DRN-5587330

The complaint

Mr H 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 January 2023 Mr H 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 H was due to pay back the agreement with monthly payments of around £70. I understand the treatment started in March 2023 and was due to last four to eight months.

The supplier went out of business in December 2023. Mr H said he was still within treatment at that time and was having issues with the aligners. He said he'd raised issues about his aligners with the supplier at one of their local branches. Mr H 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 H 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 H hadn't registered his aligners, completed virtual check ins, or ordered retainers as was required for the guarantee.

Mr H decided to refer his complaint about the claim to the Financial Ombudsman. Mr H said he was within treatment when the supplier went out of business, and that he was proceeding with the treatment slowly because that was the advice the supplier had provided at the local store. Mr H said he wasn't happy with the results.

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

Mr H didn't agree. Mr H reminded us he could no longer use the guarantee because the supplier went out of business. He reiterated he undertook the plan slower than expected and he shouldn't be penalised for doing so. Mr H said his treatment was incomplete and he has supplied evidence indicating aligner 7 and onwards were unopened and unused.

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

I issued my provisional decision on 12 May 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 Mr H'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 Mr H 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 H 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 H'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 H 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 H 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 H'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 H the treatment.

Implied terms

In cases such as this it is often complex to assess the quality of the service Mr H 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 H 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 H told us the aligners were of poor quality and broke easily. Mr H has supplied photographs of some of the aligners which show heavy wear and cracks. Mr H told us the earlier aligners seemed to work. Mr H said he ran into difficulties from the third aligner onwards.

So, I have considered whether that was sufficient to be treated as a breach of contract. In thinking about this I also have to bear in mind that Mr H told us that he wore the aligners for much longer than the supplier would have expected him to do under normal circumstances. Mr H told us he did that following direction from one of the supplier's local stores.

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 H and his experience with the aligners by the supplier, either directly or through the local store Mr H told us about. I can't know what was discussed or advised.

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.

It's important to note I'm not a dental expert, and neither is HFL. I appreciate Mr H has invested time and energy into his claim and complaint. But at the time HFL considered his claim, without sufficient supporting evidence, I don't think it was unfair to not uphold the claim on the basis of a breach of an implied term of the contract because it didn't have enough evidence to determine the service the supplier offered wasn't carried out with reasonable skill and care, or that the aligners were not of satisfactory quality.

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

It's not in dispute Mr H entered into a contract for aligner treatment and that he received and used some of those aligners. There's a lack of signed documentation, but I think the core contract was for a set of aligners Mr H was due to use for several months.

While I appreciate Mr H 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 H entered into the contract.

On the supplier's website from the time, the frequently asked questions ("FAQ") page has a section for further treatment under the guarantee. There are also sections on the guarantee that was offered by the supplier. It was said that 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. And it also outlines how the consumer could get a full or pro rata rebate if they were dissatisfied with their treatment.

To be eligible for the benefits of the supplier's guarantee there were some requirements that needed to be met. HFL said Mr H didn't meet those requirements at the point the business ceased to trade. HFL said that Mr H did not register his aligners, buy the retainers and he didn't complete the check ins.

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.

It is possible that HFL thought Mr H should have completed treatment by the time he put in the claim. Mr H said he undertook the treatment slower than expected because of advice from the local store and problems with the aligners cracking. And Mr H has shown us evidence that indicates he didn't wear aligner number 7 or any of the subsequent sets. Mr H said he was still within treatment when the supplier went out of business.

I think when the supplier went out of business, Mr H was up to date on payments. He's shown us what looks like 9 unopened aligners, so he could be said to still be within treatment. 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 Mr H 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 Mr H as if he'd met the conditions for the guarantee.

Mr H thinks she should be provided with a full refund of the treatment costs. There is a potential breach identifiable because he can no longer use the guarantee. However, given the stage of treatment he was at, the guarantee would never have given him 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 Mr H began treatment in March 2023 and only if he'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 Mr H with a full refund to recompense him for the potential breach that has happened.

Mr H himself said that it was only by the third aligner that he ran into difficulties with aligners. I'm aware that some customers took longer to complete the treatment than was initially predicted. I acknowledge that there is a lack of evidence through no fault of either party. And I've seen evidence of a number of unopened and unused aligners, which supports what Mr H told us, that he was still in treatment when the supplier went out of business. Mr H's testimony seems plausible and I've seen no evidence that undermines it.

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. Having done so, I do think it was unreasonable for HFL not to offer Mr H a pro rata rebate for the unused and unopened aligners he still had.

My provisional decision

My provisional decision is that I'm intending to uphold this complaint and direct Healthcare Finance Limited to pay Mr H a pro rata rebate for the unused and unopened aligners he will have to return to HFL."

I asked the parties to the complaint to let me have any further representations that they wished me to consider by 26 May 2025. HFL has accepted the provisional findings. At the time of writing, Mr H 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, and as HFL has accepted it should do something to put things right, I have no reason to depart from those findings. And as I've already set out my full reasons for upholding Mr H'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. For clarity I'm intending to uphold this complaint and direct Healthcare Finance Limited to pay Mr H a pro rata rebate for the unused and unopened aligners he will have to return to HFL.

My final decision

For the reasons set out, I'm upholding Mr H's complaint about Healthcare Finance Limited. I require Healthcare Finance Limited to put things right by calculating and paying the fair compensation as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 June 2025.

Douglas Sayers
Ombudsman