DRN-4946514

## The complaint

Ms M 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 provide.

## What happened

In May 2023 Ms M 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. However, it's clear that there were mistakes on the part of the supplier in terms of the aligners provided, and so ultimately Ms M began the substantive treatment in June 2023, which was expected to last ten months.

Ms M was not happy with the fit of some of the aligners or the results of the treatment and also had to be hospitalised at one point. So the treatment was not progressing as expected. She says that the supplier told her not to worry and to simply reset the dates in the app and pause the treatment, as it understood that she was not able to wear the aligners as provided. And so, she was still using the original set of aligners by the time that supplier went into administration in December 2023, some of which she says didn't fit, were painful to wear, and were having no positive impact on her teeth.

In January 2024, Ms M therefore contacted HFL to make a claim, requesting a full refund of all treatment costs, which it considered as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ('Section 75'). HFL rejected her claim and said that Ms M had not done all she needed in order to qualify for the lifetime guarantee scheme offered by the supplier. So there had been no breach of contract. Unhappy with that response, Ms M brought a complaint to us. She told us that she was paying for a service she had not received from the supplier, who she said would have provided her with a further set of aligners if it had not gone into administration.

Our investigator considered how HFL had acted in light of its responsibilities under Section 75. Ultimately, she upheld the complaint in part and concluded that HFL ought to treat Ms M's claim as if she did qualify for the supplier's guarantee scheme. That meant HFL ought to provide Ms M with a refund of £220, which was the value of one set of touch up aligners. But she thought it was not unreasonable of it to decline to refund the full cost of treatment.

Neither party believes that outcome is fair. HFL maintains there has been no breach of contract which would give Ms M recourse to any refund. Ms M maintains that she should receive a full refund of the costs.

And so the case has been passed to me to make a final decision.

## 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 Ms M 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 Ms M'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 her something when handling Ms M's claim. And if so, what that should be.

But I want to explain from the outset that I can only consider Ms M's complaint on that narrow basis – i.e. whether it was fair and reasonable for HFL to respond to her claim as it did. I cannot hold it responsible for Ms M's experience with the supplier or her understandable feelings about the treatment. I understand how strong those feelings are, but HFL is not the supplier. It is not responsible for everything the supplier did, or failed to 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.

Ms M's concerns are that she was still undergoing treatment, and that she paid for, *"…the ongoing support of an orthodontist…",* which is not available now that the supplier has gone into administration. So she believes she should receive a full refund as what she paid for has not been provided.

I accept that Ms M hadn't finished her treatment at the point that the supplier went into administration. But it's important to remember that the treatment itself is *not* something that is ongoing until the customer is satisfied with the results. So the question of what Ms M would most likely have received from the supplier had it not gone into administration is not a straightforward one. It's also important to bear in mind that, if I conclude that the supplier would most likely have provided Ms M with some further treatment or intervention, that doesn't necessarily mean that equates to a breach of contract which HFL must now respond to by providing a full refund. I will explain.

In cases such as this it is often complex to assess the *quality* of the service Ms M 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 Ms M 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 refuse to refund the cost of treatment.

I need to consider what I think Ms M'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 Ms M 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 Ms M 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 Ms M 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 think it forms the basis of the written contract between her and the supplier, and have considered the content of it carefully.

Importantly, the final section before the customer was required to sign set out that:

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

I'm satisfied the supplier never said that it could guarantee her satisfaction with the results of the treatment. That means I don't find a breach of any explicit terms of the contract between Ms M and the supplier. But that is only the first question I have considered.

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 Ms M 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, our investigator concluded that Ms M may have been able to access some further support via the supplier's lifetime guarantee scheme. What that offered was the *possibility* of having aligner touch-ups every year, provided that Ms M met certain criteria, and that a dentist approved the provision of the touch-up aligners. So it was far from guaranteed. My understanding is that a dentist would only approve the provision of more aligners if s/he assessed that further progress to straighten the teeth would be possible through a touch-up aligner.

Despite her not having met all the criteria to technically be eligible for that guarantee scheme, our investigator thought that Ms M had potentially lost out as the supplier was no longer trading and could not provide her with a further touch-up aligner after it went into administration. And so she thought it would be fair for HFL to pay her the value of a set of those aligners.

HFL does not accept that. It said that it was clear that Ms M had not adhered to the necessary terms, and so would not have been offered any touch-up aligner treatments by the supplier.

On the other hand, Ms M thinks she should be provided with a full refund of the treatment costs.

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 so there is no basis for me to direct HFL to refund Ms M's treatment costs.

The question of whether she would have been provided further treatment by the supplier, including under its lifetime guarantee scheme, is a lot more nuanced.

On paper, it seems clear that she did not meet all of the eligibility requirements for the supplier's lifetime guarantee. But I can also see from the terms and conditions that it was possible for customers to re-qualify for the guarantee scheme in certain circumstances. Given all the detailed testimony Ms M has given us about her circumstances and what she says the supplier told her about pausing her treatment, in this case, I am persuaded that it is more likely than not that the supplier would have supported her in re-qualifying for the guarantee scheme.

But, given the stage of treatment she was at, that 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 available for the first 30 days after Ms M began her treatment in 2023, and only if Ms M had not opened or used any of the aligners. So it would not be fair or reasonable for me to tell HFL that it should now provide Ms M with a full refund to recompense her for the supplier going into administration. The supplier itself would never have been contractually

obliged to do that.

I have also thought about the amount our investigator has suggested HFL should offer Ms M. 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 our investigator has suggested that HFL compensate Ms M for the loss of one year's 'use' of the lifetime guarantee.

Hypothetically, it is *possible* that Ms M could have requested and received a set of aligners every year for the rest of her life – *if* the supplier had chosen to include her in the guarantee scheme. But that hypothetical possibility doesn't lead me to conclude that it would be fair for me to direct HFL to provide more than what the investigator has suggested, namely the value of one year's benefit from the guarantee scheme.

There are many ways in which the lifetime guarantee could have ceased to be of use to Ms M. Firstly, she may not have done what she needed to in terms of continuing to buy retainers from the supplier in future years. And crucially, 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 think the fair and reasonable outcome in this case is for HFL to recompense Ms M in the way that our investigator suggested. Identifying exactly how many annual touch-up aligners Ms M *may* have asked for; *may* have qualified for; and *may* have been approved for, is pretty much impossible.

Although I am very sorry to hear of Ms M'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 her the costs of this treatment. However, I do uphold the complaint in part and direct HFL to treat her as if she were eligible for the lifetime guarantee. It should therefore refund her in the amount of £220.

## Putting things right

HFL should refund Ms M the amount of £220, which it can deduct from any outstanding sums owed.

## My final decision

For the reasons I've explained, I uphold this complaint in part and direct HFL to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 24 February 2025.
Siobhan McBride
**Ombudsman**