

The complaint

Mrs B 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 August 2022 Mrs B 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 Mrs B was due to pay back the agreement with monthly payments of around £70. Mrs B said her initial treatment was for a few months but she wasn’t happy with the results and S provided her with ‘touch up’ aligners. She said the ‘touch ups’ also didn’t make much difference and she had an in-person appointment for reassessment. She said S agreed to provide further ‘touch up’ aligners. She said she didn’t hear anything so continued to wear her old aligners. She said she was frustrated and spoke to S and it said she was supposed to have ordered retainers by that point but it agreed to provide further aligners. She said she after treatment she couldn’t see any difference in her smile. She also said the aligners made her gums sore.

S went out of business in December 2023. Mrs B contacted HFL to ask for help. She said S was no longer responding to her and that she was unhappy with the treatment and results. 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 but didn’t think she’d met all the conditions for it because she’d not ordered retainers or completed virtual check ins.

Mrs B decided to refer her complaint to the Financial Ombudsman. One of our investigators looked into things and thought HFL’s answer was broadly fair.

Mrs B didn’t agree. She said she didn’t think the investigator considered all the information. She reiterated she didn’t achieve the promised results. She said S extended her treatment several times as evidenced with emails and text messages. She said HFL took payments that were unauthorised after she’d complained. She thought she should receive a full refund. As things weren’t resolved the complaint has been passed to me to decide.

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 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 Mrs B 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.

I also want to say I'm very sorry to hear that Mrs B is unhappy with her treatment. I can't imagine how she must feel, but I thank her for taking the time to bring her 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 Mrs B'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 Mrs B 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 didn't accept Mrs B's claim. I've gone on to consider if there is persuasive evidence of a breach of contract or misrepresentation by S to decide if that was fair. I've focussed on Mrs B'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 Mrs B the treatment.

Implied terms

In cases such as this it is often complex to assess the quality of the service Mrs B paid for. Results from these sorts of 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.

Mrs B has not provided supporting evidence such as an independent, expert opinion that sets out the treatment she 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 agreed to provide 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 Mrs B'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 Mrs B as I understand they were kept in an online application that's no longer available. So there's a lack of evidence. But it's not in dispute Mrs B was due to receive a set of aligners when she entered into the contract in August 2022 and that she received and used them. I think the core contract was for those set of aligners that she was due to use for a few months.

I think it likely Mrs B signed an agreement with S 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 Mrs B would have understood S couldn't guarantee specific results or outcomes. The consent form also sets out that there could be gum irritation or acceleration of gum disease during treatment. So even if Mrs B didn't quite get the results she wanted after the core treatment or experienced the sort of issues she's highlighted, without sufficient evidence to show otherwise, I don't think that would be considered a breach of contract. That's not to say I don't understand why she's unhappy. Merely that I'm considering how HFL acted based on the evidence presented to it.

While I appreciate Mrs B 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. I think this was limited. In the absence of a specific signed contract, I've looked at S's website from around the time Mrs B 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, they *might* be eligible for additional 'touch up' aligners. Mrs B said S offered her further 'touch up' aligners. But I haven't seen evidence S would extend the original treatment.

I don't think the fact S offered Mrs B further 'touch up' aligners in itself shows there was a breach of any express terms of the 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 offered Mrs B 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 Mrs B wasn't happy with the results, I don't think HFL had persuasive enough evidence to show S breached express terms of the contract in respect of the results she 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. The guarantee provided the *possibility* of having further aligners, provided that Mrs B registered her aligners; wore them as prescribed; completed virtual check ins; and stayed up to date on payments. It also said after the core treatment Mrs B was required to buy retainers every 6 months at her own cost and wear them as prescribed. Moreover, a dentist was required 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.

On the one hand, HFL said Mrs B didn't buy the retainers when required and she didn't complete the check ins. I'm also conscious there are also some gaps in the timeline which means we haven't seen evidence of all the follow up treatment Mrs B said she was supplied after the core treatment. On the other hand, Mrs B said her treatment was extended several times which she thinks indicates the initial plan wasn't effective.

It's not clear Mrs B met the requirements to benefit from the guarantee. It's curious that S provided her further treatment and may have agreed to provide further 'touch up' aligners when she may not have met those qualifying requirements. Perhaps, as our investigator pointed out, it was done as a gesture of goodwill. Or it may be that S considered Mrs B had been able to requalify for the guarantee. But the problem I have is that by the time Mrs B contacted S and HFL to complain (in early 2024) it was around a year and a half after she entered into the agreement with S. The treatment was expected to last a few months. I can

see it looks like Mrs B had some further treatment. She's shown us evidence it looks like she was still unhappy in May 2023, but I don't think she supplied sufficient evidence to HFL she was having issues around the time S went out of business. We've seen many other cases where S was trading up until the time it went out of business in December 2023. Mrs B said she had further treatment around November 2023, but I can't see she supplied HFL sufficient information showing what happened around that time. And I have to consider how HFL acted based on the evidence it was supplied – which, as I've said, was very limited.

Overall, I don't think HFL was given sufficient information showing Mrs B bought retainers – which was one of the qualifying conditions for the guarantee. The retainers came at a cost Mrs B would have had to meet to qualify for the guarantee. I appreciate Mrs B mentioned S indicated she might not have been at that stage to order retainers. I'm also conscious there was a way for customers to requalify for the guarantee if they'd not met certain conditions. But I think that requalification was intended for customers who'd just finished, or were within treatment. I don't think HFL had sufficient information that Mrs B was within treatment or should have 'just' finished it when she contacted it. Moreover, the guarantee was there to cover one set of 'touch ups' per year. Mrs B has indicated she had more than that. So, on balance, I don't think HFL's answer was unfair taking into account what Mrs B had already received (or had been due to pay for) and taking into account there was a lack of evidence she'd have been contractually due anything further around the time S went out of business.

Mrs B has requested a full refund. But even if I'd identified a breach of contract in relation to the guarantee, this wasn't a remedy the contract offered in this sort of scenario. I'm conscious Mrs B has received the core benefit through the initial treatment, and I think the total amount of credit was substantially for that treatment, so I don't think HFL is acting unfairly by asking her to pay back the credit. HFL hasn't made an offer to Mrs B for a potential loss through her not being able to utilise the guarantee. On balance, I don't think there's the grounds to say HFL should offer her a price reduction for something I can't see S was required to provide her under the guarantee.

Finally, I note Mrs B may have stopped making payments towards the agreement or claimed payments back. 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. In the circumstances, HFL may wish to consider removing any adverse information if Mrs B 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 Mrs B is unhappy with how HFL treats her going forward, it may be something our service is able to consider separately.

While I am sorry to hear Mrs B is unhappy, with s.75 in mind, I don't find there are grounds to direct HFL to refund her or to waive the outstanding balance. But I should point out Mrs B is free to pursue the claim by more formal means, such as through the courts.

My final decision

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 26 May 2025.

Simon Wingfield
Ombudsman