

The complaint

Mr K 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 November 2022, Mr K entered into a 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 K was due to pay back the agreement with monthly payments of around £65 over a period of just over two years.

Mr K said his initial treatment plan was expected to last for a period of four months’ but the aligners didn’t arrive until December 2022. He said after the core treatment had finished, S provided further ‘touch up’ aligners in March and an additional set in October 2023. Mr K says the final set of touch-up aligners were for a further three months.

S went out of business in December 2023. Mr K subsequently contacted HFL to make a claim. He said the product he received from S didn’t work as intended, he wasn’t happy with the results he felt had been guaranteed and he could now no longer receive further treatment under the lifetime guarantee.

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 K met the conditions for it because he’d not completed virtual check ins or ordered retainers, so it declined the claim.

Mr K decided to refer his complaint to the Financial Ombudsman. He indicated the treatment hadn’t achieved the expected results. He said he’d not ordered retainers because he was still receiving treatment at the point S went out of business. He said he did carry out the check-ins and often he was contacting S to do the check-ins rather than S making sure the check-ins were completed.

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

Mr K reiterated he didn’t order retainers because he wasn’t at the stage to and felt he had completed check-ins. He felt he wasn’t happy with the outcome of his treatment and given he could no longer use the guarantee, he felt he was entitled to a full refund.

As things weren’t resolved the complaint was passed to me to decide. On the 5 March 2025, I sent a provisional decision to both parties explaining why I was minded to upholding the complaint in part and asked both parties to make any final submissions before I issued my final decision on the case.

Mr K did not reply or make any further submissions. HFL replied that in the interests of bringing matters to a close, it would be willing to offer to pay Mr K the £220 I had recommended in my provisional 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.

In my provisional decision I explained the following:

Firstly, I'd like to reassure Mr K that I have considered all his concerns carefully and looked at everything he has provided, but I will only be dealing with the most salient parts of his complaint in this decision as I'm required to decide matters quickly and with minimum formality.

I also want to say I'm very sorry to hear that Mr K is unhappy with the treatment. I can't imagine how he must feel, but I thank him for taking the time to bring the 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 K'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 K 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 and HFL has also agreed that S.75 applies.

HFL didn't accept Mr K's claim, so I've considered if there is persuasive evidence of a breach of contract or misrepresentation by S that means HFL should have acted differently.

Implied terms

In cases such as this it is often complex to assess the quality of the service Mr K 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 K is indicating he was unhappy with the results. 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 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 S offered wasn't carried out with reasonable skill and care. I don't think the fact that S 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

I also need to consider what I think Mr K'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 K 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 K was due to receive a set of aligners when he entered into the contract in November 2022 and that he received and went on to use them. I think the core contract was for those set of aligners that he was due to use for four months.

I therefore think Mr K completed the core treatment he'd paid for in November 2022. But he was unhappy with the results and S agreed to supply further sets of aligners – at no cost. While I appreciate Mr K 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 K 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, which is what S did.

I haven't seen sufficient evidence S would extend the original treatment. So, I've thought about what services S was required to offer after the initial treatment, and whether there's been a breach of contract. Further aligners seem to be part of S's aftercare offering for further refinement (subject to dentist approval). It's not clear whether S gave Mr K 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 K was unhappy with the results, I don't think HFL had sufficient evidence to show S breached the express terms of the contract in respect of the results he achieved.

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 K registered his aligners; wore them as prescribed; completed check-ins; stayed up to date on payments. And that, after treatment, Mr K 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.

As I've explained, we know a dentist approved further treatment in 2023 several times. HFL didn't think Mr K had met the conditions for the guarantee when he contacted it because he'd not completed virtual check-ins or ordered retainers. We've seen other cases where S has told HFL the customer did meet the condition so I can't completely disregard what it's told us.

But even putting that to one side, it looks like Mr K met all the other conditions for the guarantee. And I note S's website from around the time had a section titled:

"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?"

This says: 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

If you just finished treatment, you can become eligible again as long as you:

1. Are current on your repayments
2. Replace retainers every 6 months and wear them as prescribed

If you're unsure whether you're eligible, contact us to find out.

I haven't seen anything to suggest that when Mr K first contacted HFL he wasn't up to date on payments. It's not totally clear from the FAQs whether Mr K would be classed as 'in treatment' after the core treatment had finished, and when he was supplied 'touch up' aligners. But if he was classed as within treatment the steps above indicate he may have been able to requalify for the guarantee. And if he was classed as just finishing treatment (given he's shown us he had aligners to use until at least the end of December 2023) he may have been able to requalify as well.

While it's not definitive, I think there's a chance he 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 treated Mr K as if he'd met the conditions for the guarantee.

Mr K thinks he should be refunded. There is a potential breach identifiable because Mr K 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 K began the treatment around November 2022, and only if Mr K 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 K 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 K. 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.

Moreover, Mr K had already benefitted from the guarantee previously. Given the guarantee was only there to cover one set of treatment per year, it's not clear S was contractually obliged to have given Mr K more than the first 'touch up' set for the year. I'm also conscious Mr K hasn't had to pay for retainers, which is a requirement to continue benefitting from the guarantee.

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 K received. But I think there's a possible loss because Mr K 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 K would have continued to receive any benefits under the guarantee; taking into account he's received the core treatment, and received several touch-up aligners at no extra cost, I think HFL should offer this £220 to remedy any potential loss. It seems like a fair compromise given I think the total amount paid was substantially for the core treatment.

Firstly, I would like to clarify that I've focussed mainly on Mr K'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 amount to a misrepresentation because I don't think it would have been aware it would go out of business when it sold Mr K the treatment. So, I wanted to confirm that I don't think a misrepresentation claim exists here.

As neither party has made any further submissions, and HFL has in fact agreed to offer compensation in line with my provisional findings, I see no reason to depart from my findings as set out in my provisional decision.

Having reviewed this complaint again, I am still of the view that Mr K has had the benefit of the core treatment, and there's insufficient evidence that there has been a breach of contract or misrepresentation in relation to the core treatment – so I don't think Mr K is entitled to a refund of the full costs he has paid. But I do think Mr K has suffered a potential loss due to S no longer trading and Mr K no longer having access to the guarantee. For the reasons explained in my provisional findings, I think HFL should pay Mr K £220 for the potential loss he has suffered.

Putting things right

HFL must pay Mr K £220 in compensation for the loss of the guarantee.

My final decision

For the reasons I've explained, I uphold this complaint in part and Healthcare Finance Limited must put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 17 April 2025.

Asma Begum
Ombudsman