DRN-4247223

The complaint

Miss A complains about cosmetic treatment she paid for using a loan from Healthcare Finance Limited ('HFL').

What happened

Miss A used a fixed sum loan from HFL to fund dental alignment treatment from a supplier.

Miss A is not happy with the treatment and says the supplier has gone into liquidation.

HFL looked into the matter for Miss A. It offered her £149 to pay for the tooth whitening part of the package she had not received. However, it would not refund her more than this. In summary, it noted that Miss had received the full aligner treatment and there were no contractual guarantees given by the supplier in respect of the expected results.

Miss A disputes this. She says that the supplier told her before the sale and after that if she wasn't happy with the results of her treatment she was entitled to extra aligners or a full refund.

Our investigator looked into the way HSL had handled Miss A's claim for a refund. She didn't think that it had acted unfairly in just offering to pay £149 for the tooth whitening. In summary, she didn't think there was persuasive evidence to show the treatment had not been performed properly, or that Miss A was contractually entitled to a refund (or free aligners) if she wasn't satisfied with the treatment.

Miss A disagreed. In summary, she says she has email evidence that shows she is entitled to a refund / additional aligners if she isn't satisfied with the results.

The matter has now come to me to make a final decision.

I issued a provisional decision on this case on 27 July 2023. In summary, this is what I said:

 While the Consumer Rights Act 2015 implies into consumer contracts a term that says services will be provided with reasonable care and skill it is particularly difficult to determine that to be the case with a complex medical product like this, and with no expert evidence.

 Furthermore, while Miss A is not happy with the results she has achieved, I don't have persuasive information to show what results she actually achieved. I also note that a finding in respect of reasonable care and skill is not dependant just on the results but the manner in which the treatment was carried out. And as I have already said, based on the evidence I have I am not in a position to say that the treatment was carried to an unacceptable standard.

 It doesn't appear to be in dispute that Miss A bought a whitening treatment as part of the package which she didn't receive. So the offer from HFL to pay £149 for the cost of a replacement treatment appears to be fair and reasonable.

 The express terms of the contract from the supplier do not guarantee results and say these can vary.

 Miss A has shown us an email from a customer service operative which says if she is not happy with the treatment she will be entitled to more aligners or a refund. However, the email isn't completely clear about the terms of any refund and refers to this being in accordance with the supplier's 'policy'. The supplier also sent the email to Miss A sometime after she entered into the contract for the service.

 I have considered that Miss A says the supplier told her at the point of sale that if she wasn't happy with the treatment she could get a refund. However, based on what I have seen the information regarding this policy is unclear (particularly in light of what the supplier's terms say)– so it is difficult to say that it was enough to constitute a breach of contract or misrepresentation.

 In the circumstances where there isn't a clear breach or misrepresentation – and where Miss A has received the service (except whitening) it wouldn't be fair to direct HFL to refund her.

I asked the parties for their responses. Miss A responded to provide further evidence which she says shows the supplier promised her a refund if she was not happy with the results.

I put this information to HFL for its comments. It said, in summary:

 the terms and conditions which are signposted to the customer clearly state that the supplier does not guarantee a successful treatment outcome. Therefore, it would argue that Miss A is not entitled to a refund;

 if a sales representative has said that a refund is available as a sales promotion effort that refund is plainly subject to the terms and conditions; and

 the supplier might have agreed to provide a refund as a gesture of goodwill – but that is not a contractual right to be honoured in terms of Section 75 liability.

I then issued a further provisional decision on 12 July 2023 in which I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In my provisional decision I noted that:

• Miss A's testimony both to this service and in her initial emails to the supplier soon after she started treatment is consistent in saying that she was given information at the point of sale about some kind of satisfaction/refund guarantee;

• the customer service email she received after starting treatment refers to a refund if she is not satisfied with the results; and

• HFL has mentioned the supplier previously offering a lifetime guarantee in the past (before Miss A made her purchase).

In doing so I accepted the possibility that Miss A was given information at the point of sale about what would happen if she was dissatisfied with the treatment.

However, at the time I issued my first provisional decision the only thing Miss A had in writing to support her case was the customer service email which referred to a refund if she wasn't happy but that this would be in accordance with a 'policy'. It was somewhat unclear what this policy was. I thought it less likely that Miss A has been told pre-sale about an unqualified right to a refund if she wasn't happy with the results. Particularly considering that the contract said that results were not guaranteed.

However, since then Miss A has shown other emails she received. One of which says this amongst other information about the treatment:

'If you're not satisfied, we're not satisfied – that's why we will happily give your money back'

I note that this isn't a bespoke paragraph which a customer service agent has put together but appears to be official 'copy' from the supplier in its policy wording. There is not much room for interpretation here – it appears fairly clear that there is a satisfaction guarantee.

Furthermore, another email says this:

'As per your email, I would like to confirm if you are not satisfied with the results which we had shown you at your appointment, you have the right to cancel the contract at any time and you will be refunded at all cost and will not have to continuing [sic] paying for the course'

It goes on to say this:

'As mentioned on our website, if you're not satisfied, we're not satisfied. That's why we'll happily give your money back and that's a promise to you'.

Looking at this recent information I find it more emphatic and compelling in outlining what the terms of the refund promise were at the time. And it appears that it was in fact based on customer satisfaction without any clear qualification.

I have already mentioned Miss A says she was told at the point of sale that she was guaranteed a refund if she wasn't happy. She has not only been consistent about this – it was clearly important to her as she followed up about it with the supplier when she was having trouble with the treatment early on. She referred back to what she was told at the consultation as follows:

'When I went for the consultation, I was told if I wasn't happy with the final results, I would be refunded or provided with more aligners'

What Miss A has now provided appears to add particularly persuasive weight to her claim that the advertising of the supplier to her (including on its website) was in fact about an unqualified right to a refund based on her satisfaction alone. On balance, this evidence in conjunction with the other factors here has persuaded me it more likely than not the supplier told Miss A in writing or otherwise that she would be entitled to a refund if she wasn't happy with the results. And while this is a generous policy I also think that it is capable of becoming a term of the contract.

The Consumer Rights Act 2015 section 50 says that anything said or written to the consumer by or on behalf of the supplier will be treated as a term of the contract if it is taken into account by the consumer when deciding to enter into the contract.

I now think the evidence is persuasive in showing that Miss A at the initial consultation was likely given information about an unqualified satisfaction guarantee. Furthermore, it is very clear that such a promotion would be a very attractive offer to the average person – and it

was clearly important to Miss A in her decision to go ahead with the treatment. So I think it was taken into account here in the way section 50 requires.

So, on balance, and considering the relevant law I think that the satisfaction guarantee is an implied contractual term here – rather than simply an offer of goodwill that came about later. I note the terms document does state that the supplier does not guarantee a successful treatment outcome and says that results will vary. This is what led me to think originally that there was likely to be some kind of policy qualifications around any satisfaction guarantee. However, I don't see any such qualifications in the evidence Miss A has provided – in fact it appears to be quite the opposite.

I see the contract say results are not guaranteed / are variable so it is unexpected to see a separate promise to the customer of a refund should results not be to their liking – however, it is not (to my reading) a case of two terms that are completely at odds with one another. I note that while the contract says results are not guaranteed there isn't clearly a term in the contract that specifically says refunds will not be issued if results are not to the customer's satisfaction. It appears most likely in Miss A's case the supplier was offsetting the potential pitfalls of a product that wasn't guaranteed with the attraction of little risk to her (in the form of a refund) in the event that things didn't work out to her satisfaction.

In any event, even if I did accept the terms in the main contract document are at odds with the terms I have seen regarding the satisfaction guarantee I look at what is fair and reasonable here. And where there is a lack of clarity as to the contractual agreement (and with the provisions of the Consumer Rights Act 2015 in mind) I consider it fair to give it the meaning that is most favourable to Miss A here.

In the particular circumstances of the complaint I am persuaded on balance the supplier promised Miss A she would get a refund if she wasn't happy with the results of her treatment – and this was a contractual term from the outset. I also note that Miss A has explained that she has seen no difference to her teeth, and was dissatisfied with her treatment – yet when she reached out to the supplier about it her emails bounced back as it had gone out of business.

In not refunding her under the terms of its satisfaction guarantee – I consider the supplier is in breach of contract. So with Section 75 in mind I consider HFL should now refund Miss A what she has paid (and not yet got back) under the finance agreement and write off any further liability.

I understand that Miss A made a handful of payments to HFL before she stopped paying for the treatment. From what she has said it also appears that she has disputed these with her card provider and received a refund. Miss A can clarify this. However, if she has made any payments which were not clawed back from it then HFL should refund these. Because of the particular circumstances here and noting that Miss A has withheld payments I don't consider it would also be fair to add out of pocket interest to any refunds.

My provisional decision

I uphold this complaint and direct Healthcare Finance Limited to:

- *Refund any payments Miss A has made to the finance agreement and not yet got back; and*
- *write off any further liability she has under said finance agreement.*

I asked the parties for their comments. Both accepted my latest provisional findings.

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.

Because the parties have accepted my latest provisional findings (as copied above) I uphold this complaint for the same reasons.

Putting things right

HFL should ensure it puts things right in accordance with my findings here.

My final decision

I uphold this complaint and direct Healthcare Finance Limited to:

- Refund any payments Miss A has made to the finance agreement and not yet got back; and
- write off any further liability she has under said finance agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 14 August 2023.

Mark Lancod
Ombudsman