DRN-4921564

The complaint

Mrs W 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 February 2023 Mrs W 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 a few months.

It seems clear that Mrs W was not happy with the results of the treatment and was asking for 'aligner touch ups' to try and improve the outcome by September 2023. It seems that the supplier may have been in the process of assessing her request in October, but in any event that supplier went into administration in December 2023.

In December 20203, Mrs W therefore contacted HFL to make a claim, asking for the loan to be cancelled, which it considered as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ('Section 75'). Ultimately, HFL accepted that Mrs W had suffered a loss and refunded her what it said was the value of one set of touch up aligners, which it considered would have been provided by the supplier, and to which Mrs W had a contractual right. This was in the amount of £220. Unhappy with that response, Mrs W 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 HFL's offer was fair and it was not unreasonable of it to decline to cancel the remaining balance of the loan.

Mrs W 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 Mrs W 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, and indeed HFL has accepted Mrs W'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 offered more than it has when handling Mrs W's claim.

But I want to explain from the outset that I can only consider Mrs W's complaint on that narrow basis – i.e. whether it was fair and reasonable for HFL to respond to her claim by offering what it did. I cannot hold it responsible for Mrs W's experience with the supplier or her feelings about the treatment. HFL is not the supplier, and is not answerable for

everything the supplier did, or did not, do. HFL simply has a legal duty to consider whether she has a valid claim under Section 75 and to respond fairly to that claim if so.

Mrs W's concerns are that she is unhappy with the results of the treatment and now cannot get any more aligners from the supplier. She is also angry at what she feels was very poor service from the supplier. So she believes she should not have to make any more loan repayments after the supplier went into administration, as she could not get any treatment or service from that point.

In cases such as this it is often complex to assess the quality of the service Mrs W 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 Mrs W 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 Mrs W'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 Mrs W 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 Mrs W commenced her 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 Mrs W 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.

Crucially, in the final section before Mrs W was required to sign, it 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 her satisfaction with the results of the treatment, regardless of the pictures showing what it hoped to achieve. That means I don't find a breach of any explicit terms of the contract between Mrs W 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 Mrs W 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, HFL accepts that Mrs W was eligible to be covered by the supplier's lifetime guarantee scheme. This is despite her not having purchased retainers, which was technically required for her to be eligible. However, HFL has taken a fair and reasonable approach in nonetheless including her in this group of customers, as she was seemingly waiting for touch-up aligners at the point that the supplier went into administration.

What that guarantee offered was the *possibility* of having aligner touch-ups every year, provided that Mrs W 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.

Because of her being eligible for that guarantee, HFL identified that Mrs W had lost out as the supplier was no longer trading and could not provide her with a touch-up aligner at the end of 2023 when she asked.

But Mrs W thinks she should be provided with a pro rata refund of the treatment costs, by way of the loan being cancelled at effectively the halfway point. I have set out why I don't find that there has been a breach of an explicit contract term in respect of treatment results, or indeed those terms implied in the contract. But there is a breach identifiable because Mrs W can no longer use the lifetime guarantee. However, given the stage of treatment she was at, that guarantee would never have given her the option of any refund of the treatment costs. It's clear from the information I have that a full refund was only available for the first 30 days after Mrs W began her treatment in 2023, and only if Mrs W had not opened or used the aligners. There is no provision in the documentation for partial refunds. So it would not be fair or reasonable for me to tell HFL that it should now provide Mrs W with even a partial refund to recompense her for the breach that has happened: the supplier would never have been obliged to do so.

In saying that, it's important for me to underline that Mrs W wasn't paying a monthly subscription for a service which was withdrawn when the supplier went into administration. The treatment (essentially the initial set of aligners) was paid for upfront by HFL and Mrs W had agreed to pay that back over the course of two years. So she has already had the service (albeit she is not satisfied with it or its results) that HFL paid for on her behalf.

Finally, I have thought in some detail about the amount HFL has offered Mrs W. I am satisfied that the £220 is a fair estimate of the cost of a set of touch-up aligners, as I have seen evidence provided by the supplier to HFL to confirm that. So essentially it has compensated her for the loss of one year's 'use' of the lifetime guarantee. Hypothetically, it is possible that Mrs W could have requested and received a set of aligners every year for the rest of her life. Which we all hope will be many years. But that hypothetical possibility doesn't lead me to conclude that HFL has been unfair in what it has offered.

There are many ways in which the lifetime guarantee could have ceased to be of use to Mrs W. Firstly, she may not have done what she needed to in terms of continuing to buy retainers from the supplier. Perhaps more importantly, the supplier may not have approved providing her with touch-up aligners if its dentists had assessed that they would not be beneficial. The guarantee only gave the possibility of annual touch-up aligners – not the certainty that they would actually be provided.

So taking that into account, and noting the informal remit of this service to resolve disputes, I don't find that it was unfair or unreasonable of HFL to recompense Mrs W in the way that it has. Identifying exactly how many annual touch-up aligners Mrs W *may* have asked for; *may* qualified for; and *may* been approved for, is pretty much impossible.

Although I am sorry to hear of Mrs W'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 cancel the loan from December 2023. What it has already offered is fair and it need not do anything else. If the £220 refund has not been applied to Mrs W's account, then HFL should do so now.

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 more than it has already offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 4 March 2025.

Siobhan McBride
Ombudsman