DRN-4903360

The complaint

Mr B 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 June 2023 Mr B entered into a 25-month fixed sum loan agreement with HFL to fund the provision of dental aligners to straighten his teeth from a third-party supplier. It was expected that the treatment would last for about four months.

Although generally happy with the progress of the treatment, in October 2023 Mr B asked the supplier for an 'aligner touch up': effectively some further treatment. This was because his bite was misaligned. The supplier rejected that request, which it says was reviewed by a dentist, who said that no further movement would be possible with Mr B's teeth and the aligners offered by it. He appealed that decision, and the supplier again rejected it, on the same basis. The supplier also reminded Mr B of the need for him to buy retainers to ensure that the progress he had made wasn't lost. That supplier went into administration in December 2023.

In December 2023, Mr B therefore contacted HFL to make a claim, which it 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 B 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 B 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, in summary, that there was insufficient evidence to say that the supplier had not provided the service Mr B paid for with reasonable skill and care, or that there was a breach of contract when the supplier refused to offer further treatment. Therefore she did not think it unfair or unreasonable for HFL to reject Mr B's claim under Section 75.

Mr B 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.

Having done so, I'm not upholding it, and I'll explain why.

Section 75 enables Mr B 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 B's claim.

But I want to explain from the outset that I can only consider Mr B's complaint on that narrow basis – i.e. whether it was fair and reasonable for HFL to reject his claim. I cannot hold it responsible for Mr B's experience with the supplier or the distress or inconvenience caused by the supplier going out of business and his feelings about the treatment. HFL does not have, as Mr B terms it, *"…a moral obligation…",* to do anything to address all his concerns about the service he paid for from the supplier. It simply has a legal duty to consider whether he has a valid claim under Section 75.

In cases such as this it is often complex to assess the quality of the service Mr B 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 B 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 reject his claim.

It is clear that Mr B's concerns are about his bite – that is the way in which his top teeth connect with his bottom teeth. For example, I have read in his correspondence with the supplier before it went into administration that Mr B was, *"…pleased with the movement…"*, of his teeth, which I take to mean the extent to which they had straightened. He said he had expected his bite to return to normal, but that has not happened. In a later email, Mr B reiterates the *"improvement"* he has seen, but says that it's essential for him, *"…to have not only straight teeth but also a bite that functions correctly."* That is, of course, entirely understandable.

But I need to consider what I think Mr B'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 B 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 B commenced his treatment in the summer of 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 B 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.

There is, in fact, a discrete section of the form headed, *"Bite Adjustment",* which sets out that:

> *"Your bite may require adjustment after use of the aligners".*

It goes on to say:

> *"I understand that* [the supplier] *cannot guarantee any specific results or outcomes. I further understand that my…aligner treatment will only address the alignment of my teeth and not correct my existing bite condition."*

I am confident Mr B is saying that his bite has altered and become problematic as a result of the straightening treatment, rather than has failed to be improved by it. But in either situation,

I think the contract between him and the supplier was clear in saying that the treatment provided could not address bite issues, and indeed may cause them. As appears to be the case here.

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 B 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.

Mr B also says that he ought to be covered by the supplier's lifetime guarantee scheme for further treatment. If that were the case, then I might consider there has been a breach of contract on that basis. There was information about this guarantee scheme in the FAQs document which I'm confident would have been available to Mr B in the supplier's app. The guarantee was only applicable in certain circumstances, and contingent upon the customer's actions. One of those was about completing 'check ins' with the supplier. There is an ongoing dispute about whether Mr B did that, or indeed was afforded the opportunity to. However, in any event, he accepts that he didn't buy the retainers for his teeth, which was another requirement. He says there was no point, due to his bite problems. But I can see that the supplier reminded him of the need to do so in emails it sent. And choosing not to meant that he would not be covered by the lifetime guarantee. So there isn't a clear breach here by the supplier for which I could fairly hold HFL liable.

Moreover, it would appear that the supplier had twice considered Mr B's request for further treatment (which may have been available to him under the guarantee) and twice said that further treatment would be no use in these circumstances. The aligners it had provided, and hypothetically could have continued to supply under the guarantee, were not going to address Mr B's concerns around his bite. So actually, I don't think the guarantee, and whether Mr B ought to have qualified for it or not, really lies at the heart of this particular complaint. Even if he had benefited from that, it seems highly unlikely it would have led to his problem being tackled.

In short, the contract between Mr B and the supplier was for it to provide treatment to straighten his teeth. And he accepts it has, in fact, done that. I entirely understand the difficulties that he is now experiencing with his bite, but I think the supplier made it clear in the contract that such issues were a risk/potential side effect of the treatment. And I don't think Mr B has been unfairly stopped from relying on the supplier's lifetime guarantee scheme. So I don't find there is a basis for a successful claim under Section 75 for breach of contract or that the supplier failed to deliver the service paid for with reasonable care and skill.

Although I am sorry to hear of Mr B'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 B to accept or reject my decision before 28 November 2024.

Siobhan McBride
Ombudsman