DRN-4844004

The complaint

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

What happened

In April 2023 Mr F 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 his teeth. It was expected that the treatment would last for between four and eight months, and indeed appears to have been completed in the summer of 2023, as that is when he ordered a retainer to help maintain the results of the aligners.

It seems clear that Mr F was not entirely happy with the results of the treatment (although it isn't clear exactly why) and indeed that the supplier provided an 'aligner touch up' post-treatment to try and improve the outcome. However, Mr F says that it did not fit his mouth and he was unable to wear it. Mr F says he tried to get further help from the supplier and a new set of aligners, but it didn't respond to him. In any event that supplier went into administration in December 2023.

In January 2024, Mr F therefore contacted HFL to make a claim, requesting a full refund of all treatment costs and cancellation of the loan, which HFL considered as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ('Section 75'). Ultimately, HFL declined his claim as it said Mr F had not complied with the requirements to qualify for the particular guarantee scheme offered by the supplier, that may have offered further treatment. Unhappy with that response, Mr F brought a complaint to us.

Our investigator considered how HFL had acted in light of its responsibilities under Section 75. However, he did not uphold the complaint and did not think it unfair or unreasonable for HFL to reject Mr F's claim under that legislation.

Mr F 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 Mr F to make a claim against HFL for breach of contract 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. 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 F's claim.

But I want to explain from the outset that I can only consider Mr F's complaint on that narrow basis – i.e. whether it was fair and reasonable for HFL to respond to his claim by offering

what it did. I cannot hold it responsible for Mr F's experience with the supplier or his feelings about the treatment. HFL simply has a legal duty to consider whether he has a valid claim under Section 75 and to respond fairly to that claim if so.

Mr F's concerns are that he isn't happy with the results of his treatment, and now cannot, as the supplier is no longer in business, get any further support from it. So he believes he should receive a full refund of the cost of the treatment.

In cases such as this it is often complex to assess the quality of the service Mr F 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 Mr F has not provided an independent, expert opinion that sets out that the treatment he 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 his claim as it did.

So I need to consider what I think Mr F's contract with the supplier agreed to provide in terms of treatment. In that way, I can determine whether there has been a breach of an explicit term of it. I don't have a contract signed by Mr F 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 Mr F commenced his treatment in 2023. 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 Mr F 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.

The key relevant section is the final one before Mr F was required to sign which sets 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 his satisfaction with the results of the treatment. That means I don't find a breach of any explicit terms of the contract between Mr F and the supplier.

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 Mr F 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 further 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 Mr F 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.

As mentioned above, the supplier did provide Mr F with a set of 'touch-up aligners' presumably in order to try and address his concerns about the results of the treatment. However, I think it was most likely that the supplier did that as a gesture of goodwill, rather

than because it considered that Mr F was eligible for the lifetime guarantee scheme.

I say that because the evidence suggests that Mr F didn't do everything he needed to in order to qualify for the guarantee. One of the supplier's requirements was that customers completed regular check ins during treatment, which HFL says the supplier confirmed he did not. Mr F disagrees and believes he did everything necessary. As mentioned earlier, where disputes or uncertainties exist, it is my role to decide, on the balance of probabilities, what I think happened.

Mr F responded to the investigator's view highlighting that he did do the check ups required, contrary to what HFL says. But he can offer no further evidence of that. I am fully aware that he can't do that because the online application in which his records were stored is no longer working. So I accept that he is in a difficult position here. HFL has provided data received from the supplier showing the guarantee requirements and which were and weren't met by each customer. I have no reason to doubt that data. Taking a cynical stance, which acknowledges that it is perhaps in HFL's interests for customers of this supplier to not be eligible for the guarantee, I remain confident in the evidence it has provided. Firstly, it would be an extremely serious allegation to suggest that, as a regulated financial business, HFL would provide dishonest evidence to this service. Secondly, I have seen in other, similar, complaints, data provided by HFL that shows other customers did complete check-ins and were therefore eligible for the guarantee scheme. Thirdly, whilst I acknowledge the possibility that HFL could have made an innocent mistake in the information it's provided, I don't have enough to conclude that is likely to have happened. And so, although I don't doubt Mr F's genuinely held recollections, I am ultimately persuaded by HFL's evidence rather than his.

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

Although I am sorry to hear of Mr F'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 him the costs involved or provide other compensation.

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 Mr F to accept or reject my decision before 10 December 2024.

Siobhan McBride
Ombudsman