

The complaint

Mrs 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 April 2023 Mrs 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 £1,600 and Mrs H was due to pay back the agreement with monthly payments of around £70. I understand the initial treatment was due to last 5 months.

The supplier went out of business in December 2023. Mrs H contacted HFL to say she was in her first ‘touch up’ stage which hadn’t yielded the results she wanted. She said despite the supplier offering a lifetime guarantee she found herself in a situation where she was paying for a loan with no benefits. HFL asked Mrs H to provide a timeline of events and relevant communication. Mrs H said she completed the treatment but, on completion, her teeth had barely moved so she reported the issue to the supplier. She said it carried out more scans and provided further aligners extending the treatment for eight weeks. She said her teeth still hadn’t moved as expected and she was left with no option for extra aligners, retainers or the promised guarantee.

HFL said it acknowledged the supplier provided a guarantee, but it didn’t think Mrs 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 Mrs H hadn’t completed virtual check ins or ordered retainers as required for the guarantee.

Mrs H decided to refer her complaint about the claim to the Financial Ombudsman. She reiterated she was unhappy with the results she said she was promised. She said she’d completed the check ins and didn’t order retainers because they wouldn’t fit at the stage she was at. And after learning about the supplier’s uncertain future she was unwilling to purchase retainers from it. She also said her dentist informed her the alignment wouldn’t have been successful without prior treatment.

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

Mrs H didn’t agree. She said she didn’t recall seeing a clause that the supplier couldn’t guarantee results. She said a comparison with her photos and the expected alignment plan showed the treatment didn’t work. She said she was thinking of trying to obtain a dentist report.

As things weren’t resolved the complaint has been passed to me to decide. No further substantive evidence has been supplied.

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 Mrs 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 Mrs H 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 Mrs 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 Mrs 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 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.

Mrs H has indicated the aligners haven't worked as she said was promised. 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. But I want to explain from the outset that I can only consider Mrs H's complaint on that narrow basis – that is, whether it was fair and reasonable for HFL to respond to the claim in the way it did.

I've focussed on Mrs 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 Mrs H the treatment.

Implied terms

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

While I appreciate her reasons, Mrs H 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 understand Mrs H thinks her photos and digital images should be enough to show the treatment hasn't worked as expected. But it's important to note I'm not a dental expert, and neither is HFL. Without sufficient supporting evidence, I can't safely conclude if the teeth moved as should have been expected; whether Mrs H wore the aligners as prescribed; whether the aligners weren't suitable for her in the first place, and so on.

Mrs H also seems to be indicating the aligners shouldn't have been sold to her in the first place. She said she needed prior treatment in order for the aligners to have worked properly. I do appreciate what she's saying. But 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 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 Mrs H bought the treatment which has been made available by HFL. And I've thought about Mrs H's testimony and her supporting evidence.

It's not in dispute Mrs H entered into a contract for aligner treatment and that she received and used those aligners. There's a lack of signed documentation, but I think the core contract was for a set of aligners Mrs H was due to use for five months. The supplier's website from the time said most treatment lasts between 4 to 6 months. Mrs H said the supplier gave her two months' 'touch up' aligners following on from this that she says ended in December 2023, although we've not been supplied supporting evidence of exactly what happened, or details of complaints raised with the supplier in 2023. But I'm conscious some of the information may not be available if it was stored in the supplier's online application.

I think it likely Mrs H 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 Mrs H would 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 Mrs H didn't quite get the results she wanted after the core treatment I don't think that in itself would be considered a breach of contract.

While I appreciate Mrs 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 Mrs H 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. Mrs H said the supplier gave her a further set of 'touch up' aligners.

I don't think the fact the supplier gave Mrs H 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 Mrs H 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 Mrs H 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 Mrs H achieved.

Guarantee

While I think Mrs H received the goods and service under the core contract, I'm conscious there was an aftercare offering. Although as I've pointed out, she's also said that her dentist told her aligners weren't going to work without prior treatment. And she's said the 'touch up'

aligners she was given didn't work. It's not clear that Mrs H 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. Mrs H said she 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 Mrs H 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 Mrs H 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 Mrs H didn't buy the retainers and she didn't complete the check ins. On the other hand, Mrs H said she did complete the check ins; her teeth were not at the stage to order retainers; and she didn't want to order retainers because of the uncertain future of the supplier. She also said some of the evidence was no longer available.

It's possible Mrs H could have taken steps to become eligible for the guarantee again but I think she'd have at least been required to buy retainers when the treatment finished. Mrs H said she didn't want to do that, and I've set out her reasons above. The retainers weren't supplied under the contact funded by HFL. And it's not clear on what basis the supplier agreed 'touch up' treatment for Mrs H if she wasn't eligible. But even putting all that to one side, it seems as though Mrs H said the 'touch up' treatment she did have didn't work, and her dentist told her she'd need other dental treatment prior to having the movement she wanted. I don't know if she'd have had that advice prior to undergoing the treatment with the supplier.

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. And even if there was, it doesn't seem like Mrs H thought that further aftercare would have been beneficial. I'd like to have been more certain that she's lost out.

Moreover, Mrs H 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 Mrs H 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 her 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 Mrs H for a potential loss through her not being able to utilise the guarantee. Given the particular circumstances of the complaint, I don't think that's unfair.

I am sorry to hear Mrs H is unhappy. I'm not saying something hasn't gone wrong. But with s.75 in mind, and bearing in mind I need to resolve the complaint quickly and with minimum formality, I don't find there are grounds to direct HFL to refund her because there's not enough evidence to show there's been a breach of contract that's caused Mrs H a loss.

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 Mrs H to accept or reject my decision before 13 January 2025.

Simon Wingfield
Ombudsman