

The complaint

Mr M complains about the way that Healthcare Finance Limited (HFL) responded to a claim he made to it in respect of dental treatment he paid for using a fixed sum loan it provided.

What happened

In April 2023 Mr M bought a course of dental aligner treatment from a supplier I'll call S at a cost of £1,559. He paid a deposit of £66.05 and financed the remainder with a fixed sum loan from HFL.

S ceased trading in December 2023. Mr M contacted HFL in March 2024 explaining his treatment was incomplete and enquiring about his options.

HFL considered its liability to Mr M under section 75 Consumer Credit Act 1974 (s.75). However, it didn't think there was a valid claim for breach of contract as it said records provided by S showed Mr M had not met the eligibility criteria of S's lifetime smile guarantee (the guarantee) and so he had not suffered a loss.

Mr M then referred a complaint to this service.

Our investigator didn't think Mr M's complaint should be upheld.

Mr M did not agree with the investigator and asked an ombudsman to review his complaint.

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 see that another entity responded to this complaint on HFL's behalf. My references to HFL are taken to include representations made on its behalf.

It is important to note that my decision here is about the actions of HFL – and what it should fairly have done for Mr M in response to his claim in its position as a provider of financial services. In looking at how it handled the claim Mr M brought to it I've considered the information reasonably available to it at the time, along with the relevant protections available to Mr M. I consider s.75 to be particularly relevant here.

S.75 provides that in certain circumstances Mr M can hold HFL liable for a breach of contract or misrepresentation by S. There are certain criteria which have to be met in order for s.75 to apply, and I am satisfied these are met here.

I note that Mr M does not appear to have made a claim relating to a misrepresentation. Therefore, I've considered whether S has breached its contract with him.

Implied terms

The CRA implies terms into consumer contracts that services will be provided with reasonable care and skill.

This is generally determined with reference to what is considered good practice in the relevant industry and what a reasonably competent provider of that service would provide.

What is difficult here is that Mr M bought a complex cosmetic/medical product which requires expert knowledge to properly understand. Neither me nor HFL are experts in this area. And without expert evidence that explains what has gone wrong and why or some other similarly persuasive evidence, it is hard to fairly conclude that the treatment wasn't carried out properly.

It is also important to note that even if I agreed Mr M had not achieved certain results he was expecting, a finding in respect of reasonable care and skill is not dependent on the results achieved but the manner in which the treatment was carried out. And while particular results may be indicative of how a treatment was carried out – it is common, particularly in the medical/cosmetic field for outcomes to vary for a number of reasons other than a lack of care or skill by the practitioner.

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 the supplier offered wasn't carried out with reasonable skill and care, and I've not seen evidence the goods element – i.e, the aligners, were not of satisfactory quality.

Express terms

In order to determine if there has been a likely breach of any express term of the contract I've considered S's documentation from around the time Mr M bought the treatment and which has been made available to me by HFL, alongside other information such as Mr M's testimony.

I don't think its disputed that Mr M entered into a contract for aligner treatment with S. I don't have a copy of Mr M's specific treatment plan or the signed supply agreement. However, from the information I do have (including Mr M's testimony) I am satisfied that on balance the core contract was for a set of aligners used for straightening teeth over a short-term treatment duration of several months. There is no dispute that Mr M received those aligners.

Mr M said he couldn't finish his treatment because S ceased trading. I don't know exactly how many aligners Mr M was supposed to receive because there is no evidence available that shows what his treatment plan looked like. However, I understand S would typically supply the full course of aligners in one single package at the beginning and that treatment seems to have been largely self-directed. From the information Mr M has sent us, including an email from S stating his treatment lasted five months, it appears his treatment plan was due to finish around late September/early October 2023. However, I can see that Mr M was in contact with S in late September 2023 about aligners which were not fitting and on 29 September 2023 it looks like S asked Mr M to send it photographs of his teeth. Mr M said he sent these photographs over S's app and then didn't hear anything from S.

Unfortunately, the information stored on S's app disappeared when it ceased trading so I can't see if Mr M did send the photographs or not. Seeing as Mr M had previously contacted S by email when his aligners didn't fit, I'd perhaps expect to have seen further email contact from him if he hadn't heard from S after he said he submitted his photographs. I note it also took Mr M until March 2024 to contact HFL. If he'd been waiting to hear back from S before it ceased trading it seems reasonable to think he'd have made contact with HFL sooner upon learning of S's demise – which he said was on 21 December 2023. Mr M told us he realised

at that point that he'd be unable to order retainers which suggests to me that he may have considered the core treatment complete. He also said in an email to us on 19 August 2024 that his treatment was "going as planned" up to the point that S ceased trading. It's questionable why he'd have said this if in fact he'd been waiting since October 2023 for it to act on the photographs he said he sent.

From the available evidence it's not clear enough to me that Mr M submitted the photographs that S asked him to send, or if he did, that S failed to take any action. On balance therefore I can't reasonably conclude that the core contract hadn't been performed because it appears S had supplied all of the aligners to Mr M, his plan was due to finish before S ceased trading and it's not clear enough that S hadn't done something it was supposed to do in respect of Mr M's notification that his aligners were not fitting him.

I don't find that HFL unreasonably declined to meet Mr M's claim for breach of contract on the basis his treatment had not finished.

I have taken from Mr M's complaint that he's also dissatisfied with the outcome he achieved from the treatment. I don't know what Mr M's projected outcome was – that information seems to have been stored on the app also so it's not available. Neither is it particularly clear what results Mr M achieved.

While this isn't ideal, I don't think Mr M's claim was disadvantaged by it. I say this because, on balance, I'm not persuaded the results of the treatment were contractually guaranteed to match a certain projection in any event.

I consider it likely Mr M signed an agreement with S which included a consent form – as is usually the case with such treatments. We don't have the one Mr M signed but HFL has provided the standard consent/terms and conditions form the supplier used and that states the various and numerous risks, uncertainties and variables with such a dental treatment. It seems likely to be the same form Mr M would have signed. The form contained a statement that S could not guarantee specific results or outcomes.

This doesn't appear to me to be a particularly unusual or onerous term in the provision of such a treatment. It would not be reasonable to expect (taking account of all the variables outlined in the consent form – including how often aligners are worn and underlying health issues) that particular results would definitely be achieved in a medical/cosmetic treatment of this kind.

So, if Mr M's results were not in line with any projection that was made, this was not a breach of contract given what was likely agreed between Mr M and S that the outcome was uncertain and not guaranteed.

In summary, I don't consider that HFL had persuasive information to show the supplier had breached its contract in respect of the results Mr M achieved. So, I don't think it would be expected to agree to a refund on that basis either.

The guarantee

S's website said that if a customer hadn't achieved the results they wanted, and providing they had met certain conditions, they might be eligible for additional 'touch up' aligners under the terms of the guarantee either while they were using their aligners or after they finished with them.

From what I can see on S's website, the availability of a 'touch up' under the guarantee isn't the same as saying that particular results will be achieved. It seems like it's intended for

refinement if possible. What the guarantee offered was the possibility of having further aligners provided that during treatment Mr M registered his aligners; wore them as prescribed; completed check-ins; stayed up to date on payments. And that, after treatment, he bought retainers every six months and wore them as prescribed. A dentist also had to approve the treatment. My understanding is that a dentist would only do so if they assessed that further progress to straighten the teeth would be possible.

HFL said it received information from S showing Mr M did not qualify for the guarantee because he hadn't completed the necessary check-ins or ordered retainers. It hasn't provided the information from S so I've no way of knowing whether it's accurate or not. Equally however, I've very little from Mr M which shows on balance that he did complete check-ins when he was supposed to.

I recognise that Mr M said a lot of the information relating to check-ins was on S's app and that he is disadvantaged because it is no longer available. This is unfortunate but I have to decide the case on the available evidence or where there is a lack of evidence what I think happened on the balance of probabilities. From what I've seen, there just isn't enough to make me think on the balance of probabilities that Mr M completed check-ins as he said he did as he's not provided persuasive evidence in support of this. And while S had asked him to send photographs of his teeth, perhaps with a view to potentially providing touch-up aligners, because it's so unclear what happened after this and up to the point S ceased trading, I don't think it demonstrates by itself in this particular case that Mr M was meeting the terms of the guarantee at this point.

S's website said it was possible to re-qualify for the guarantee during treatment if check-ins had been missed by checking in again and continuing to wear aligners as prescribed. However Mr M's treatment had most likely finished before S ceased trading, so my reading of S's literature on the guarantee was that he could no longer requalify for it after this. He also needed to have ordered retainers to qualify for the guarantee after treatment had finished which it doesn't appear he had done.

I can't therefore conclude that Mr M has lost out on the potential benefits of the guarantee as a result of S ceasing to trade because it's not clear enough he was eligible for it in this case.

Overall, based on the available evidence I'm not persuaded HFL has treated Mr M unfairly by declining to meet a claim under s.75.

My final decision

For the reasons I've explained, I do not uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 May 2025.

Michael Ball
Ombudsman