understandably unhappy that S is no longer trading and so he can't get any further help from it.*

*When Mr G contacted HFL its records indicated the core treatment should have completed by that point. Given Mr G entered into the contract in March 2023, and he said the plan was for five months, I think that sounds accurate. Mr G has said he'd been trying to contact S for months but wasn't able to reach it. The problem I have is that I don't have sufficient evidence Mr G had been trying to contact S for months without success. From other cases we've seen, S was still trading broadly as expected up to the day before it went out of business. So without supporting evidence to show Mr G sought help but wasn't given any, it's difficult for me to say S hadn't been supporting him before it went out of business. I'd like to have been more certain on that point. I don't think HFL would have been unfair in thinking that if Mr G had started running into difficulties around October 2023, there'd have been time for S to assist him before it went out of business. There's a chance that Mr G didn't mitigate the situation he found himself in. And he's acknowledged he missed a check in. So HFL may have had valid concerns Mr G wouldn't have been eligible for further treatment.*

*Mr G thinks he should be refunded or be able to stop making further payment. There is a potential breach identifiable because Mr G can no longer ask S for further help or 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 G began the treatment around March 2023, and only if Mr G had not opened or used the aligners.*

*However, I also note the guarantee says for customers in the middle of treatment:*

*"If you decide that clear aligners aren't for you, outside of the first 30 days, you can still return your unused aligners for a prorated refund (based on the percentage of aligners returned unopened and unused). Please note: You are responsible for shipping costs when returning aligners."*

*I don't think it would be fair or reasonable for me to tell HFL that it should now provide Mr G with a full refund or to end the agreement to recompense him for the potential breach that has happened. And while HFL may have had some understandable concerns that Mr G wasn't supposed to be in the middle of treatment, it's now agreed to offer Mr G what he may have been due under the guarantee. So I'm minded to say this is a fair and reasonable outcome in the specific circumstances of Mr G's case, and that's what I'm intending to direct HFL to do.*

HFL accepted the provisional decision. Mr G said, in summary, he'd been trying to contact S for months when an aligner didn't fit, and he'd been doing that through the online app, as he'd been advised. He said the app would keep crashing and he didn't receive a response to his queries. He said if S was still trading he'd have been able to make changes to his treatment. He said S didn't support him for months leading up to when it shut down and that it set up a new similar business under a different name. He said he'd need to pay the full contract price again, even if he only required adjustments.

Mr G said he acknowledged he was in the treatment plan for longer than the estimate, but he said this was not uncommon, and that S said it was important not to switch aligners early as it can disrupt the treatment. He said he updated the expected end date for the treatment on the app.

Overall, Mr G thought a full refund was the fairer outcome. He questioned why HFL would want him to return the aligners as well.

### **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. It's not straight-forward, and there's a lack of evidence that makes it difficult to safely conclude what's happened.

I'm not saying something hasn't definitely gone wrong. But I need to consider how HFL acted based on the evidence presented to it. HFL expected Mr G to have completed his treatment by the time he contacted it. It expected him to have been at the point to order retainers. And the information it had indicated Mr G hadn't completed the required check ins. I'm mindful we've seen a several other cases that indicate S was trading until the day before it went out of business. Mr G has shown S acknowledged a message in September 2023, but it doesn't give further details for what that was for. I think HFL would have wanted to see more evidence S wasn't giving Mr G the support he said he'd requested, while it was still trading. As I said, I need to consider how HFL handled the claim based on what was presented to it. And the evidence was incomplete and inconclusive.

For the reasons given in my provisional decision, while I'm sympathetic to the situation, based on what Mr G has been able to submit to support his claim, I still think a prorated refund is broadly fair in the circumstances. And while I agree the aligners will be worthless for anyone else, I don't think it's unfair if in order to agree the refund HFL would like them returned given it shows the customer didn't go on to use them. I should, however, point out Mr G doesn't have to accept this decision. He's also free to pursue the complaint by more formal means such as through the courts.

### **My final decision**

My final decision is that I uphold this complaint and direct Healthcare Finance Limited to pay Mr G the prorated refund once he returns the unopened aligners.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 31 March 2025.

Simon Wingfield  
**Ombudsman**