DRN-4840335

The complaint

Miss K 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 October 2022 Miss K entered into a two-year 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 £1,600 and Miss K was due to pay back the agreement with monthly payments of around £70. She said she was initially provided around 20 aligners and the treatment was due to finish around March 2023. Miss K said several aligners had fitting issues so S agreed to provide further aligners. She said she was unhappy with the service supplied. She's shown us correspondence with S around November 2023 where she complained about the results, and it asked for medical evidence. Miss K said it agreed to carry out a scan for further aligners in November 2023, although it looked like she was also requesting compensation around this time as well as an alternative.

Miss K said she went to her dentist for a check-up due to mouth pain, and it told her S had gone out of business in December 2023. Miss K contacted HFL to make a claim in January 2024, requesting a full refund. Miss K said the treatment caused jaw misalignment and pain. She also said her teeth had moved back to their old position. HFL considered the claim as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ("s.75"). HFL acknowledged S provided a 'lifetime' guarantee and it agreed to refund Miss K what it said was the value of one set of 'touch up' aligners – £220.

Miss K decided to refer her complaint to the Financial Ombudsman. Our investigator looked into things and thought HFL's offer was fair, and it was not unreasonable of it to decline to refund the full cost of treatment.

Miss K didn't agree. She said she didn't receive the goods she was supposed to receive and that she was in the middle of treatment when S went out of business. She said most of the aligners didn't fit or solve the problem. She also said she'd have to go elsewhere to continue treatment. She said some of the information she needed to support her case wasn't available because it was stored in S's online application that no longer worked. She said she was waiting for further aligners when S went out of business.

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 Miss K 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 Miss K is unhappy with her treatment. I can't imagine how she must feel, but I thank her for taking the time to bring her complaint.

What I need to consider is whether HFL – as a provider of financial services – has acted fairly and reasonably in the way it handled Miss K's request for getting her money back. But it's important to note HFL isn't the supplier.

S.75 is a statutory protection that enables Miss K 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. 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.

HFL has broadly accepted Miss K's claim in one sense because it's offered her £220. I've gone on to consider if there is persuasive evidence of a breach of contract or misrepresentation by S that means HFL should have offered more than it has when handling Miss K's claim. But I want to explain from the outset that I can only consider Miss K'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.

Miss K entered into the agreement in October 2022, and it was expected to last a few months. She was not happy with the results of the treatment. Therefore, she tells us S provided her with further 'touch up' aligners to try and improve the results for her in March 2023 for four months; in August 2023 for 2 months, and she said further aligners were approved in November 2023, but these weren't received. She says she hasn't finished her treatment, and now cannot, as S is no longer in business. So she believes she should receive a full refund.

I've focussed on Miss K'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 be a misrepresentation because I don't think it would have been aware it would go out of business when it sold Miss K the treatment.

Implied terms

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

Miss K has not provided supporting evidence such as an independent, expert opinion that sets out the treatment she 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 S offered wasn't carried out with reasonable skill and care. I don't think the fact that S provided further treatment for

refinement or ‘touch up’ in itself shows the original core treatment wasn’t carried out with reasonable care and skill in line with the implied terms of the contract.

Express terms

I also need to consider what I think Miss K’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 K 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 K was due to receive a set of aligners when she entered into the contract in October 2022 and that she received and used them. I think the core contract was for those set of aligners that she was due to use for a few months.

I think it likely Miss K 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 K would have understood S couldn’t guarantee specific results or outcomes. The consent form also sets out that problems may occur in the jaw joints during treatment and that there could be outside factors that contribute to this. Given the nature of the treatment, I don’t think those sorts of terms are unfair or unusual. So even if Miss K didn’t quite get the results she wanted after the core treatment or experienced some joint pain, without sufficient evidence to show otherwise I don’t think that would be considered a breach of contract.

As I’ve said above, Miss K was unhappy with the results of the core treatment, and she tells us S agreed to supply further sets of ‘touch up’ aligners – at no cost. Miss K said she received two more sets but a third set that had been agreed wasn’t supplied around the time S went out of business.

While I appreciate Miss K is put in a difficult position because some of the evidence isn’t available, I can only consider how HFL acted based on what was able to be supplied. In the absence of a specific signed contract, I’ve looked at S’s website from around the time Miss K entered into the contract. This says most treatment lasts between 4 to 6 months. It says if the customer hasn’t achieved the results they want, and providing they’ve met certain conditions, they *might* be eligible for additional ‘touch up’ aligners. Miss K said S gave her further sets of ‘touch up’ aligners. Miss K said this was essentially an extension of the original treatment because of issues she had. But I haven’t seen evidence S would extend the original treatment.

I don’t think the fact S gave Miss K further ‘touch up’ aligners in itself shows there was a breach of any express terms of the contract. Further aligners seem to be part of S’s aftercare offering for further refinement (subject to dentist approval). It’s not clear whether S gave Miss K further aligners because it thought the results could be improved upon or whether it was for some sort of failing on its side. We don’t have sufficient evidence to conclude.

While I’m sympathetic Miss K wasn’t happy with the results, I don’t think HFL had persuasive enough evidence to show S breached express terms of the contract in respect of the results she achieved.

Guarantee

On S’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 Miss K registered her aligners; wore them as prescribed; completed virtual check ins; and stayed up to date on payments. It also said after the core treatment Miss K 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 K said she didn't order retainers because she didn't think she'd completed her treatment.

Miss K thinks she should be provided with a full refund of the treatment costs. There is a potential breach identifiable because Miss K can no longer use the guarantee. However, given the stage of treatment she was at, the guarantee would never have given her the option of a refund of the core treatment cost. From what I've seen, a full refund was only available for the first 30 days after Miss K began her treatment in October 2022, and only if Miss K had not opened or used the aligners. I don't think it would be fair or reasonable for me to tell HFL that it should now provide Miss K with a full refund to recompense her for the potential breach that has happened. I don't think it was unreasonable for HFL to not offer to refund the value for what was provided under the core contract, but I've thought about what it has offered.

There are many ways in which the guarantee could have ceased to be of use to Miss K. 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 K needed to buy them separately. S may not have approved providing her with touch-up aligners if its dentists had assessed that they would not be beneficial, although I appreciate Miss K said it offered further treatment in November 2023. The guarantee only gave the possibility of annual touch-up aligners – not the certainty that they would actually be provided.

Moreover, looking at things strictly, Miss K may have already benefitted from the guarantee twice previously, and she's given reasons she didn't order retainers. Given the guarantee was only there to cover one set of treatment per year if Miss K met certain conditions, it's not clear S was contractually obliged to have given her the third set she was waiting for at that time.

We don't have evidence S told Miss K she didn't need to order retainers. S's FAQs said she did if she wanted to benefit from the guarantee and it was strongly recommended in order to maintain her results. I have to bear in mind that when considering losses, Miss K would have been required to mitigate the impact of any potential breach of contract. She could have bought retainers to have helped maintain her results. As I've said above, retainers weren't provided as part of the treatment cost.

Even if I accept there's a potential loss, 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 or results Miss K received. I don't have enough evidence of a breach of contract in relation to the core treatment. But I think there's a possible loss because Miss K may have been able to utilise the guarantee, and she said this was agreed before S went out of business.

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. Taking into account she's received the core treatment, and that she said she was offered further treatment before S went out of business, I think HFL is acting fairly by offering this price reduction to remedy any potential loss. It seems like a fair

compromise given I think the total amount paid was substantially for the core treatment.

While I am sorry to hear Miss K 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 its offer is broadly fair in the circumstances. I should, however, point out Miss K doesn't have to accept this decision. She's also free to pursue the complaint by more formal means such as through the courts.

Finally, I note Miss K may have stopped making payments towards the agreement, and I think HFL put certain collections activity on hold since the complaint was referred. I primarily need to consider what happened up to the point HFL issued its final response letter because those events relate to what it has had the chance to consider. Given the circumstances, HFL may wish to consider removing any adverse information if Miss K clears any arrears. But, for the avoidance of doubt, given I don't know exactly what's happened, and that these events mostly happened or may happen after HFL issued its final response, I'm not deciding that aspect within this final decision. If Miss K is unhappy with how HFL treats her going forward, it may be something our service is able to consider separately.

My final decision

For the reasons given above, my final decision is that Healthcare Finance Limited has done enough to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 9 January 2025.

Simon Wingfield
Ombudsman