

The complaint

Miss S 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 March 2023 Miss S entered into a two-year fixed sum loan agreement with HFL to fund the provision of dental aligners from a third-party supplier (“the supplier”). The cash price was around £1,600 and Miss S was due to pay back the agreement with monthly payments of around £70. Miss S said the treatment was due to last eight months.

The supplier went out of business in December 2023. Miss S contacted HFL to say she was still within treatment and requested a refund.

HFL responded to the claim and said it acknowledged the supplier provided a guarantee, but it didn’t think Miss S met all the conditions for it so declined the claim when considering its liabilities under Section 75 of the Consumer Credit Act 1974 (“s.75”). It said Miss S hadn’t completed virtual check ins or ordered retainers as was required for the guarantee.

Miss S responded to HFL. She said the app wasn’t allowing her to carry out check ins towards the end of her treatment. She said she couldn’t order retainers via the app which she communicated to the supplier. She said towards the end of her dealings with the supplier she couldn’t speak to it. She said she had to pay for retainers elsewhere and had been quoted around £3,000 for further treatment. She said her treatment was due to finish on 25 December 2023, so it wasn’t completed when it stopped trading. She said the loss of the guarantee wasn’t the only issue. I understand Miss S went on to claim back payments she’d made to HFL and so it started to contact her about missed payments and arrears.

Miss S decided to refer her complaint about the claim to the Financial Ombudsman. She said she had 16 sets of aligners and was due to finish treatment at the beginning of December 2023, but her teeth weren’t moving as expected so she was told to wear previous aligners which caused a delay to the treatment. She said her treatment wasn’t overseen and she needed further treatment. She said the impact on her credit file was causing issues and she’d been going through a lot personally. She later said she didn’t order retainers because of issues completing a webform. She said the treatment was unsafe and so it would be unfair to have to pay for it.

Our investigator looked into things and didn’t think HFL’s answer was unfair.

Miss S didn’t agree. She wanted to reiterate her treatment wasn’t finished. She said she was on aligner number 11 when the supplier went out of business. She said aligners were worn for approximately 2 weeks if they fit but this time can be extended. She thought HFL should find an alternative for her to complete treatment. She said she saw another orthodontist within a few days of the supplier going out of business, and it told her to stop using the aligners. She later said she found further information that indicated she should have finished treatment in January 2024.

Miss S also said she had unopened aligners (5 out of 16). We've asked for photo evidence of these, but I can't see we've received them.

I 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 Miss S 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.

I also want to say I'm very sorry to hear that Miss S is unhappy with the treatment. I can't imagine how she must feel, but I thank her for taking the time to bring the complaint.

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 S's request for getting money back. But it's important to note HFL isn't the supplier.

S.75 is a statutory protection that enables Miss S 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.

Miss S has said she wasn't able to complete her treatment. I've gone on to consider if there is persuasive evidence of a breach of contract by the supplier that means HFL should have offered to take any action. I've focussed on Miss S's breach of contract claim. Even if the supplier 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 S the treatment.

Implied terms

In cases such as this it is often complex to assess the quality of the service Miss S 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.

Miss S has not provided supporting evidence such as an independent, expert opinion that sets out the treatment she paid for has not been carried out 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'm not a dental expert, and neither is HFL. Without sufficient supporting evidence, I don't think HFL was unfair at the time to not uphold the claim on the basis of a breach of an implied term of the contract because I don't think it was supplied enough evidence that the service the supplier offered wasn't carried out with reasonable skill and care.

Express terms & guarantee

To decide whether there's likely been a breach of an express term of the contract I've looked

at the supplier's documentation from around the time Miss S bought the treatment which has been made available by HFL. And I've thought about Miss S's testimony and her supporting evidence.

It's not in dispute Miss S entered into a contract for aligner treatment and that she received them. There's a lack of signed documentation, but I think the core contract was for a set of aligners Miss S was due to use for a few months.

While I appreciate Miss S is put in a difficult position because some of the evidence isn't available, I can only consider how HFL acted based on what was able to be supplied. In the absence of a specific signed contract, I've looked at the supplier's website from around the time Miss S entered into the contract. This says most treatment lasts between 4 to 6 months. Although it can be longer for night time aligners. It says if the customer hasn't achieved the results they want, and providing they've met certain conditions, the customer might be eligible for additional 'touch up' aligners.

The information is slightly conflicting. Miss S said her treatment was for eight months and she indicated she was due to finish in December 2023 or January 2024. She said the fast-track aligners she bought were to be worn for two weeks at a time. HFL had information that the treatment plan should have ended prior to the supplier going out of business. So with 16 sets of aligners and the dates given for estimated completion I think it would have had valid concerns the plan wasn't being followed as prescribed if it still had some way to go. I accept it's possible Miss S was wearing aligners for longer than prescribed because her teeth may have taken longer to move. Unfortunately, there's not much supporting evidence. But she's also sent us a screenshot from 5 September 2023 to say she needed to move to aligner number 10. So it's not clear how she could've only been on aligner 11 around the time the supplier went out of business. The timeline doesn't quite match up to what I think HFL would have likely expected. I think this makes it difficult to reach firm conclusions.

Overall, I don't think HFL was unfair to not consider Miss S was reasonably within the core treatment period at the time the supplier went out of business, or that she should have had several aligners left to use based on the evidence it was presented around December 2023. And it's important to note I need to consider how it handled the claim based on what was presented to it at the time. And that was very limited.

However, it's clear Miss S was not happy with the results of the treatment around the time the supplier went out of business. She went to other providers for quotes. So while I appreciate the loss of the guarantee wasn't the main thrust of her complaint, I've considered if she'd have been due any further support from the supplier had it not gone out of business.

On the supplier's website from the time, the frequently asked questions ("FAQ") page has a section for further treatment under the guarantee. This suggests customers can request further aligner 'touch ups' after the core treatment at no cost on an ongoing once a year basis. It also says if the patient feels like something's not right or they weren't getting the results they expected the supplier could evaluate the plan to determine if an update or additional aligners were required.

From what I can see the availability of a 'touch up' isn't the same as saying that particular results will be achieved. It seems like it's intended for refinement if possible. The guarantee provided the possibility of having further aligners, provided that Miss S registered the aligners; wore them as prescribed; completed virtual check ins; and stayed up to date on payments. It also said after the core treatment Miss S was required to buy retainers every 6 months and wear them as prescribed. Moreover, a dentist was required to approve the further treatment. My understanding is that a dentist would only do so if they assessed that further progress to straighten the teeth would be possible.

On the one hand, HFL said Miss S didn't buy the retainers and she didn't complete the check ins. It also reasonably thought she should have completed treatment by the time she put in the claim. On the other hand, Miss S said she undertook the treatment slower than expected.

Putting the lack of evidence to one side for the moment, I note the supplier's website from around the time had a section titled: "I missed a check-in (or forgot to register my aligners or order retainers), and I'm not sure my [guarantee] is still in effect. Is there anything I can do to become eligible again?" This says:

If you are currently in treatment, you will become eligible again as long as you:

- 1. Check in your aligners (check your email or the app to do this)*
- 2. Complete your future Smile Check-ins (via email or our app)*
- 3. Are current on your payments*
- 4. Purchase retainers after treatment, replace them every 6 months, and wear them as prescribed*

If you just finished treatment, you can become eligible again as long as you:

- 1. Are current on your repayments*
- 2. Replace retainers every 6 months and wear them as prescribed*

If you're unsure whether you're eligible, contact us to find out.

I think when the supplier went out of business, Miss S was up to date on payments. Based on the evidence presented it's not totally clear if she was within treatment or not when the supplier went out of business. While it's not definitive, and the FAQs could have been clearer in setting out the exact steps and timescales/deadlines, I think there's at least a good possibility Miss S would have been able to requalify for the guarantee had the supplier not gone out of business. Bearing in mind I need to resolve the complaint quickly and informally by deciding what I think is fair and reasonable, on balance, I think HFL should treat Miss S as if she'd met or could requalify the conditions for the guarantee.

Miss S thinks she should be provided with a full refund of the treatment costs. There is a potential breach identifiable because she can no longer use the guarantee. However, given the stage of treatment she was at (or should have been at), the guarantee would never have given her the option of a refund of the core treatment cost. From what I've seen, a full refund was only available for the first 30 days after Miss S began her treatment in March 2023 and only if she'd not opened or used the aligners. I don't think it would be fair or reasonable for me to tell HFL that it should now provide Miss S with a full refund to recompense her for the potential breach that has happened. Had she followed the initial plan, the supplier would likely have been around to help her if she had issues. But I'm aware that some customers took longer to complete the treatment than was initially predicted. Overall, I don't think it was unreasonable for HFL to not offer to refund the value for what was provided under the core contract, but I've thought about what could be done to resolve the complaint.

Miss S may have been able to receive 'touch up' treatment during or after the core treatment under the guarantee. But there are many ways in which the guarantee could have ceased to be of use to Miss S. Firstly, she may not have done what she needed to in terms of continuing to buy retainers. The retainers were not supplied under the original contract – Miss S needed to buy them separately. The supplier may not have approved 'touch-up' aligners if its dentists had assessed that they would not be beneficial. The guarantee only gave the possibility of annual touch-up aligners – not the certainty that they would actually be provided. Even if I accept there's a potential loss, it's not straight-forward to establish the

value of the perceived loss.

HFL shared information from the supplier saying the financial value of a 'touch-up' treatment is £220. It's difficult to know for certain if that's accurate. But this represents a refund of over 10% of the cost of the treatment. Taking into account the lack of evidence about the timeline for the core treatment, and that she may have been eligible for 'touch up' treatment, I think HFL should offer this price reduction to remedy any potential loss. It seems like a fair compromise given I think the total amount paid was substantially for the core treatment.

Moreover, even if this was a situation where Miss S simply decided to stop wearing her aligners, if she does have evidence of unopened aligners, I note the FAQs may also have allowed for her to return them for a prorated refund. So I think this should be offered as well. She'd need to send evidence of that in response to this provisional decision.

Finally, I note Miss S has claimed back some of the payments, which complicates matters somewhat. It's had a negative impact on her credit file because those payments are now showing as in arrears. The loan was still required to be repaid so I don't think HFL acted unfairly here. But I can also understand Miss S was concerned and didn't know what to do so went to her bank for help. To resolve things, I'm going to propose that the adverse information is removed if Miss S is able to clear the arrears.

Therefore, to put things right, I'm going to propose:

If Miss S has unopened aligners:

- HFL should offer her a prorated refund once those unopened aligners are returned. This refund can be taken off the arrears balance.*
- HFL should remove adverse information from Miss S's credit file once she clears the arrears.*

If Miss S doesn't have unopened aligners:

- HFL should refund Miss S £220. This refund can be taken off the arrears balance.*
- HFL should remove adverse information from Miss S's credit file once she clears the arrears.*

Miss S doesn't have to accept a decision. She's also free to pursue the complaint by more formal means, such as through the courts.

HFL said it was happy to provide a pro-rata refund if Miss S sends back the unused and unopened aligners.

I can't see we received a response from Miss S.

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.

Seeing as though neither party has submitted anything materially new for me to consider I see no reason to depart from the conclusions I reached in my provisional decision.

Putting things right

To put things right, if Miss S has unopened aligners:

- HFL should offer her a prorated refund once those unopened aligners are returned. This refund can be taken off the arrears balance.
- HFL should remove adverse information from Miss S's credit file once she clears the arrears.

If Miss S doesn't have unopened aligners:

- HFL should refund Miss S £220. This refund can be taken off the arrears balance.
- HFL should remove adverse information from Miss S's credit file once she clears the arrears.

Miss S should let us know what option she is seeking if she wishes to accept this decision.

My final decision

My final decision is that I uphold this complaint and direct Healthcare Finance Limited to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 30 May 2025.

Simon Wingfield

Ombudsman