

The complaint

Mr P complains that Healthcare Finance Limited (“HFL”) failed to pay out on a claim he made to it about the failure of a supplier to deliver the dental treatment which he paid for with credit it provided.

What happened

In September 2023 Mr P entered into a 25-month fixed sum loan agreement with HFL to fund the provision of dental aligners from a third-party supplier to straighten his teeth. The treatment was expected to take four months. The supplier went into administration in early December 2023.

Mr P says that he wore all the core aligners provided, but felt he hadn't, “...*received the full treatment as outlined in the agreement...*” So in February 2024, he contacted HFL to let it know that he wasn't prepared to continue making loan repayments for, “...*a service that has not been delivered as promised.*” It appears that Mr P has made no repayments since that time and is facing significant arrears on the account. HFL considered his complaint as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 (‘Section 75’).

Later in February 2024 HFL responded to Mr P to let him know that it would provide a refund – pro-rated to the number of the core aligners which were unused, and which he would need to return to it. At that point, HFL also gave Mr P information about other suppliers from whom he could purchase retainers in order to preserve the results of the treatment he'd paid for. Unhappy with the offer, Mr P ultimately pursued his complaint with us.

Our investigator looked into his concerns and considered how HFL had acted in light of its responsibilities under Section 75. She thought that HFL ought to offer Mr P a partial refund of £220 related to the supplier's lifetime guarantee scheme, but that it was not unreasonable of it to decline to refund the full cost of treatment.

HFL accepted that, but Mr P didn't, introducing new points about the quality of the service provided and of the aligners themselves, and asked an Ombudsman to look into things.

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.

Section 75 enables Mr P to make a claim against HFL for breach of contract by the supplier of the goods/service in question, or a misrepresentation. Certain criteria apply to Section 75 in respect of things like the cost of the goods or services and the parties to the agreement. I am satisfied there are no concerns in respect of these criteria, and indeed HFL has accepted Mr P's claim in this regard. So I have moved on to consider if there is persuasive evidence of a breach of contract or misrepresentation by the supplier that means HFL should have offered more than it has when handling Mr P's claim.

But I want to explain from the outset that I can only consider Mr P's complaint on that narrow basis – i.e. whether it was fair and reasonable for HFL to respond to his claim by offering what it did, *based on the evidence he provided to it when he raised his claim in 2024*. Whilst it wouldn't make a difference anyway, technically I can't consider Mr P's more recent concerns that he's raised about the quality of the aligners – because he didn't raise that with HFL.

Additionally, I cannot hold it responsible for Mr P's experience with the supplier or his feelings about the treatment outcome. HFL simply has a legal duty to consider whether he has a valid claim under Section 75 on the basis he presented to it and to respond fairly to that claim if so.

Mr P's primary concerns are that, because he couldn't access retainers and touch-up aligners, his teeth have reverted and any progress he may have made has been lost. And as the supplier is no longer in business, he cannot receive any further treatment via its guarantee scheme. As a result, he believes HFL ought to have offered him a full refund in response to his claim, and that is the complaint I have to consider.

In cases such as this it is often complex to assess the quality of the service Mr P paid for. Results from such treatments are, of course, subject to many variables and there are generally disclaimers by the providers of such services, and accepted risks that results simply cannot be guaranteed. I, of course, am not a dental expert. And Mr P has not provided an independent, expert opinion that sets out that the treatment he paid for has not been done with reasonable 'care and skill', as implied by the Consumer Rights Act 2015 ('CRA'). It is that, rather than the *results* of the treatment, that is the crucial issue for me in considering whether it was fair and reasonable for HFL to respond to his claim as it did. As noted previously, he also didn't raise any concerns about the quality of the service he paid for when he first made his claim to HFL.

In any event, I need to consider what I think Mr P's contract with the supplier agreed to provide in terms of treatment. In that way, I can determine whether there has been a breach of an explicit term of it. I don't have a contract signed by Mr P as I understand they were housed in an online application which no longer holds that content since the supplier went into administration. However, HFL has been able to provide a sample document called a "*Consent and History Form*". This document is not dated, but is noted to be 'v3.7'. HFL says it would have been in use at the time that Mr P commenced his treatment in 2023. Where there are evidential uncertainties, as here, it is my role to determine what I think is more likely than not to have happened, or been the case.

In the absence of anything else, I think it is more likely than not that Mr P would have been provided with a document sufficiently similar in layout and content to the sample I have for me to be able to rely on it. So I have considered the content of it carefully.

There is a key final section of the document before the customer was required to sign that sets out:

"I understand that [the supplier] cannot guarantee any specific results or outcomes."

So I'm satisfied the supplier never said that it could guarantee Mr P's satisfaction with the results of the treatment, the core aspect of which was provided to him through the initial set of aligners. So I cannot identify a breach of contract on that basis. But this is only the first question I have had to consider when reviewing this complaint.

As set out above, the CRA says that there are also implied terms of contracts – not everything has to be fully spelled out. In this scenario, the implied terms of this contract are

that the supplier would provide the service Mr P paid for with reasonable care and skill. I've already set out why I don't have the evidence to reach a conclusion that it didn't.

However, our investigator also addressed the important issue of whether Mr P was eligible to be covered by the supplier's lifetime guarantee scheme under the terms of the contract. She concluded that he likely would. I think that is fair, despite the fact that he never bought retainers from the supplier. Ordinarily, those would need to be paid for, as an additional cost to the treatment, before a customer could benefit from the lifetime guarantee scheme. But, as the supplier went into administration only two months after Mr P likely started what was expected to be a four-month treatment phase, he did not have the opportunity to buy those retainers.

Crucially, what that lifetime guarantee offered was the *possibility* of having aligner touch-ups every year, provided that Mr P carried on buying retainers from the supplier, and that a dentist approved the provision of the touch-up aligners. My understanding is that a dentist would only do so if s/he assessed that further progress to straighten the teeth would be possible through a touch-up aligner.

As Mr P was not able to benefit from that guarantee, the investigator identified that he had potentially lost out as the supplier was no longer trading, and HFL should therefore reimburse him for the cost of a set of aligners, estimated at £220.

It's important to recognise that, given the stage of treatment Mr P had reached, the lifetime guarantee would never have given him the option of a full refund of the treatment costs in any event. It's clear from the information I have that a full refund was only available for the first 30 days after Mr P began his treatment in 2023, and only if Mr P had not opened or used any of the aligners. There was no term of the contract, explicit or implied, which set out that the treatment was ongoing until Mr P was satisfied with the results, or that he would have been entitled to any form of refund if he remained unsatisfied with them.

In response to the investigator's view, Mr P said that his complaint is also about, "*...the quality and competence of the dental aligners provided based on the unsatisfactory results and complications...*" He says that these factors, "*...together raise legitimate concerns about whether the treatment was provided to a reasonable professional standard.*" However, he had not raised those concerns before, and so I cannot actually consider them as part of this complaint about HFL's response to the claim he made. Even if he had raised that with HFL, I would need an independent, expert opinion to be able to conclude that the service he paid for was not delivered with reasonable care and skill.

Whilst Mr P has not addressed this point specifically, I have also thought in some detail about the monetary amount the investigator thought HFL ought to pay Mr P. While I can't be certain, I am satisfied that the £220 is a fair compromise price reduction offer, and have seen evidence provided by the supplier to HFL to confirm that it was roughly the cost of a set of touch-up aligners. So essentially that refund would compensate him for the loss of one year's 'use' of the lifetime guarantee. Hypothetically, it is possible that Mr P could have requested and received a set of aligners every year for the rest of his life. Which we all hope will be many years. But that hypothetical possibility doesn't lead me to conclude that it would be fair for me to direct HFL to refund him any more than that.

There are many ways in which the lifetime guarantee could have ceased to be of use to Mr P, even if he had been able to initially rely on it. Firstly, he may not have done what he needed to in terms of continuing to buy retainers from the supplier. Perhaps more importantly, and as I've already discussed, the supplier may not have approved providing him with 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.

So taking that into account, and noting the informal remit of this service to resolve disputes, I don't find that it was unfair or unreasonable of HFL to refuse to provide Mr P with a full refund, but to agree instead to compensate him for the loss of one year's use of the guarantee. Identifying exactly how many annual touch-up aligners Mr P *may* have asked for; *may* have qualified for; and *may* have been approved for, is pretty much impossible.

Finally, I would highlight that Mr P has not had to pay for a set of retainers, estimated to be £160, in order to have the benefit of the lifetime guarantee on this occasion. Technically, he was required to do so, but as I've already said, it is reasonable that he couldn't. However, the fact still remains that he hasn't been put to that expense. I also note that HFL provided him with details of alternative retainer suppliers in February 2024. So it tried to facilitate him finding retainers to preserve the results he had achieved. In saying that, I'm relying on the act that he has repeatedly told us that his teeth have 'reverted'. Not that the core aligners had no impact on the straightness of his teeth.

Although I am sorry to hear of Mr P's disappointment with this situation, with Section 75 in mind, I don't think it would be fair or reasonable to conclude that HFL should refund him the full costs of this treatment. But it should compensate him for the loss of one year's use of the lifetime guarantee

Putting things right

HFL should refund Mr P the amount of £220.

My final decision

For the reasons I've explained, I uphold this complaint in part and Healthcare Finance Limited must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 29 August 2025.

Siobhan McBride
Ombudsman