DRN-5402534

The complaint

Miss H has complained about the way Healthcare Finance Limited ("HFL") dealt with a claim for money back in relation to dental treatment which she paid for with credit it provided.

What happened

In September 2023 Miss H 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 £1,750 and Miss H was due to pay back the agreement with monthly payments of around £75. I understand she was provided aligners in October 2023 and the treatment was due to last to February 2024.

S went out of business in December 2023, so Miss H contacted HFL to ask for a refund. Miss H also said just before S went out of business she'd tried to contact it because she hadn't noticed improvement in her teeth. HFL considered the claim as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ("s.75"). HFL acknowledged S provided a 'lifetime' guarantee. It offered Miss H a pro-rata refund for any unused aligners.

Miss H decided to refer her complaint to the Financial Ombudsman. She said the offer from HFL suggested she sought cancellation because she didn't want to continue the service, but that wasn't the case. After the complaint was referred, HFL offered Miss H £220, which it said was the value of a set of 'touch up' aligners she may have been eligible for under the guarantee. It did this because it wasn't clear Miss H had any unopened or unused aligners.

Our investigator looked into things and thought HFL's offer was broadly fair.

Miss H didn't agree. She said she was left without support and reiterated there'd been a breach of contract. She didn't think the offer adequately compensated her.

As things weren't resolved the complaint was passed to me to decide. Miss H supplied photos of 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 Miss H 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 Miss H's request for getting her money back. But it's important to note HFL isn't the supplier.

S.75 is a statutory protection that enables Miss H 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 her 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 broadly accepted Miss H's claim because it initially offered a pro-rata refund and it's now offered her £220. 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 when handling Miss H's claim.

Miss H entered into the agreement in September 2023, and it was expected to last a few months. S went out of business when she was part-way through treatment. I've focussed on Miss H's breach of contract claim. Even if S 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 Miss H the treatment.

When Miss H put in her claim with HFL it offered her a pro-rata refund in line with S's guarantee. I 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."

The point Miss H raised, which I think is a fair one, is that she didn't contact HFL (or S) because she'd decided clear aligners weren't right for her. She'd found out S had gone out of business, and she was expecting to not only have received her set of aligners, but the ongoing dental support and lifetime guarantee – as set out in its online literature. S's FAQs said during treatment its dental experts would be with the customer every step of the way, using virtual check ins to track progress. It said its care team would be available 24/7. Because of a fundamental breach of contract, S wasn't able to offer the ongoing support or the guarantee for Miss H.

I'm aware some other customers decided to carry on with their treatment after S went out of business. That was possible because it was largely a self-directed treatment. But I'm also aware some customers decided not to continue treatment when they found out S was no longer trading. Given a part of the contract to be expected was the ongoing support it's not unreasonable that certain customers may have had valid concerns with continuing treatment without the dental supervision and support they'd expected.

Miss H has shown us photos of three unopened sets of aligners so it seems she didn't complete her treatment. And given what she said I think the reason she didn't complete her treatment was as a direct result of a fundamental breach of contract. I've thought about how things should be put right. And I'm intending to decide that HFL should end the agreement and provide Miss H with a refund of what she's paid. I'll explain why.

HFL may argue Miss H gained some benefit from the aligners she used. But I've not seen sufficient evidence she did. If the patient stopped wearing aligners, it's quite likely some or all progress made would be lost and the teeth may regress back fully, or near to the position they were in before. This is why retainers are recommended for when the customer reaches the point they want to 'retain' i.e., at the end of the treatment. Miss H said she wasn't noticing any benefit from the treatment around the time S went out of business. I don't know if that's accurate or not, but if she has unopened aligners she didn't complete the treatment. She's not said she went elsewhere to have it completed. She said she'd need to start again. This seems plausible.

Moreover, even if Miss H did gain some benefit from the aligners she used, in all likelihood, it's unlikely if she went to another dental treatment provider she'd only need to pay the percentage cost of treatment she didn't complete. She'd likely have to pay the full cost again. So the cost to cure the breach is likely the full cost of comparable treatment elsewhere, which is another reason I think a full refund is fair. It's a quick and informal way to resolve things, which is what I'm required to establish.

HFL may argue that Miss H didn't take steps to mitigate. She ultimately could have bought retainers at the point S went out of business to maintain her progress. Or she could have continued the treatment or paid to do it elsewhere straight away. I've already explained why I don't think it was unreasonable for Miss H to have chosen not to continue the treatment. I also have to bear in mind that Miss H would've been understandably concerned to hear S went out of business. She likely didn't know what to do. And she had to wait around two months for HFL's answer on her claim. She may not have wanted or been able to afford to pay for treatment elsewhere while waiting to find out the outcome of her claim with HFL. I'm also conscious that patients were only recommended to buy retainers when they completed their treatment. Miss H expected to complete her treatment and buy retainers from S. She was halfway through when S went out of business. So I don't think it would be fair to say she didn't take steps to mitigate by not buying retainers to maintain the progress she had made.

I should point out I'm conscious that I'm required to look at how HFL handled the claim based on the evidence presented, and it's only more recently Miss H has shown she had unopened aligners. But I think the most pragmatic thing is to deal with the complaint knowing what we know now, rather than direct Miss H to raise another complaint that will add further time and costs to all the parties. And ultimately even without the photos, HFL could have accepted Miss H's testimony itself along with the information it received from S that showed she'd not finished treatment.

Overall, Miss H hasn't said she's obtained a benefit from the service she paid for. I think to cure the breach she'd likely need to start again, or at least pay the full cost for another set of treatment, whether or not she's had any benefit from the treatment with S. So I'm intending to say the fairest thing to do is to end the agreement and refund her everything paid towards it. HFL would only be required to do that if Miss H sends it the unopened aligners (if HFL wishes). While I appreciate they're not going to be of any use to anyone, I don't think HFL would be unfair in wanting to see sufficient evidence she didn't complete the treatment.

Miss H responded to say she was pleased with the provisional decision. HFL responded to say, in summary:

- It disagreed that Miss H had lost all benefits of the treatment when she didn't continue the treatment.
- The nature of the treatment meant that teeth will shift to the desired (though not guaranteed) results. This aspect of the service was delivered.
- Patients are advised to preserve their results by continuing to wear the last aligners or by purchasing retainers (that weren't included within the contract). Miss H did neither which led to regression of results.
- HFL provided information about suppliers of retainers to help preserve results.
- It would propose an additional payment of £220 in addition to a pro-rata refund for any unused and unopen aligners. It would also ensure any adverse credit markers on Miss H's file were removed.

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. The main thrusts of HFL's responses are that Miss H has received some benefit and therefore value from the service, and that she didn't mitigate by ordering retainers or continuing treatment. I explained that I didn't think Miss H was at fault for not taking steps to mitigate given the uncertainty of what to do when S went out of business, and that she wasn't at the stage to order retainers. I remain of that view. I think it's important to note I didn't think this was a situation where Miss H had a change of heart. S went out of business and could no longer provide the service she'd paid for.

Moreover, I did point out in my provisional decision that I'd not seen evidence Miss H did benefit from the service. But I can't be certain of that. I said even if she did receive some value or benefit, the cost of curing the breach would, to my mind, be more likely than not the full cost of service elsewhere. I don't know what a court would decide if the claim was brought to it. But rather than directing HFL to pay for treatment elsewhere so Miss H could complete the treatment, I thought it fairer that she be given a full refund so she can decide what to do. I still think a full refund is a fair and reasonable outcome in the individual circumstances of her complaint.

My final decision

For the reasons given above, my final decision is that I uphold this complaint and direct Healthcare Finance Limited to:

- End the agreement with nothing further to pay once Miss H returns the unopened aligners (if HFL wishes).
- Refund Miss H everything paid under the agreement.
- Interest should be added to the above amounts at a rate of 8% a year simple from the date each payment was made to the date of settlement.
- Remove any adverse information about the agreement from Miss H's credit file.

If HFL considers it is required to deduct tax from my interest award it should provide Miss H a certificate of tax deduction so she may claim a refund from HMRC, if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 14 April 2025.
Simon Wingfield
Ombudsman