DRN-4929394

The complaint

Mr D has complained about the way Healthcare Finance Limited ("HFL") dealt with a claim for money back in relation to dental treatment which he paid for with credit it provided.

What happened

In February 2023 Mr D entered into a two-year fixed sum loan agreement with HFL to fund the provision of dental aligners from a third-party supplier ("the supplier"). The cash price was around £1,600 and Mr D was due to pay back the agreement with monthly payments of around £70. He said the supplier initially supplied 20 aligners and the treatment was due to last around 10 months.

The supplier went out of business in December 2023. Mr D contacted HFL in January 2024 to say he'd been in contact with the supplier to ask for a refund because the aligners hadn't worked as promised. He said when eating he catches the inside of his lip when he bites down, and that he wasn't getting a response from the supplier.

HFL said it acknowledged the supplier provided a guarantee, but it didn't think Mr D met all the conditions for it, so it declined the claim when considering its liabilities under Section 75 of the Consumer Credit Act 1974 ("s.75"). Mr D decided to refer his complaint about the claim to the Financial Ombudsman. He reiterated he was unhappy with the results he said he was promised. He requested a refund, and said he'd been negatively affected.

Our investigator looked into things and didn't think HFL's answer was unfair. Mr D didn't agree. He said he'd paid for a service he hadn't received. He said the whole point of the treatment was to straighten his teeth. He said no one from the supplier contacted him to say regular check-ins were required. He said the instructions were to change his aligners every two weeks which he did until the end of the treatment. He said when he noticed problems at the end he contacted the supplier but found out it had gone out of business. He said it's not fair for him to continue to pay for a service he wasn't going to receive. He said if the supplier hadn't gone out of business, the situation would have been resolved.

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 Mr D 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 Mr D is unhappy with the treatment. I can't imagine how he must feel, but I thank him for taking the time to bring his 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 Mr D's request for getting money back. But it's important to note HFL isn't the supplier.

S.75 is a statutory protection that enables Mr D 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 him 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.

Mr D has indicated the aligners haven't worked as he said was promised, and that he can no longer use the guarantee. I've gone on to consider if there is persuasive evidence of a breach of contract by the supplier that means HFL should have offered to take any action. But I want to explain from the outset that I can only consider Mr D's complaint on that narrow basis – that is, whether it was fair and reasonable for HFL to respond to the claim in the way it did.

I've focussed on Mr D's breach of contract claim. Even if the supplier 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 Mr D the treatment.

Implied terms

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

Mr D has not provided supporting evidence such as an independent, expert opinion that sets out the treatment he 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, and I've not seen evidence the goods element – i.e, the aligners, were not of satisfactory quality.

Express terms

To decide whether there's likely been a breach of an express term of the contract I've looked at the supplier's documentation from around the time Mr D bought the treatment which has been made available by HFL. And I've thought about Mr D's testimony and his supporting evidence.

It's not in dispute Mr D entered into a contract for aligner treatment and that he received and used those aligners. There's a lack of signed documentation, but I think the core contract

was for a set of aligners Mr D was due to use for a few months. The expected length of the treatment is not totally clear. The supplier's website from the time said most treatment lasts between 4 to 6 months. Mr D said his treatment lasted for 10 months. He's also said he received 20 aligners and was due to change them every two weeks. The timeline hasn't clearly been set out. But it doesn't seem to be in dispute Mr D's treatment finished before the supplier went out of business, and this was also set out by HFL in its response to the claim.

I think it likely Mr D signed an agreement with the supplier 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 Mr D would have understood the supplier couldn't guarantee specific results or outcomes. The consent form also has a section for "bite adjustment" that said *Your bite may change during treatment and may result in temporary discomfort. Your bite may require adjustment after use of the aligners.*

Given the nature of the treatment, I don't think those sorts of terms are unfair or unusual. So even if Mr D didn't quite get the results he wanted after the core treatment I don't think that in itself would be considered a breach of contract.

While I'm sympathetic Mr D wasn't happy with the results and said he had an issue with his bite, I don't think HFL had persuasive enough evidence to show the supplier breached the contract in respect of the results Mr D achieved.

Guarantee

While I think Mr D received the goods and service under the core contract, Mr D is unhappy he can no longer receive treatment from the supplier to improve his results. Mr D's argument therefore seems to mainly focus on the supplier breaching the contract by not offering him what he says he should be due under the guarantee.

On the supplier'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 Mr D registered his aligners; wore them as prescribed; completed virtual check ins; and stayed up to date on payments. It also said after the core treatment Mr D was required to buy retainers every 6 months 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.

On the one hand, HFL said Mr D didn't buy the retainers and he didn't complete the check ins. As I've said, the timeline isn't very clear either. On the other hand, Mr D said he was never told he needed to complete check ins. He said he followed instructions and contacted the supplier when the results it promised weren't honoured and when he suffered complications. He also said some of the evidence was no longer available.

Mr D isn't disputing the information HFL said it received from S. He's said he wasn't told to complete check ins. He's not given a clear account of why he didn't order a retainer. In his response to our investigator he said this was part of a service he hadn't received. But it's important to highlight the retainers weren't included as part of the treatment Mr D paid for – he needed to buy them separately. It's possible Mr D could have taken steps to become

eligible for the guarantee again but I think he'd have at least been required to buy retainers when the treatment finished to do so. On balance, I don't think he'd done that quickly enough to meet the conditions for the guarantee.

As I've said above, I need to bear in mind what HFL can fairly be held responsible for. I can't now fairly point to a term of the contract that's been breached that HFL is responsible for. Even without a signed contract, based on the FAQs it seems as though Mr D didn't meet the relevant requirements to continue benefitting from the guarantee.

Moreover, Mr D has requested a refund, or to stop making payments. But even if I'd identified a breach of contract in relation to the guarantee, these weren't remedies the contract offered in this sort of scenario. I'm conscious Mr D has received the core benefit through the initial treatment, and I think the total amount of credit was substantially for that treatment, so I don't think HFL is acting unfairly by asking him to pay back the credit. HFL hasn't made an offer to Mr D for a potential loss through him not being able to utilise the guarantee. I don't think there's the grounds to say HFL should offer him a price reduction for something I can't see the supplier was required to provide him under the guarantee.

While I am sorry to hear Mr D is unhappy, with s.75 in mind, I don't find there are grounds to direct HFL to refund him or to waive the outstanding balance.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 2 January 2025.

Simon Wingfield
Ombudsman