

## **The complaint**

Mrs K 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 April 2023, Mrs 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 Mrs K was due to pay back the agreement with monthly payments of just under £70, the term of the loan was just over 2 years.

S went out of business in December 2023, and in March 2024 Mrs K contacted HFL to make a claim, requesting a refund. She said she hadn’t completed the treatment plan, as she’d worn the aligners for a longer period than initially anticipated, elongating her treatment plan. She says she hadn’t received the full treatment or service. She also hadn’t received a retainer that she thought she was entitled to. Mrs K told HFL that she didn’t think she should have to pay for a loan when she hadn’t received the full goods and services under the contract.

HFL considered the claim as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 (“s.75”). HFL said Mrs K was not entitled to a refund under S’s guarantee for any unused aligners as she hadn’t completed the required check-ins or purchased retainers.

Mrs K decided to refer her complaint to the Financial Ombudsman. She re-iterated that she hadn’t received the goods and services offered under the contract and that her teeth are not any straighter. She’d also stopped making the payments under the loan and said the debt recovery process was causing her stress and she was worried about her credit file. Mrs K highlighted that there was a distinct lack of evidence that either herself or HFL could provide, as much of the evidence, such as previous contact she’d had with S, was all done through an online application that is no longer accessible to her or HFL.

Our investigator looked into things and felt the complaint should be upheld in part. While she didn’t agree that Mrs K was entitled to a full refund, she did feel Mrs K should be able to return some unused and unopened aligners for a pro-rata refund. She pointed out that while Mrs K hadn’t completed her full treatment plan, she had used some of the aligners sent to her but still had a few unused and unopened aligners. She felt that while HFL’s records show she hadn’t completed check-ins, Mrs K had provided evidence that she was in touch with S, at least around October 2023, when she had a fitting issue. She provided pictures and sought support and was engaged in the process.

Originally HFL didn’t agree with our investigator’s view of the complaint, but it subsequently agreed to offer Mrs K a pro-rata refund for the unused and unopened aligners in the interests of bringing matters to a close.

But Mrs K didn’t agree. She re-iterated that she hadn’t received all the goods and services under the contract, that she shouldn’t have to pay for something that had clearly not worked

and was in her view “never going to work”. She also raised concerns that the investigator had relied on copies of a consent form that S generally used but Mrs K doesn’t recall signing one. She was also unhappy that she was being pursued for payment and she didn’t feel this was fair while the complaint was ongoing.

Our investigator at this point pointed out that if Mrs K wanted to, she could assess her claim as if the treatment had ended and consider her losses due to the loss of the lifetime guarantee – but this would likely only be around £220. She still felt that a full refund wasn’t fair, given Mrs K had used a lot of the aligners.

Mrs K felt she was entitled to a full refund, as there had been a breach of contract and said she’d try to get an experts opinion showing the treatment hadn’t worked and was never going to work. But she was subsequently unable to obtain this.

As things weren’t resolved the complaint was passed to me to decide. On 3 April 2025, I issued my provisional decision explaining that I was minded to partially uphold the complaint. HFL replied accepting my decision and offering to resolve the complaint in line with my decision (and in line with our investigators earlier recommendation). Mrs K (through her representative) didn’t agree, and I will address her concerns below.

### **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 Mrs K, that I have considered all her concerns carefully, but I will only be dealing with the most salient parts of her complaint in this decision as I’m required to decide matters quickly and with minimum formality.*

*I would add that I’m sorry to hear that Mrs K is unhappy with her treatment plan and the impact it had on her. It may be helpful to explain that I need to consider whether HFL – as a provider of financial services – has acted fairly and reasonably in the way it handled Mrs K’s claim. But it’s important to note HFL isn’t the supplier. S.75 is a statutory protection that enables Mrs 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 her for the provision of goods or services.*

*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.*

*I’ve considered if there is persuasive evidence of a breach of contract or misrepresentation by S that means HFL should have offered something different to what it eventually offered in response to Mrs K’s claim. But I want to explain from the outset that I can only consider Mrs K’s complaint on that narrow basis – that is, whether it was fair and reasonable for HFL to respond to her claim by eventually offering what it did.*

*It may be helpful to explain that I understand Mrs K doesn’t recall signing a consent form our investigator mentioned but my understanding is that without agreeing to this, the sale would unlikely have proceeded, and it was a requirement of S’s sales process to ask consumers to read and sign this. So, I think it’s likely she did sign one, even if she can’t recall that now. There is a considerable lack of evidence due to S’s online application no longer being available, and most of the communication having been done through the application. So, we*

have to make a decision based on the available evidence including the documents HFL is able to provide as well as information available on S's website at the time of sale.

### *Misrepresentation*

*I've focussed mainly on Mrs 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 Mrs K the treatment. I also understand Mrs K felt the treatment was "never going to work" and she's sought to provide evidence from an expert to corroborate her belief but unfortunately was unable to. But without this evidence and knowing that S unlikely sold her the treatment plan knowing it was going to stop trading, I don't think a misrepresentation claim exists here.*

### *Breach of contract – implied terms*

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

*I understand Mrs K feels some of the aligners didn't fit properly, and she's also said her teeth are not any straighter. But Mrs K has not provided supporting evidence such as an independent, expert opinion that sets out the treatment she 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 understand Mrs K contacted S in October 2023 because she didn't feel aligner 9 fit properly, Mrs K says S didn't reply. But there is a lack of available evidence to confirm this. We have seen cases where S was responding to consumers until shortly before it stopped trading in December 2023. And Mrs K says she's gone on to use aligner 9 and 10 – which indicates the problem was resolved.*

*I understand Mrs K has found it difficult to obtain an expert's report, although she did try. But I'm not a dental expert, and neither is HFL and 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 or that the goods provided were not of satisfactory quality.*

### *Breach of contract - express terms (aligners and dentist support)*

*I also need to consider what I think Mrs 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 Mrs K, as I understand they were kept in an online application that's no longer available. So, as explained above, there's a lack of evidence.*

*But it's not in dispute Mrs K was due to receive a set of aligners when she entered into the contract in April 2023 and that she received them, and I think, based on what I've seen, she likely used some of them. She said she was given 16 aligners and she used 10 of them. Mrs K has told us aligners 11-16 were unused. Mrs K has told us her treatment plan didn't finish within 6 months, so this indicates her treatment plan was intended to last for 6 months. This*

*is in line with S's website, which states most plans were for between 4-6 months. I think the core contract was for those sets of aligners that she was due to use for 6 months.*

*But I also have to bear in mind that Mrs K signed her credit agreement in April 2023, and S didn't stop trading until December 2023 some 8 months after she signed up to her treatment plan. So, HFL would have had to consider that her treatment plan should have ended by the time S stopped trading.*

*I understand Mrs K says her treatment plan was incomplete and it took longer because she had fitting issues. I can see she did contact S in early October 2023 to discuss a fitting issue, she said that aligner 8 now fits but she was having trouble with aligner 9. I can't see what S's response to this was, but Mrs K says it didn't respond at all. But she's also gone on to use aligner 9 and 10 – which indicates the fitting issue was somehow resolved.*

*But Mrs K then didn't go on to use aligner 11-16 during November and December 2023 – after which S stopped trading. Bearing in mind aligners are to be worn for between 1 to 2 weeks, I still think she ought to have been nearing the end of her treatment plan by December when S stopped trading, even if she had been wearing the first few for slightly longer than expected/recommended. If Mrs K was following her treatment plan correctly, she should have used at least a few more aligners during November and early December 2023 and she should've been thinking about buying a retainer at this stage (these had to be purchased separately around 4 weeks before the end of the treatment plan). Mrs K also didn't raise any concerns with HFL until March the following year, due to it chasing her for repayment of the loan – not in December 2023, because she couldn't contact S.*

*It doesn't look like S ceasing to trade has materially affected Mrs K's choices. Based on the evidence available to HFL, I don't think it would've been unfair in concluding that Mrs K wasn't correctly following the treatment plan or that she stopped wearing them for reasons unrelated to S no longer trading. Ultimately, we don't know for certain what happened because there is a lack of evidence available due to much of it being held on the online application that's no longer available. So, I don't think it's unreasonable for HFL to take a step back and decide what it thinks likely happened based on the evidence that is available.*

*It also isn't unreasonable for HFL to only consider refunding consumers for issues that happened only as a result of S ceasing to trade. It is not unfair that it would not refund to consumers who either didn't follow the plan or had changed their minds –one of which seems likely here given the timeline. HFL has also pointed out that its records show Mrs K hadn't completed the relevant check-ins and hadn't bought retainers which usually happens near the end of the treatment plan if customers wanted to become eligible for the lifetime guarantee.*

*I don't think there's sufficient evidence to explain why her treatment was still so far from complete in December 2023 – some 8 months after she signed up. I'm also not satisfied there's sufficient evidence the reason her treatment plan hadn't ended was due to S's ceasing to trade in December 2023. It looks like Mrs K had access and the use of support from S for 8 months after the sale, and at some point, stopped using the aligners. I can see Mrs K has commented that the treatment didn't work, and she believes it was never going to work. But had she contacted S after October 2023 saying she no longer wanted to continue with the plan because she wasn't happy with the service received or because she didn't think it would work, she would not have been entitled to a full refund. 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.”

Overall, the evidence HFL has is that Mrs K's treatment plan was initially intended for 6 months and should have ended by the time S stopped trading. That she used 10 out of 16 aligners – but likely stopped using them before S stopped trading and/or that she doesn't seem to be wearing the aligners in accordance with her treatment plan. Its records also show she didn't complete check-ins or buy retainers which ought to have happened after 6 months. She also didn't raise any concerns until March the following year. So, I can see why HFL couldn't safely conclude that the reason Mrs K didn't wish to continue with the plan was because S breached the contract by ceasing to trade in December 2023.

It doesn't look like Mrs K sought to cancel her treatment plan in December because S stopped trading and she could no longer use its support. Mrs K is entitled to change her mind and cancel if she's unhappy with the service received or if she no longer had faith in the plan – but as explained above, she wouldn't have been entitled to a full refund at that stage. She would only have been allowed a pro-rata refund which she's been offered.

*Breach of contract - express terms (results achieved)*

As explained above, I don't know for certain, but I think it's likely Mrs K 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 dental treatments. And it indicates Mrs K would have understood S couldn't guarantee specific results or outcomes. Given the nature of the treatment, I don't think that sort of term is unfair or unusual. So even if Mrs K didn't quite get the results she wanted after the core treatment, I don't think that in itself would be considered a breach of contract.

*Touch up aligners under the lifetime guarantee*

I understand under the lifetime guarantee, customers could either end their agreement early and receive a pro-rata refund or they could complete the treatment plan, and subject to certain conditions being met (such as purchasing retainers every 6 months – which weren't included as part of the contract), Mrs K might have been provided with 'touch up' aligners once a year. On some cases HFL has offered to refund £220 for this potential loss under the guarantee.

But customers couldn't have cancelled the treatment plan, received a pro-rata refund and also claimed under the lifetime guarantee for further touch-ups. The touch ups under the lifetime guarantee were only available for consumers who'd completed the plan or had issues part way through and met a series of other conditions.

Our investigator offered to look into the second option for Mrs K, given her treatment plan should have already ended by the time S had stopped trading. But she replied that she felt she was entitled to a full refund and shouldn't have to pay for something that didn't work. I also think if we consider this option, Mrs K will likely be refunded less than what HFL has currently offered. So, I don't think HFL needs to consider the loss of the lifetime guarantee in this case.

*Request for a full refund*

Mrs K says S went out of business part way through the treatment, and she didn't want to continue to complete the treatment plan. But had Mrs K wanted to end the plan at this time,

*and S had still been trading, she'd only be entitled to a pro rata refund – she wouldn't have been entitled to a full refund at this stage of the treatment plan.*

*As explained above, based on the circumstances of this case, I've been unable to safely conclude that Mrs K hasn't benefitted from the core treatment plan to some extent, or that her reasons for not completing the plan was due to S no longer trading. So, I don't think it's fair to ask HFL to refund everything she's paid and cancel any further payment. And HFL has now offered Mrs K a pro-rata refund for the unused and unopened aligners she didn't use.*

### **Summary**

- *I don't think there's sufficient evidence that S didn't exercise reasonable care and skill while it was trading or that the goods provided were not of satisfactory quality.*
- *I don't think there's sufficient evidence that there's been an express breach of contract based on the outcome of Mrs K's treatment plan and her unhappiness with her teeth not being straight.*
- *I don't think S ceasing to trade is the main reason Mrs K chose not to continue with her plan. It seems she stopped using the aligners before S stopped trading.*
- *While S may have stopped trading part way through her treatment period, after our investigator's view to HFL, it has agreed to reduce Mrs K's balance to account for any services and goods she hasn't used by offering to refund for any unused and unopened aligners.*

*Considering all of the above, I think HFL's response to this issue is reasonable. While I am sorry to hear Mrs K is unhappy, with s.75 in mind, I don't find there are grounds to direct HFL to refund her the full cost of the treatment. I think our investigator's recommendation and HFL's current offer is broadly fair in the circumstances. I should, however, point out Mrs K doesn't have to accept this decision. She's also free to pursue the complaint by more formal means such as through the courts.*

*Finally, I can see Mrs K has been extremely concerned over HFL continuing to pursue repayment of the loan. I'm generally not able to consider matters that happened after the final response was issued. Once HFL has processed its pro-rata refund, I would encourage Mrs K to contact HFL to discuss the repayment of any outstanding balance. If Mrs K clears the arrears, HFL is able to consider removing any arrears information from her credit file and discuss a way forward. But if Mrs K doesn't feel she's been treated fairly, she can raise the matter with us as part of a separate complaint.*

### **Putting things right**

*On receipt of the unused and unopened aligners, HFL should provide Mrs K with a pro-rata refund for those aligners she hasn't used. I understand instructions have been given to Mrs K on how to complete the process of returning the unused and unopened aligners.*

Mrs K responded disagreeing with my provisional decision and made the following comments:

- *That Mrs K didn't only raise her concerns after S went into administration, but she'd tried to raise concerns in October through the online app and she cancelled her direct debit at this time – as she was deeply unhappy with the service received.*
- *Mrs K is unhappy that the evidence from the online application (which would evidence her contact and concerns with S) isn't available but evidence that Mrs K didn't complete the check-ins evidence is available.*

- Mrs K was advised to soak any ill-fitting aligners in warm water to get them to fit and she was told to wear them for longer than initially advised. But her representative says that you didn't need to be a dental expert to understand that this process changed the shape of the aligners rather than the aligners changing the shape of her teeth, so it was never going to straighten her teeth.
- Mrs K feels that the online application evidence should be available in this age of technology which would show the poor service Mrs K received at the hands of S.
- Mrs K doesn't feel my provisional decision is fair as it sides with HFL even though it can't provide evidence.

Firstly, I'd like to say how sorry I am that Mrs K found my provisional findings so disappointing. I appreciate she feels strongly that she shouldn't have to pay for something that didn't work, and is deeply unhappy with the service received from S. But I reiterate I am assessing whether HFL's response to her s.75 claim for breach of contract is fair and not whether S has treated her fairly during the course of her treatment plan. HFL is not S and isn't responsible for everything that may have gone wrong with S.

As Mrs K is making a s.75 claim, the onus is on her to evidence that S either breached the contract or made a misrepresentation that she relied on – that HFL is now responsible for remedying. While I sympathise with the evidential difficulties faced in this case, I cannot review evidence that both parties have confirmed is unavailable. I am reliant on both HFL and Mrs K providing the evidence they still retain, to help me complete my assessment of the case.

Mrs K has confirmed that she was unhappy with the service received from S from before October 2023, that she had problems with the aligners fitting and the lack of timely responses from S. She also struggled to find time to complete check-ins with S – as she worked between 9am-5pm. So, in October 2023, she cancelled her direct debit. My understanding is that she also stopped using the aligners around this time because she didn't think the treatment was working – and this explains why so many aligners went unused between October and December 2023. But this is exactly the finding I made – that I don't think Mrs K stopped wearing the aligners and chose to abandon the treatment plan because S breached the contract by ceasing to trade in December 2023 – something HFL would be expected to remedy.

Mrs K is claiming that she was unhappy with the service S provided and that the aligners didn't fit properly. So she stopped wearing the aligners in October 2023 and stopped paying her direct debit. I appreciate Mrs K feels the plan was never going to work and didn't work as her teeth aren't any straighter.

But in order for her to successfully make a s.75 claim for these issues – she'd need to provide evidence that either the aligners were of poor quality and/or not fit for purpose from an independent dental expert, or that the treatment plan was misrepresented to her with evidence from an independent dental expert corroborating her claims. HFL cannot be expected to uphold her s.75 claim based solely on her concerns and unhappiness. It has to decide if she has provided sufficient evidence to support the claim that S breached a contractual term or misrepresented the plan to her and this caused her to suffer loss. I don't think HFL acted unreasonably by concluding that she hasn't been able to obtain the evidence required to make a successful s.75 claim on these grounds.

Mrs K changed her mind about continuing with the treatment plan much earlier than December 2023 when S stopped trading, as she wasn't happy with the service offered by S and because she no longer had faith that the treatment would work – and she is absolutely entitled to do that – but this doesn't entitle her to a refund of everything she paid. As explained above, she would only be entitled to such a remedy if she could evidence (usually

with an independent report from an expert in dental care), that S had breached the contract or misrepresented the plan to her in some way and this caused her loss.

If Mrs K had raised her concerns in October 2023 directly with S – which she says she did through the online application – she wouldn't have been entitled to a full refund, but a pro-rata refund – which is what I ordered in my provisional findings and what HFL had already offered.

As explained in my provisional decision, I'm afraid I am still of the view that Mrs K didn't abandon her treatment plan because S breached the contract by ceasing to trade. But because she was unhappy with S for other reasons and stopped using the aligners much earlier than December 2023. But I don't think she's provided sufficient evidence that her reasons for not continuing with the plan was due to S breaching the contract or due to S misrepresenting the plan to her in some way – which is what is required to make a successful s.75 claim against HFL. Based on what I've seen, I think it's more likely that Mrs K changed her mind about continuing with the plan because she was unhappy, but this doesn't entitle her to a full refund.

Based on the above, I see no reason to depart from my findings as set out in my provisional decision. So, for the reasons explained, I uphold this complaint but only in part and ask HFL to put things right as I've set out below.

### **Putting things right**

On receipt of the unused and unopened aligners, HFL must provide Mrs K with a pro-rata refund for those aligners she hasn't used. I understand instructions have been given to Mrs K on how to complete the process of returning the unused and unopened aligners.

### **My final decision**

For the reasons I've explained, I uphold this complaint in part and direct Healthcare Finance Limited to put matters right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 20 May 2025.

Asma Begum  
**Ombudsman**