

The complaint

Miss W 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 July 2023, Miss W entered into a fixed sum loan agreement with HFL to fund the provision of dental aligners from a third-party supplier that I’ll call “S”. The cash price was around £1,700 and Miss W was due to pay back the agreement with monthly payments of around £70 and the term of the loan was just over 2 years. She hasn’t told us how long her treatment plan was expected to last or when it was due to come to an end.

S went out of business in December 2023, and soon after this Miss W contacted HFL to make a claim, requesting a refund. She said she only discovered S had become insolvent because she needed help with an aligner that she felt didn’t fit. She also hadn’t received a retainer that she thought she was entitled to. Miss W told HFL that she didn’t think she should have to pay for a loan when she hadn’t received the full goods and services under the contract. HFL considered the claim as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 (“s.75”). HFL said Miss W could return unopened aligners for a pro-rata refund.

But Miss W had opened all her aligners to ensure they fit, so HFL told her she wasn’t entitled to a pro-rata refund. It also explained that retainers weren’t included in the contract the loan covered, and they had to be purchased separately at the end of her treatment period.

Miss W decided to refer her complaint to the Financial Ombudsman. She re-iterated that she hadn’t received the goods and services offered under the contract and that her teeth are not any straighter. She mentioned that this situation had caused her mental and emotional stress, and she cannot provide much evidence such as previous contact she’d had with S, as it was all done through an online application that is no longer accessible to her or HFL. At this time, HFL offered £220 for potential losses Miss W may have suffered due to the loss of a lifetime smile guarantee.

Our investigator looked into things and didn’t think the HFL needed to do any more than it had already offered for the following reasons:

- That retainers weren’t included in the contract that HFL had financed, and they had to be bought separately.
- Although Miss W hadn’t told us how far she was into her treatment plan, HFL had offered to give her a pro-rata refund if she no longer wanted to continue with the plan and return any unused and unopened aligners. There was insufficient evidence to safely conclude HFL needed to offer any more than this in respect of the core treatment plan.
- HFL also offered to reduce Miss W’s loan balance by £220, in recognition of a potential loss suffered under the lifetime smile guarantee (LSG).

Overall, our investigator felt that HFL's response to Miss W's claim was fair and its offer to reduce her loan balance by £220 was reasonable.

Miss W didn't agree and said she wanted to take things further. She re-iterated that she hadn't received all the goods and services under the contract so didn't feel it was fair to make her pay for it. She made no further comments about HFL's offer to reduce her balance by £220 in recognition of the potential loss suffered under the LSG.

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.

Firstly, I'd like to reassure Miss W, that I have considered all her concerns carefully, but I will only be dealing with the most salient parts of her complaint in this decision as I'm required to decide matters quickly and with minimum formality.

I would add that I'm sorry to hear that Miss W is unhappy with her treatment plan and the impact it had on her mentally and emotionally. It may be helpful to explain that I need to consider whether HFL – as a provider of financial services – has acted fairly and reasonably in the way it handled Miss W's claim. But it's important to note HFL isn't the supplier. S. 75 is a statutory protection that enables Miss W 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.

There are certain conditions that need to be met for section 75 to apply. From what I've seen, those conditions have been met and HFL has also agreed that S.75 applies.

I've considered if there is persuasive evidence of a breach of contract or misrepresentation by S that means HFL should have offered something different when handling Miss W's claim. But I want to explain from the outset that I can only consider Miss W's complaint on that narrow basis – that is, whether it was fair and reasonable for HFL to respond to her claim by offering what it did.

Misrepresentation

I've focussed mainly on Miss W's breach of contract claim. Even if S couldn't provide all the services it promised, because it went out of business, it's not clear this would amount to a misrepresentation because I don't think it would have been aware it would go out of business when it sold Miss W the treatment. So, I don't think a misrepresentation claim exists here.

Breach of contract - Implied terms

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

I understand Miss W feels one of the aligners didn't fit properly, and she's also said her teeth are not any straighter. But Miss W has not provided supporting evidence such as an independent, expert opinion that sets out the treatment she paid for has not been done 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. And I've seen no evidence this issue was raised with S before it stopped trading.

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 S offered wasn't carried out with reasonable skill and care or that the goods provided were not of satisfactory quality.

Express terms

I also need to consider what I think Miss W's contract with S agreed to provide in terms of treatment so I can determine whether there has been a breach of an express term of it. I don't have a contract signed by Miss W, as I understand they were kept in an online application that's no longer available. So, there's a lack of evidence.

But it's not in dispute Miss W was due to receive a set of aligners when she entered into the contract in July 2023 and that she received them, and I think she likely used at least some of them. I think the core contract was for those sets of aligners that she was due to use for a few months. Miss W hasn't told us how long her treatment plan was meant to last, or how many of the aligners she used despite our investigator requesting this information from her. But from S's website, it seems most plans were for between 4-6 months, and I have to bear in mind that Miss W signed her credit agreement in July 2023, and S didn't stop trading until December 2023. And she's also pointed out that she didn't know that S had stopped trading until she tried an aligner that she didn't think fit properly. She then contacted HFL in December 2023 - so it seems to me that she was happy with S for almost 5 months after she agreed to the contract.

I don't know for certain, but I think it's likely Miss W signed an agreement with S 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 Miss W would have understood S 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 Miss W 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. S went out of business part way through the treatment. HFL gave Miss W the offer to return any aligners for a pro-rata refund.

Miss W has said that she wasn't given the full service due under the contract which may include dentist support, or a service to support with fitting aligners before the end of her treatment period. I can understand she would have been very concerned to hear S went out of business part-way through her treatment, particularly as she says she had a fitting issue. It seems like (when S was still trading) the support was available if required, and in order to track the patient's progress.

But as explained above, this support was available for almost 5 months after she agreed to the plan, and most plans only lasted between 4-6 months. As she has received all the aligners she's entitled to and had the benefit of dentist support from S for at least 5 months, and because I don't know exactly how long her treatment plan was expected to last, it's difficult for me to make a finding that HFL was incorrect to conclude that she has benefitted from the core treatment plan.

Additionally, HFL did offer to give her a pro-rata refund for any unused and unopened aligners. I understand Miss W had opened her aligners to check them, but HFL had to make

a decision based on the available evidence – and its offer for a pro-rata refund depended on customers like Miss W not having used the aligners and completed the treatment. It wouldn't be fair for HFL to have to refund to those customers who used the aligners and had the benefit of the core treatment. So, I don't think it's unreasonable for HFL to have a process in place to establish Miss W hadn't had the benefit of the treatment before giving any refunds. So, it's insistence that Miss W only receive a refund for the unopened aligners seems reasonable.

Overall, I don't think there's sufficient evidence that there's been an express breach of contract based on the outcome of Miss W's treatment plan and her unhappiness with her teeth not being straight. While S may have stopped trading part way through her treatment period, HFL has already offered to reduce Miss W's balance to account for any services and goods she hasn't used by offering to refund for any unused and unopened aligners. Considering the above, I think HFL's response to this issue is reasonable.

Lifetime smile guarantee

I've thought about whether our investigator's assessment is a fair way to resolve the complaint. In the absence of a specific signed contract, as explained above, I've looked at S's website from around the time Miss W entered into the contract. And as mentioned above, this says most treatment lasts between 4 to 6 months. It says if the customer hasn't achieved the results they want (like Miss W says she hasn't), and providing they've met certain conditions, they *might* be eligible for additional 'touch up' aligners under the guarantee. 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 Miss W met certain conditions. It also said after the core treatment Miss W was required to buy retainers every 6 months at her own cost 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.

Miss W thinks she should be provided with a full refund of the treatment costs. This is a potential breach of contract identifiable because Miss W can no longer use the guarantee. However, given that she was several months into her treatment, the guarantee would never have given her the option of a refund of the core treatment cost – only a pro rata refund for any unused and unopened aligners which she's been offered. So, I don't think it would be fair or reasonable for me to tell HFL that it should now provide Miss W with a full refund to recompense her for the potential breach that has happened.

There are many ways in which the guarantee could have ceased to be of use to Miss W. Firstly, she may not have done what she needed to in terms of buying retainers. The retainers were not supplied under the original contract – Miss W needed to buy them separately. But S may not have approved providing her 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.

I accept there's a potential loss, but it's not straight-forward to establish the value of the perceived loss. And I'm required to resolve the complaint quickly and with minimum formality. As I've explained, I don't think HFL is required to remedy a failure in relation to the

core treatment (beyond what its already offered in terms of a pro-rata refund) or due to the results Miss W received. But I think there's a possible loss because Miss W may have been able to utilise the guarantee.

HFL shared information from S saying the financial value of a 'touch-up' treatment is £220. It's difficult to know for certain if that's accurate. But this represents a refund of over 10% of the cost of the treatment. Considering we'll never know if Miss W would have continued to receive any benefits under the guarantee and taking into account HFL couldn't safely conclude Miss W hadn't received the majority of the core treatment, I think our investigator's recommendation for HFL to offer this price reduction to remedy any potential loss seems reasonable. It seems like a fair compromise given I think the total amount paid was substantially for the core treatment. And Miss W hasn't provided sufficient evidence that makes me think her overall loss is more than the £220 that HFL has offered.

While I am sorry to hear Miss W is unhappy, with s.75 in mind, I don't find there are grounds to direct HFL to refund her the full cost of the treatment. I think our investigator's recommendation and HFL's offer is broadly fair in the circumstances. I should, however, point out Miss W doesn't have to accept this decision. She's also free to pursue the complaint by more formal means such as through the courts.

My final decision

For the reasons given above, my final decision is that I uphold this complaint and direct Healthcare Finance Limited, to the extent not done so already, to pay Miss W £220.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 1 April 2025.

Asma Begum
Ombudsman