

The complaint

Mr F has complained about the way Healthcare Finance Limited (“HFL”) dealt with a claim for money back in relation to dental treatment which he paid for with credit it provided.

What happened

In January 2023 Mr F 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 £1,640 and Mr F was due to pay back the agreement with monthly payments of around £70. I understand the treatment started in early 2023 and was due to last for eight months. Mr F encountered issues and I have seen that the supplier provided further aligners in September 2023. Mr F said the treatment was supposed to last a further 16 weeks.

The supplier went out of business in December 2023. Mr F said he was still within treatment at that time and was having issues with the aligners. Mr F put in a claim and complaint with HFL.

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

Mr F decided to refer his complaint about the claim to the Financial Ombudsman. Mr F said he was within treatment when the supplier went out of business and that he was proceeding with the treatment more slowly than may have been expected due to the fitting issues he had experienced. Mr F said he wasn’t happy with the results.

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

Mr F didn’t agree. Mr F reminded us he could no longer use the guarantee because the supplier went out of business. Mr F told us he had completed all of the check-ins and that we had relied on unsubstantiated claims made by HFL in reaching our assessment.

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

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 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 Mr F 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 Mr F is unhappy with the treatment. I can't imagine how he must feel, but I thank him 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 Mr F'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 Mr F 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 him 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.

Mr F has said he wasn't able to complete his 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 Mr F'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 Mr F the treatment.

Implied terms

In cases such as this it is often complex to assess the quality of the service Mr F 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. HFL was required to consider whether treatment Mr F paid for had not been carried out with reasonable care and skill as implied by the Consumer Rights Act 2015 ('CRA'). It is the manner in which the service was provided, rather than the results of the treatment that is the crucial issue in considering whether there's been a breach of an implied term in relation to the service.

Mr F told us the aligners were of poor quality, did not fit and broke a tooth which he had to get rebuilt.

So, I have considered whether that was sufficient to be treated as a breach of contract. I understand details of the treatment were kept on the online application which stopped working when the supplier went out of business. So, we do not have access to whatever may have been recorded about Mr F and his experience with the aligners by the supplier. So, I can't know what was discussed or advised. And Mr F has not provided supporting evidence such as an independent, expert opinion that sets out the treatment he paid for has not been carried out with reasonable care and skill as implied by the CRA.

I'm mainly considering what HFL did based on the evidence available or presented to it. In this case, it's not clear HFL would have been able to safely determine there was a breach of contract in relation to implied terms.

I appreciate Mr F has invested time and energy into his claim and complaint. Mr F has provided photos and digital images of interactions with the supplier that he thinks should

be enough to show the treatment hadn't worked as expected. But it's important to note I'm not a dental expert, and neither is HFL. At the time HFL considered his claim, 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. I say that 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

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 Mr F bought the treatment which has been made available by HFL. And I've thought about Mr F's testimony and his supporting evidence.

It's not in dispute Mr F entered into a contract for aligner treatment and that he received and used those aligners. There's a lack of signed documentation, but I think the core contract was for a set of aligners Mr F was due to use for several months. The supplier's website from the time said most treatment lasts between 4 to 6 months. Mr F said that in August 2023 he broke a front tooth and in September 2023 the supplier gave him some 'touch up' aligners which were supposed to cover 16 weeks or so.

Mr F says he was still in treatment when the supplier went out of business. It's possible that Mr F has told us he was still in treatment because he deemed the treatment had not yielded satisfactory results at the time the supplier went out of business. But it seems from the above that the aligners from the core treatment had been provided and used. Mr F told us he received touch up aligners after his issues in August. And the above dates provided by Mr F suggest that those aligners would have been used at or about the time the supplier stopped trading. I have also noted that Mr F told us he had no unused aligners in his possession. But I'm also conscious some of the information may not be available, if it was stored in the supplier's online application.

I think it likely Mr F signed an agreement with the supplier 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 a dental treatment. And it indicates Mr F should have understood the supplier 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 Mr F didn't quite get the results he wanted after the core treatment I don't think that in itself would be considered a breach of contract.

While I appreciate Mr F 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 Mr F entered into the contract. This says if the customer hasn't achieved the results they want, and providing they've met certain conditions, they might be eligible for additional 'touch up' aligners. Mr F said the supplier gave him a set of 'touch up' aligners.

I don't think the fact the supplier gave Mr F further 'touch up' aligners in itself shows there was a breach of any express terms of the contract. Further aligners seem to be part of the supplier's aftercare offering for further refinement (subject to dentist approval). It's not clear whether the supplier gave Mr F further aligners because it thought the results could be improved upon or whether it was for some sort of failing on its side. Similar to what I've set out above, we don't have sufficient evidence to conclude.

I'm sympathetic Mr F wasn't happy with the results, but I don't think HFL had persuasive enough evidence to show the supplier breached the contract in respect of the results Mr F achieved.

Guarantee

While I think Mr F received the goods and service under the core contract, I'm conscious there was an aftercare offering. And I've noted that Mr F told us that neither the original aligners nor the 'touch up' aligners he was given worked. So, it's not clear that Mr F would have sought further treatment from the supplier. But I've thought about the guarantee and what it could have offered.

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. Mr F said he was given the set of 'touch up' aligners, but they didn't work.

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 Mr F 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, Mr F 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 Mr F didn't buy the retainers and he didn't complete the check ins. On the other hand, Mr F said he did complete the check ins and his teeth were not at the stage to order retainers. He also said some of the evidence was no longer available.

It's possible Mr F could have taken steps to become eligible for the guarantee again, but I think he'd have at least been required to buy retainers when the treatment finished. The retainers weren't supplied under the contract funded by HFL. And it's not clear on what basis the supplier agreed 'touch up' treatment for Mr F if he wasn't eligible. But even putting all that to one side, it seems as though Mr F said the 'touch up' treatment he did have didn't work.

As I've said above, I need to bear in mind what HFL can fairly be held responsible for. There's not clearly a term of the contract that's been breached that HFL is responsible for.

Moreover, Mr F has requested a refund or to stop making payments. But even if I'd identified a breach of contract in relation to the guarantee, these weren't remedies the contract offered in this sort of scenario. I'm conscious Mr F has received the core goods and services through the initial treatment, and I think the total amount of credit was substantially for that treatment, so I don't think HFL is acting unfairly by asking him to pay back the credit – based on the lack of evidence to show there's been a breach of contract. HFL hasn't made an offer to Mr F for a potential loss through him not being able to utilise the guarantee. Given the particular circumstances of the complaint, I don't think that's unfair.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or

reject my decision before 20 June 2025.

Douglas Sayers
Ombudsman