DRN-4548548

The complaint

Mr C is unhappy with treatment he received which was funded by a loan from Healthcare Finance Limited ('HFL').

What happened

The background facts of this case are well known to the parties so I won't repeat these in detail here.

Mr C agreed dental treatment from a clinic ('the supplier') in June 2019 and says he found out in 2023 that it was no longer trading. He says his treatment was not completed and he wants a refund or the cost of follow up treatment to finish the job (which he has a quote of £6,629 for). So he approached HFL to see if it could help.

HFL says that usually this type of treatment would take 10-12 months and it wasn't clear what Mr C had not received. However, it was willing to offer Mr C £300 compensation for any failure by the supplier along with £200 for its own customer service delays.

Our investigator considered HFL's liability in light of Section 75 of the Consumer Credit Act 1974 ('Section 75') but was not persuaded there was a breach of contract or misrepresentation by the supplier. So she didn't think HFL should fairly provide a refund.

Mr C disagrees and has asked for an ombudsman to take another look. I issued a provisional decision on this which said as follows:

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

I have considered the information on the file – however, I won't comment on it all. This reflects my role resolving disputes informally.

I am sorry to hear about Mr C's frustration with his dental treatment. However, it is important to note that HFL is not the supplier here. So in considering what is fair and reasonable I consider its role as a finance provider. In that respect I consider Section 75 particularly relevant so I have focused on this.

Under Section 75 Mr C can hold HFL liable for a breach of contract of misrepresentation by the supplier of the service here.

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 this criteria 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 acted differently in the way it handled Mr C's claim.

From what I can tell Mr C's claim against HFL isn't about misrepresentation so I have not considered that aspect here and focused on breach of contract.

In order to consider breach of contract I look at the specific contract terms Mr C agreed with the supplier and also those implied by law.

In respect of the specific contractual terms agreed there is difficulty in clarifying what potentially went wrong here – because I don't appear to have a copy of the full contract which Mr C agreed with the supplier.

In respect of implied terms the relevant one here is that implied by the Consumer Rights Act 2015 ('CRA') that a service will be provided with reasonable 'care and skill'.

Mr C's claim to HFL does not appear to be about the quality of the work he received on his teeth to date. Only that it was not finished. However, for completeness I have briefly considered this aspect.

When it comes to assessing the quality of a medical or cosmetic treatment it is difficult and complex because there are many variables which can impact the results. Just because results are not what a customer wanted doesn't mean the treatment wasn't carried out as it should have been. There are also particular disclaimers and accepted risks when it comes to this type of treatment which complicates matters further. Usually in order for me to say that HFL should have concluded that a treatment was not carried out with reasonable care and skill I would expect to see some compelling evidence to show this (often in the form of an independent expert report). In this case Mr C has provided a quote for further work by a dentist, and while it shows further work is needed on Mr C's teeth this doesn't persuasively show that the supplier acted without reasonable care and skill in carrying out the contract it had agreed with Mr C.

However, as I have already mentioned, Mr C's claim does not appear to be about quality – but that the treatment he agreed to has not been completed and has caused him detriment.

From the information I have it isn't entirely clear how much treatment Mr C had received before the supplier ceased trading. I note his testimony on the matter isn't consistent – in his initial call to this service he appears to indicate he had one more appointment to go, in another later call to our investigator he says he was not even halfway through. I also note that some of his testimony indicates he had appointments with the supplier following the pandemic yet in the report from a third party dentist it says he told them his last visit was pre-pandemic.

HFL has indicated that this kind of treatment normally takes 12 months and online sources appear to indicate that this treatment takes 12-18 months. From what I know the supplier ceased trading in April 2022 – so it seems unusual that Mr C's treatment would not have been finished at this stage- which is about three years later.

However, I do note that Mr C has said that the treatment was not completed due to delays caused by the COVID-19 pandemic. It appears from what Mr C says the clinic had to cancel appointments as a result. I am sorry to hear about this. However, if this is what occured the supplier not being able to complete the original contract as intended is not necessarily a breach of contract in this situation (either a breach of an express term or an implied term under the CRA).

As I have indicated, I don't have the contract but it is quite possible a force majeure clause would limit the supplier's liability in situations involving unforeseen events like a pandemic. However, even if it did not – the inability to complete the contract as intended in the original timescale would likely mean said contract is frustrated rather than breached. When a contract is frustrated it effectively comes to an end. And even if the supplier had made a new

agreement to provide further services as a goodwill gesture beyond the scope of the original contract (which appears might have occurred here) – this does not necessarily mean that the original contract as paid for using the finance has been breached.

So while Mr C might have had a certain civil remedy against the supplier directly in these particular circumstances I am unable to reasonably conclude there is a breach of contract which HFC is liable for under Section 75. Therefore, I do not consider it fair and reasonable to say that HFC should have responded to the claim by paying Mr C a refund.

For completeness, it is worth noting here that even if I agreed that the original contract did not come to an end as a result of the disruption of the pandemic (which I don't) there are also questions here as to why Mr C's treatment was not completed once restrictions eased particularly as by the time the pandemic restrictions started it was around 9 months after Mr C originally agreed to the treatment. It isn't clear if the reason for things not moving forward once restrictions eased (if that is what occurred) was a result of the supplier's actions. And I don't see why Mr C wasn't in touch with HFC much sooner if he wasn't receiving treatment – noting that the supplier had gone out of business around a year before he raised his claim.

I am sorry to hear about Mr C's disappointment with the supplier and I appreciate his options for recourse are limited now it has ceased trading. But here I am considering HFC's response to his claim. And all things considered, taking into account Section 75 I don't think that HFC acted unfairly in not giving him the full refund or cost or further treatment he wanted. The £300 goodwill gesture is more than I will be directing HFC to pay here as I don't consider there to be persuasive evidence of breach of contract. However, HFC might still be willing to pay this to Mr C and he can make enquires about this offer if he wishes.

HFC offered Mr C £200 for its customer service. I note that it doesn't appear to have responded to his original claim until this service got in touch with it. I think this has no doubt caused Mr C frustration and inconvenience. I have considered our approach to compensation for non-financial loss as set out on our website and agree that £200 is a fair amount here for the delays so I will be directing HFC to pay this to Mr C.

My provisional decision

I uphold this complaint in part and direct Healthcare Finance Limited to pay Mr C £200 in compensation.

I asked the parties for their comments on my provisional findings.

HFC did not add any further comments. Mr C says, in summary:

- £200 is an insult and doesn't cover the £5,000 he has paid for the treatment.
- The real breach of contract is from the dental practice and he is in a worse position now before the treatment started with gaps and plastic braces.

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 have considered what Mr C has said in response to my provisional decision and it doesn't change my original findings. However, I will clarify a few things.

Mr C has indicated that I found a breach of contract had been made. And appears to consider I awarded £200 for this. To clarify, the £200 is not for breach of contract by the supplier – it is purely in respect of the HFC's own customer service failings in handling the claim.

Any alleged breach of contract by the supplier is a separate matter which HFC is potentially liable for under Section 75. I have already explained the difficulty in concluding a breach of contract in my provisional decision. In summary, this is because of:

- the lack of a contract or expert information to explain what may have gone wrong in respect of this complex medical procedure;

- the fact that the delay in completing the treatment in the original timescale because of the pandemic appears to be down to 'force majeure' or the legal concept of 'frustration' rather than a breach of contract; and

- the lack of clarity about why the treatment was not completed after restrictions eased compounded by the inconsistencies in Mr C's testimony about what actually was left to still do.

I do understand that Mr C has highlighted some press articles about the supplier – however, I don't consider the content is directly relevant to the question of breach of contract in Mr C's case here.

I am sorry to hear about the position Mr C is in now due to the liquidation of the supplier – but it is worth underlining that HFC is not the supplier here. And when considering what is fair and reasonable I am looking at its response to a Section 75 claim based on the evidence that was reasonably available to it at the time. In doing so, and noting my findings above I am not persuaded that it would be fair for it to issue Mr C the refund he is seeking in the particular circumstances here.

Putting things right

For the reasons outlined here, incorporating my provisional findings, I do not consider that HFC fairly needs to pay Mr C a refund for the treatment here. However, it should pay him £200 for its customer service failings. Mr C can also approach HFC to see if it is willing to honour the £300 it offered him previously as well.

My final decision

I uphold this complaint in part and direct Healthcare Finance Limited to pay Mr C £200 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 February 2024.

Mark Lancod
Ombudsman