

The complaint

Mr E 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 August 2022 Mr E 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 Mr E was due to pay back the agreement with monthly payments of around £70. He said he initially received around 22 aligners in September 2022 and his plan finished around February 2023. He said the supplier told him in March 2023 he needed to order retainers by 26 May 2023 to maintain results and the lifetime guarantee it offered. Mr E said he contacted the supplier on 20 May 2023 to ask it to review his results. He tells us the supplier agreed to the review but that he’d have to pay for further aligners. I understand he paid £250 separately for 9 further aligners. He tells us he also ordered retainers at the same time, but that the supplier refunded the payment for this because he was going through another set of treatment.

The supplier went out of business in December 2023. Mr E tells us he contacted HFL the same month to enquire about a refund and cancellation of the loan primarily because he could no longer use the lifetime guarantee.

Mr E also said there were quality issues with the 9 aligners he received after the initial treatment so he made a separate complaint to the supplier and it agreed to send replacements. He said it ceased trading before this happened and he received a refund of the £250 from a separate claim.

HFL said it acknowledged the supplier provided a guarantee, but it didn’t think Mr E met all the conditions for it because he’d not ordered the required retainers that formed part of the qualifying conditions, so it declined the claim when considering its liabilities under Section 75 of the Consumer Credit Act 1974 (“s.75”). Mr E decided to refer his complaint about the claim to the Financial Ombudsman. He said he did order the retainers on time. He said due to a complaint about the original treatment plan not meeting the agreed results the supplier had refunded the payment and arranged further treatment for him.

Our investigator looked into things and didn’t think HFL’s answer was unfair because she didn’t think Mr E had met the qualifying conditions to benefit from the guarantee.

Mr E didn’t agree. He said he was never made aware he needed to order retainers a few weeks before the end of the treatment, and that it wouldn’t have made sense to do so. He said he ordered the retainers by the deadline the supplier told him about. He said he’ll have to pay for ‘touch up’ aligners separately when it should have been part of the contract. He said he wasn’t interested in a full refund as the treatment mostly worked, but he said he’d lost out on the ongoing support.

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 E 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 E is unhappy he can no longer use the guarantee. 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 E'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 E 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 E has indicated it's not fair he can no longer use the guarantee. 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 Mr E'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 Mr E'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 E the treatment.

Implied terms

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

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

It's not in dispute Mr E 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 E was due to use for a few months, which is what happened until he finished the core treatment around February 2023.

I think it likely Mr E 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 E would have understood the supplier couldn't guarantee specific results or outcomes. Given the nature of the treatment, I don't think those sorts of terms are unfair or unusual. So even if Mr E 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'm sympathetic Mr E said he required further treatment, I don't think HFL had persuasive enough evidence to show the supplier breached the contract in respect of the results Mr E achieved.

Guarantee

While I think Mr E received the goods and service under the core contract, Mr E is unhappy he can no longer receive further treatment from the supplier to improve his results, or to be able to refine them in future. Mr E's argument therefore seems to mainly focus on the supplier breaching the contract by not being able to offer him what he says he should be due under the guarantee.

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. 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 E registered his aligners; wore them as prescribed; completed virtual check ins; and stayed up to date on payments. It also said after the core treatment Mr E 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 E didn't buy the retainers on time. I'm also conscious that Mr E has said he was required to pay for the second set of aligners, albeit he tells us he'd claimed this money back. Had Mr E met the qualifying conditions for the 'touch up' aftercare, I don't think he'd have had to pay for the second set of aligners. On the other hand, Mr E said he did buy the retainers by the deadline the supplier gave him.

The evidence is incomplete but it's not clear why he had to buy the second set of aligners. But I do understand the point he's making, and I'm conscious some of the information may not be available because the supplier's online application is no longer accessible.

Information on the supplier's website indicates it was strongly recommended for Mr E to buy

retainers to safeguard the results he achieved. It said a set cost £80 and to “Call our customer care team... about 4-5 weeks before you finish your treatment plan to place your order”. It’s not in dispute Mr E didn’t do this. But he’s said the supplier’s guarantee page on the website doesn’t mention the 4-5 week condition, it just says retainers need to be replaced every six months. I think it should have been made clearer but given what the website says, the intention was for the retainers to be bought to use as soon as the core treatment ended.

I need to consider how HFL responded to the claim Mr E put in when he contacted it in December 2023. I’m conscious the evidence indicates the supplier didn’t consider Mr E had met the conditions for the guarantee, or he wouldn’t have had to pay for the further aligners. The core treatment ended around February 2023. So putting aside the fact he didn’t order retainers to use when the core treatment first ended, HFL would have expected him to have bought two sets by the time he contacted it. Even taking the May 2023 date for the first set, he’d have been required to buy another set around November 2023.

Mr E may argue he was still going through the second set of treatment which is why he hadn’t bought the required retainers. But the second treatment was separate to the core treatment he received under the HFL loan that ended around February 2023. Mr E tells us he paid for the second set of aligners separately, and not through credit HFL provided. If Mr E was unfairly declined aftercare in relation to the second set of treatment he’d paid for separately, there wouldn’t be grounds to hold HFL responsible for this.

By the time Mr E contacted HFL in December 2023, given the circumstances I’ve set out above, I don’t think there are grounds to say its answer was unfair. While I do sympathise, I need to consider the complaint about how HFL acted based on the evidence submitted. I’m not considering a complaint against the supplier.

As I’ve said above, I need to bear in mind what HFL can fairly be held responsible for. I can’t now fairly point to a term of the contract that’s been breached that HFL is responsible for. Even without a signed contract, based on the FAQs it seems as though Mr E didn’t meet the relevant requirements to continue benefitting from the guarantee.

Overall, I think Mr E received the core benefit 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. Mr E seems to broadly agree with this.

HFL hasn’t made an offer to Mr E for a potential loss through him not being able to utilise the guarantee. For the reasons given above, I don’t think there’s the grounds to say HFL should offer him a price reduction for something I can’t see the supplier was required to provide him under the guarantee because it’s not clear he’s suffered a loss through a breach of contract.

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 E to accept or reject my decision before 13 January 2025.

Simon Wingfield
Ombudsman