

## **The complaint**

Mr F 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 September 2023 Mr F 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 Mr F was due to pay back the agreement with monthly payments of around £75. I understand he was provided 20 sets of aligners and he was due to use them over the next few months.

S went out of business in December 2023, so Mr F contacted HFL to ask for a refund. Mr F said S wouldn’t be able to provide the service he was paying for of check ins, product adjustments and lifetime guarantee. 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 it said Mr F didn’t meet the conditions for it, and so declined the claim.

Mr F decided to refer his complaint to the Financial Ombudsman. He also wrote back to HFL to say he was having issues with the aligners after having only worn a few and that he wanted to send them back for replacement to carry on his treatment but this wasn’t possible since S went out of business. He said he wasn’t able to comply with the guarantee conditions only because S went out of business.

Our investigator looked into things and got in touch with HFL because Mr F said he had unopened sets of aligners. HFL agreed to offer Mr F a pro-rata refund for any unused aligners. Our investigator thought HFL’s offer was broadly fair.

Mr F didn’t agree. He reiterated he thought his consumer rights had been breached. He said he wasn’t comfortable sending back unopened aligners.

As things weren’t resolved the complaint was passed to me to decide. Mr F supplied photos of what look like unopened aligners. I’ve arranged for a copy to be supplied to HFL. I also 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 F 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 F’s request for getting his money back. But it’s important to note HFL isn’t the supplier.*

*S.75 is a statutory protection that enables Mr F 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.*

*After the complaint was referred to the Financial Ombudsman HFL broadly accepted Mr F's claim because it offered a pro-rata refund. 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 Mr F's claim.*

*Mr F entered into the agreement in September 2023, and it was expected to last a few months. S went out of business when he was part-way through treatment. I've focussed on Mr F'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 Mr F the treatment.*

*HFL has now offered Mr F 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."*

*I think it's important to note it seems Mr F didn't contact HFL (or S) because he'd decided clear aligners weren't right for him. He'd found out S had gone out of business, and he was expecting to not only have received his set of aligners, but the ongoing dental support and lifetime guarantee – as set out in its online literature. He also said he was having fitting issues with the aligners and so needed help. 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 Mr F.*

*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. And Mr F has said he had fitting issues with the aligners which could have been another reason he decided to stop the treatment, or was unable to continue without assistance.*

*Mr F has shown us photos of what looks like several unopened sets of aligners, so it seems he didn't complete his treatment. And given what he said, I think the reason he didn't complete the 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 Mr F with a refund of what he's paid if he returns the unopened aligners. I'll explain why.*

*HFL may argue Mr F gained some benefit from the aligners he used. But I've not seen sufficient evidence he 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. Mr F said he was experiencing fitting issues around the time S went out of business. I have no way of knowing if that's accurate or not, but if he has unopened aligners, he didn't complete the treatment. He's not said he went elsewhere to have it completed. I think it's more likely than not that if he went elsewhere for treatment he'd need to start again. I think it's important to note Mr F hasn't just shown one or two opened aligners, it looks like he has several.*

*Even if Mr F did gain some benefit from the aligners he used, in all likelihood, it's unlikely if he went to another dental treatment provider he'd only need to pay the percentage cost of treatment he didn't complete. He'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 Mr F didn't take steps to mitigate. He ultimately could have bought retainers at the point S went out of business to maintain his progress. Or he 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 Mr F to have chosen not to continue the treatment. I also have to bear in mind that Mr F would've been understandably concerned to hear S went out of business. He likely didn't know what to do. He may not have wanted or been able to afford to pay for treatment elsewhere. I'm also conscious that patients were only recommended to buy retainers when they completed their treatment. Mr F expected to complete his treatment and buy retainers from S. He was halfway through when S went out of business. So I don't think it would be fair to say he didn't take steps to mitigate by not buying retainers to maintain the progress he 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 Mr F has shown it looks like he has unopened aligners. But I think the most pragmatic thing is to deal with the complaint knowing what we know now, rather than direct Mr F 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 Mr F's testimony itself along with the information it received from S that showed he'd not finished treatment.*

*Overall, Mr F hasn't said he's obtained a benefit from the service he paid for. I think to cure the breach he'd likely need to start again, or at least pay the full cost for another set of treatment, whether or not he's had any benefit from the treatment with S. I don't think he failed to mitigate. So I'm intending to say the fairest thing to do is to end the agreement and refund him everything paid towards it, less any payments that have already been claimed by other means such as chargeback. HFL would only be required to do that if Mr F 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 he didn't complete the treatment.*

Mr F responded to say the decision read fairly and that he didn't complete the treatment. He said he wanted to highlight HFL said he'd completed check-ins when he hadn't. He said altering records was wrong. He questioned how HFL was able to obtain some records and not others (like the terms and conditions). He said it raises concerns about the integrity of the records presented. He provided a video which he said is evidence he hadn't completed his treatment. He said HFL made the process prolonged and stressful. He said sending back the aligners would only delay the process further.

HFL said, in summary:

- The most common cause of fitting issues is non-compliance with the prescribed treatment plan. It thought Mr F's situation was a case of non-compliance rather than a defect in the product or service. It didn't think a full refund was justified.
- Mr F had signed a history and consent form that shows he understood the nature of the treatment and that outcomes can vary.
- It disagreed that it was unreasonable for patients to obtain retainers midway through treatment to preserve results. It made every effort to ensure patients could independently source retainers.
- It wasn't uncommon for patients to choose to continue treatment with another provider. It wouldn't expect the customer to have to start from the beginning if they'd maintained their results.
- It had no record of Mr F contacting S to report issues or of him contacting it to raise concerns.
- It didn't believe a breach of contract had occurred. Mr F received the product he'd paid for, and some results and progress were achieved. Ongoing issues most likely stem from non-compliance with the treatment plan, and any reversion of results was as a result of Mr F not taking action to preserve results.

### **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. Mr F explained he didn't complete the treatment. If he has unopened aligners, I agree, and have explained why I think a full refund in that scenario is fair. Mr F also questioned the evidence HFL relied on. But I think it's important to note again HFL is a separate company to S. It received data from S on whether customers complied or would be seen to comply with certain conditions. I don't think it's tried to mislead Mr F, I think it simply based its decision on the data presented. And I can't see it caused any unreasonable delays in handling the claim.

With regards to the return of the unopened aligners, I'm still of the view that if HFL wants to see those, that's not unreasonable. It's the only viable way it can establish Mr F didn't continue with the treatment. And if Mr F wants to accept this decision, and if HFL require the unopened aligners, it would be legally bound to undertake the directions made once it receives them. Mr F may wish to consider sending them by recorded delivery to be safe.

I appreciate Mr F is saying his video shows the treatment didn't work. But that's not the key issue I've considered here. Mr F hasn't supplied evidence the treatment he did receive wasn't carried out with reasonable care and skill as implied by the Consumer Rights Act 2015. It's the manner in which the service was carried out, rather than the results of the treatment that is the key issue for that sort of claim. And he's not provided evidence the goods element of the contract were not of satisfactory quality. I'm directing HFL to refund Mr F for the reasons given in my provisional decision – not because he said he didn't receive the results he expected. And I'm conscious he stopped wearing aligners a long time ago so results may have regressed by this point.

With regards to HFL's points, I disagree there wasn't a breach of contract. I think there was a fundamental one. Mr F paid for aligners; ongoing support; and a lifetime guarantee. It's not in dispute S went out of business when Mr F was still due to be within the core treatment. S couldn't provide the ongoing support part of the contract (or guarantee). I think the contract was therefore breached. I think the main question is whether Mr F is fairly entitled to a full refund or whether he should pay for the service he received. As part of that question I needed to consider if Mr F took steps to mitigate as would be required.

I've already set out why I think a full refund is fair. It's not clear Mr F received benefit from the treatment if he has unopened aligners given S went out of business. I didn't think he'd acted unreasonably by not continuing treatment or stopping and buying retainers when S went out of business. Plenty of customers may have chosen to carry on the treatment without support, and others may have bought retainers. But I thought it wasn't unreasonable Mr F may not have known what to do and may not have wanted to buy retainers at that point because he hadn't finished treatment. I also said, on balance, I thought he'd need to pay either the full price or near the full price again for treatment elsewhere. So I still think the conclusions I reached in my provisional decision are fair.

### **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 when the aligners are returned (if HFL wants them returned).
- Refund Mr F everything paid under the agreement (that he's not already recovered).
- 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 Mr F's credit file.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 2 May 2025.

Simon Wingfield  
**Ombudsman**