DRN-5492515

The complaint

Miss L 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 2023 Miss L 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 L was due to pay back the agreement with monthly payments of around £75.

S went out of business in December 2023, when Miss L had used 11 of the 15 aligners provided by S. Miss L contacted HFL to ask for a refund. 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 L a pro-rata refund for any unused aligners. Miss L returned the unused aligners and HFL used the pro rata rebate to reduce the amount of the existing loan.

But Miss L was not fully satisfied as she told us she lacked confidence to continue the treatment programme without the ongoing support S had originally offered. Miss L had wanted the treatment and she told us she had made little or no progress with the aligners and couldn't afford to start treatment afresh with a third party whilst she was servicing the loan to HFL. Miss L told HFL she wanted a full refund. When HFL declined this, Miss L decided to refer her complaint to the Financial Ombudsman.

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

Miss L 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.

I issued my provisional decision on 2 April 2025, a section of which is included below, and forms part of, this decision. In my provisional decision, I set out the reasons why it was my intention to uphold Miss L's complaint. I set out an extract below:

*"**What I've provisionally 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 Miss L 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 L'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 L 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 L's claim because it initially 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 Miss L's claim.

Miss L entered into the agreement in August 2023, and it was expected to last a few months. S went out of business when she was part-way through her treatment. I've focussed on Miss L'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 L the treatment.

When Miss L 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."

In making that offer, HFL offered what might've been suitable for many customers. But I don't think it was in this case. I'm conscious this wasn't a situation (like in the terms above) where Miss L changed her mind. So, it's not clear the pro-rata was fair for her.

But in her email to HFL dated 26 January 2024, Miss L made her claim under s.75. In that email Miss L raised the point, which I think is a fair one, that 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.

Miss L said,

"When entering my agreement, I was lead to believe I would receive a lifetime guarantee as long as I met conditions through my treatment and maintenance with retainers (see photo of delivered resources). Due to S stopping business, I have been unable to receive any virtual dental support as set out in the initial consultation and I am unable to access my care plan on their app. S have breached their contract to provide services and care that I have paid for.

With the lack of professional care and support, I have not felt safe to continue to conduct treatment independently with 4 aligners of treatment remaining. If I wish to pursue with alignment from an alternative provider, I am going to be out of pocket from SDC. I do not wish to continue to pay for a service that I am not receiving."

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 L.

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 L 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 L with a refund of what she's paid. I'll explain why.

HFL may argue Miss L 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 L said she wasn't noticing much benefit from the treatment around the time S went out of business. I don't know if that's accurate or not, but as she had unopened aligners, she didn't complete the treatment.

Miss L has investigated going elsewhere for the treatment she had hoped to complete with S. Miss L's dentist told her she would need to start her treatment afresh and pay the full cost of treatment again in full. That seems plausible. So, Miss L has not had the full treatment she wanted from S and would have to start again with a new company when that becomes affordable. So, the s.75 redress mechanism offered by HFL does not address Miss L's ongoing need for the treatment she thought she was buying from S.

So, as the cost to cure the breach is likely the full cost of comparable treatment elsewhere, 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 L 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 L to have chosen not to continue the treatment.

I'm conscious that patients were only recommended to buy retainers when they completed their treatment. Miss L expected to complete her treatment and buy retainers from S. Miss L was not three quarters of the way through her treatment when S went out of business. So, I don't think it would be fair to say Miss L didn't take steps to mitigate by not buying retainers to maintain any progress she may had made.

And Miss L told us her dentist referred her to a dental orthodontist for treatment before her dentist would be prepared to start a similar treatment regime for teeth straightening. But the initial estimate was for an amount that far exceeded the original cost of treatment with S. As such, Miss L has told us she cannot consider that until she is refunded the full cost of her treatment with S. And that does not sound implausible or unreasonable.

Overall, Miss L told us she did not obtain 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.

My provisional decision

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

- *End the agreement (if it hasn't already) with nothing further to pay.*
- *Refund Miss L 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 L's credit file.*

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

I asked the parties to the complaint to let me have any further representations that they wished me to consider by 16 April 2025. Miss L has accepted the provisional findings. At the time of writing, HFL has not acknowledged receiving the provisional decision, made any further submissions or asked for an extension to do so. I consider that both parties have had sufficient time to make a further submission had they wished to do so. So, I'm proceeding to my final 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.

Given that there's no new information for me to consider following my provisional decision, I have no reason to depart from those findings. And as I've already set out my full reasons for upholding Miss L's complaint, I have nothing further to add.

Putting things right

I require Healthcare Finance Limited to calculate and pay the fair compensation as detailed in the provisional decision and repeated above.

My final decision

For the reasons set out, I'm upholding Miss L's complaint about Healthcare Finance Limited. I require Healthcare Finance Limited to calculate and pay the fair compensation as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 15 May 2025.

Douglas Sayers
Ombudsman