DRN-4837055

The complaint

Miss S complains that Healthcare Finance Limited ("HFL") failed to pay out on a claim she made to it about the failure of a supplier to deliver the dental treatment which she paid for with credit it provided.

What happened

In May 2023 Miss S entered into a 25-month fixed sum loan agreement with HFL to fund the provision of dental aligners from a third-party supplier to straighten her teeth. It was expected that the treatment would last for four months.

It's clear that Miss S was not happy with the results of the treatment and the supplier provided a set of 'aligner touch ups' in October 2023 to try and improve the outcome. However, she was still not satisfied with the results by the time that supplier went into administration in December 2023.

In December 2023, Miss S therefore contacted HFL to make a claim, requesting a full refund of all treatment costs, which it considered as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ('Section 75'). Ultimately, HFL declined her claim as it said Miss S had not complied with the requirements to qualify for the particular guarantee scheme offered by the supplier, that may have provided further treatment. Unhappy with that response, Miss S brought a complaint to us.

Our investigator considered how HFL had acted in light of its responsibilities under Section 75. However, she did not uphold the complaint and concluded that it was neither unfair nor unreasonable for HFL to reject Miss S's claim under that legislation.

Miss S doesn't accept that and asked an Ombudsman to look into things.

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.

Section 75 enables Miss S to make a claim against HFL for breach of contract or a misrepresentation by the supplier of the goods/service in question. 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 these criteria, and indeed HFL has accepted Miss S's claim in this regard. 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 Miss S's claim.

But I want to explain from the outset that I can only consider Miss S's complaint on that narrow basis – i.e. whether it was fair and reasonable for HFL to respond to her claim as it did. I cannot hold it responsible for Miss S's experience with the supplier or her feelings about the treatment, which I recognise are very strong. Miss S has categorised the supplier as being, *"…corrupt and negligent…"*. Even if that were true, it would not be relevant to the

complaint I can consider here. HFL is not the supplier, and is not responsible for all acts or possible omissions by that supplier. It simply has a legal duty to consider whether Miss S has a valid claim under Section 75, which only applies in certain circumstances, and to respond fairly to that claim if so.

Miss S's concerns are that she was still undergoing treatment, and now cannot complete that, as the supplier is no longer in business. But she has also said that she has been told by a different dentist that the product provided by this supplier would never have been effective for her anyway. So, in the round, she believes she should receive a full refund as what she paid for has not been provided.

To be clear, I don't accept that Miss S hasn't finished her treatment. From the information I have I am satisfied that, on balance, the fundamental service paid for was the provision of a set of aligners used for straightening teeth over a relatively short term. As mentioned, that treatment began around May 2023 and was expected to last a matter of some four months. The treatment itself is *not* something that is ongoing until the customer is satisfied with the results.

What is clearly the case though is that she is not happy with the results of the treatment. Therefore, the supplier had provided her with some further aligners to try and improve the results for her.

In cases such as this it is often complex to assess the quality of the service Miss S paid for. Results from such treatments are, of course, subject to many variables and there are generally disclaimers by the providers of such services, and accepted risks that results simply cannot be guaranteed. I, of course, am not a dental expert. And Miss S has not provided an independent, expert opinion that sets out that the treatment she paid for has not been done with reasonable 'care and skill', as implied by the Consumer Rights Act 2015 ('CRA'). It is that, rather than the *results* of the treatment, that is the crucial issue for me in considering whether it was fair and reasonable for HFL to respond to her claim as it did.

But I need to consider what I think Miss S's contract with the supplier agreed to provide in terms of treatment, and possibly outcome. In that way, I can determine whether there has been a breach of an explicit term of it. I don't have either a contract signed by Miss S, or evidence as to the projected results of the treatment. as I understand they were housed in an online application which no longer holds that content since the supplier went into administration. However, HFL has been able to provide a sample document called a *"Consent and History Form".* This document is not dated, but is noted to be 'v3.7'. HFL says it would have been in use at the time that Miss S commenced her treatment in 2022. Where there are evidential uncertainties, as here, it is my role to determine what I think is more likely than not to have happened, or been the case.

In the absence of anything else, I think it is more likely than not that Miss S would have been provided with a document sufficiently similar in layout and content to the sample I have for me to be able to rely on it. So I have considered the content of it carefully.

Importantly, the final section before the customer was required to sign set out that:

> *"I understand that* [the supplier] *cannot guarantee any specific results or outcomes."*

So I'm satisfied the supplier never said that it could guarantee her satisfaction with the results of the treatment. And indeed Miss S says that it was explained to her at the beginning of the treatment when the supplier did a "virtual scan" (which I understand displayed hoped for results) that her teeth, *"…may not look 100% exactly as the image…"* So I think Miss S knew that results weren't guaranteed. And that means I don't find a breach of any explicit

terms of the contract between Miss S and the supplier. But that is only the first question I have considered.

As set out above, the CRA says that there are also implied terms of contracts – not everything has to be fully spelled out. In this scenario, the implied terms of this contract are that the supplier would provide the service Miss S paid for with reasonable care and skill. I've already set out why I don't have the evidence to reach a conclusion that it didn't.

However, there is a third and final issue for me to consider in terms of the supplier's lifetime guarantee scheme. What that offered was the *possibility* of having aligner touch-ups every year, provided that Miss S carried on buying retainers, and that a dentist approved the provision of the touch-up aligners. My understanding is that a dentist would only do so if s/he assessed that further progress to straighten the teeth would be possible through a touch-up aligner.

I am happy to accept what Miss S says the supplier told her on the phone – that it would consider providing her with further treatment if she was still unhappy with her results after concluding her treatment with the final set of aligners it had sent. And that there was no point in ordering retainers until she was happy with her results. This fits with my understanding of how the need for 'touch-up aligners' was considered by the supplier, at times as part of the lifetime guarantee scheme. However, in this instance I think it was most likely that the supplier suggested that possibility as a gesture of goodwill to reassure Miss S, rather than because it considered that she was eligible for the lifetime guarantee scheme.

I say that because the evidence suggests that Miss S didn't do everything she needed to in order to qualify for the guarantee. Firstly, retainers must be purchased by the customer every year to maintain the guarantee. Additionally, one of the supplier's requirements was that customers complete regular check ins during treatment, which HFL says the supplier confirmed she did not.

Quite reasonably, Miss S points out that she didn't do that because she effectively wasn't ready for the retainers, and that someone from the supplier told her not to. I understand her point, however, the fact remains that, regardless, she has not met the written requirements to qualify for the lifetime guarantee scheme as set out, and to which HFL must now refer.

But whilst I have found that Miss S isn't eligible for the lifetime guarantee scheme, I also don't think that is the pivotal issue here. *Even if she were*, that would not entitle Miss S to the outcome she wants. Miss S thinks she should be provided with a full refund of the treatment costs. Given the stage of treatment she was at, that guarantee would never have given her that option anyway. It's clear from the information I have that a refund was only available for the first 30 days after Miss S began her treatment in 2023, and only if Miss S had not opened or used any of the aligners.

Although I am genuinely sorry to hear of Miss S's disappointment with this situation, with Section 75 in mind, I don't think it would be fair or reasonable to conclude that HFL should refund her the costs involved or provide other compensation. And so I cannot uphold her complaint.

My final decision

For the reasons I've explained, I don't uphold this complaint and Healthcare Finance Limited doesn't need to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 7 February 2025.

Siobhan McBride
Ombudsman