

## The complaint

Miss M 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 October 2023 Miss M 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 £1,650 and Miss M was due to pay back the agreement with monthly payments of around £70.

S went out of business in December 2023. Miss S said she had fitting problems with the aligners and had only used 3 of them at that time. But she also told us that to find ones that fitted she had opened all of the aligners. Miss M 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 M a pro-rata refund for any unused and unopened aligners. Miss M had no unopened aligners to return.

Miss M was not satisfied as she told us she lacked confidence to continue the treatment programme without the ongoing support S had originally offered. Miss M had wanted the treatment but had made little or no progress with the aligners she had used. Miss M told HFL she wanted a full refund. When HFL declined this, Miss M decided to refer her complaint to the Financial Ombudsman.

Our investigator looked into things and thought Miss M should receive a full refund.

HFL didn’t agree. They referred to what they thought were inconsistencies in Miss M’s testimony and felt their original offer had been fair.

As things weren’t resolved the complaint was passed to me to decide.

I issued my provisional decision on 3 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 M’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 M 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 M'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 M 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 M'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 M's claim.*

*Miss M entered into the agreement in October 2023, and it was expected to last from four to six months. S went out of business when she was part-way through her treatment. I've focussed on Miss M'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 M the treatment.*

*When Miss M 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 M changed her mind. So, it's not clear the pro-rata was fair for her.*

*Miss M made her claim under s.75. In that email Miss M 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.*

*And in her email to HFL dated 8 January 2024, Miss M said she had not changed her mind, but lacked confidence to proceed without professional dental support. She said,*

*"I am not taking part in an alligners treatment, as it is too risky without any support from them."*

*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 M.*

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

*HFL may argue Miss M 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 M said she had trouble with poorly fitting aligners and had spoken to an orthodontist about her problem before S went bankrupt. And Miss M told us she had opened all the aligners in search of better fitting sets.*

*In any event, the loan agreement was signed in mid October and by 8 December S had filed for bankruptcy. So, it's not a stretch to suggest that Miss M had barely started her treatment when S filed for bankruptcy and the dental support disappeared. Miss M did not complete the course of treatment. And it is likely that Miss M would need to start her treatment afresh and pay the full cost of treatment again in full with another provider if she chose to try again. That seems plausible.*

*So, Miss M has not had the full treatment she wanted from S and would have to start again, most likely, with a new company should she choose to do so. So, the s.75 redress mechanism offered by HFL does not address Miss M'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 M 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 M 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 M may have expected to complete her treatment and buy retainers from S. But Miss M was barely a month through her treatment when S went out of business. So, I don't think it would be fair to say Miss M didn't take steps to mitigate by not buying retainers to maintain any progress she may have made, if any.*

*Overall, Miss M 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 M 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 M's credit file.*

*If HFL considers it is required to deduct tax from my interest award it should provide Miss M 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 17 April 2025. Both Miss M and HFL have accepted the provisional findings. 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, and as both parties have accepted my provisional findings, I have no reason to depart from those findings. And as I've already set out my full reasons for upholding Miss M'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 M'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 M to accept or reject my decision before 21 May 2025.

Douglas Sayers  
**Ombudsman**