DRN-4936522

The complaint

Mrs B 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 March 2023 Mrs B 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. Mrs B says the aligners she received were to last for about four months.

Mrs B was not happy with the results of the treatment and the supplier provided at least one 'aligner touch up' in the summer of 2023 to try and improve the outcome. In November 2023 Mrs B seems to have requested a further aligner touch up, and she says the supplier agreed to it. In any event that supplier went into administration in early December 2023, and Mrs B did not receive the aligner touch up that had apparently been approved.

In December 2023, Mrs B therefore contacted HFL to make a claim, requesting a refund or compensation, which it considered as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ('Section 75'). Ultimately, HFL declined her claim as it said Mrs 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, Mrs 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 did not think it unfair or unreasonable for HFL to reject Mrs B's claim under that legislation.

Mrs B doesn't accept that, saying that she should be compensated as the goods or services were not supplied, or were supplied only in part, 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 B to make a claim against HFL for breach of contract by the supplier of the goods/service in question, or a misrepresentation. 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 considered Mrs B'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 acted differently in the way it handled Mrs B's claim.

But I want to explain from the outset that I can only consider Mrs B's complaint on that narrow basis – i.e. whether it was fair and reasonable for HFL to reject her claim. I cannot

hold it responsible for Mrs B's experience with the supplier or her feelings about the treatment. 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 B's concerns are that she hasn't finished her treatment, and now cannot, as the supplier is no longer in business. Following the investigator's view, she said that she should receive at least the value of the touch up aligners that she says the supplier had agreed to supply, but didn't. She reiterated that the service she has paid for has only been partially received.

To be clear, I don't accept that Mrs B hadn't finished her core treatment. From the information I have (primarily Mrs B's own testimony) I am satisfied that, on balance, the fundamental service paid for was the provision of a set of aligners used for straightening teeth over a relatively short term. As mentioned, that treatment began in March or April 2023 and was expected to last a matter of some four months. The treatment itself is *not* something that is ongoing until the customer is satisfied with the results.

What is clearly the case is that she is not happy with the results of the treatment. Therefore, the supplier had provided her with some further aligners to try and improve the results for her. I don't have the details of why the supplier apparently initially rejected one of her requests for further aligners at some point in the second half of 2023. But it is important to note that there was no guarantee that customers would continue to receive aligner touch ups ad infinitum – and I will return to that within the context of the supplier's lifetime guarantee scheme later in this decision.

In cases such as this it is often complex to assess the quality of the service Mrs 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 Mrs B 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 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 Mrs 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 Mrs B commenced her treatment in 2023. She says that she has never seen, let alone signed, such a document. 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 a document sufficiently similar in layout and content to the sample I have – regardless of whether Mrs B remembers seeing it or not – formed the basis of what the supplier contractually agreed to provide to her. So I think I am able to rely on it, and have considered the content of it carefully.

There is a key final section of the document before the customer was required to sign that sets out:

> *"I understand that* [the supplier] *cannot guarantee any specific results or outcomes."*

So I'm satisfied the supplier never said that it could guarantee Mrs B's satisfaction with the

results of the treatment, the core aspect of which I have already found was completed. That means I don't find a breach of any explicit terms of the contract between Mrs B and the supplier. But this is only the first question I have had to consider when reviewing this complaint.

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 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.

The final issue for me to consider is the supplier's lifetime guarantee scheme and the terms of it. HFL says Mrs B isn't eligible for this guarantee – Mrs B says she is.

Crucially, what that lifetime guarantee offered was the *possibility* of having aligner touch-ups every year, provided that Mrs B carried on buying retainers from the supplier, 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. So requesting aligners under the guarantee did not automatically mean they would have been provided. As an aside, the guarantee would never have given her the option of a refund of the treatment costs. It's clear from the information I have that a refund was only a possibility for the first 30 days after Mrs B began her treatment in 2023, and only if she had not opened or used the aligners supplied for the treatment.

I accept Mrs B's evidence that the supplier agreed to provide further aligners on or around 1 December 2023. But that in itself does not conclusively prove that she was eligible for its lifetime guarantee scheme. I think in this instance it was most likely that the supplier agreed to that as a gesture of goodwill, rather than because it considered that Mrs B was eligible for the lifetime guarantee scheme. Mrs B says that is nonsense as no company would go to that expense if it didn't have to. But in my experience of this supplier's practice, it did appear to do this on a regular basis. In any event, I'll explain why I find that she didn't fulfil all the criteria.

The evidence clearly shows that Mrs B didn't do everything she needed to in order to qualify for the guarantee under its explicit terms. One of the supplier's requirements was that customers complete regular check ins during treatment, which HFL says the supplier confirmed she did not. Mrs S disagrees and believes she 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.

Mrs B responded to the investigator's view highlighting that she did a check-in on 30 November 2023, when photographs were taken by one of the supplier's dental advisors. However, the check-ins had to be completed during the core treatment phase – what she has described as happening following her request for further aligners would not have been classed as a check-in for the purposes of the guarantee. I am fully aware that she can't provide more detail about her actions during the core treatment because the online application in which her records were stored is no longer working. So I accept that she 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. In this instance I have no basis to doubt that data. In any event, the check-in issue is not the only one in play.

Additionally, as she wasn't happy with the results of the treatment, Mrs B hadn't ordered and paid for a set of retainers. But this *was* required if customers were to be eligible for the lifetime guarantee. Quite reasonably, Mrs B points out that she didn't do that because she effectively wasn't ready for them, due to being unhappy with the treatment results. I

understand her point, however, the fact remains that she has not met the requirements to qualify for the lifetime guarantee scheme as stipulated

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. And that Mrs B received and completed the core treatment she paid for using the loan from HFL. For completeness, and despite Mrs B not having raised any concerns about it, I have also thought about whether there is any evidence of a misrepresentation by the supplier under the terms of Section 75. In short, there isn't.

Although I am sorry to hear of Mrs 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 accept her claim and compensate her.

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 Mrs B to accept or reject my decision before 31 December 2024.

Siobhan McBride
Ombudsman