DRN-4950509

The complaint

Miss U complains that Healthcare Finance Limited won't refund her the money she paid for services around, and the supply of, dental aligners.

What happened

In August 2023 Miss U used finance provided by Healthcare Finance Limited (HFL for short) to pay for the provision of bespoke dental aligners and the services which ran alongside this treatment both of which were provided by a company I'll call "S". Miss U said she received her aligners to straighten her teeth and used all the aligners. Her treatment was for a course of approximately six months. Miss U says she didn't get the results she wanted and in December 2023 she found out that S had gone into administration and the support through the app and the guarantee were no longer available to her. Miss U is unhappy with the outcome of the treatment she has received and isn't receiving any support from S. So she took this dispute to HFL.

HFL considered her dispute with the supplier and considered it under a claim under section 75 of the Consumer Credit Act 1974 ("S75" and "CCA" respectively). It offered her £220 refund to be removed from her outstanding balance. Feeling that HFL's position to be unfair Miss U brought her complaint to this service.

Our investigator looked into the matter. Overall, he felt that HFL had fairly treated Miss U. Miss U didn't agree. So 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 should make very clear that this decision is not about S (who sold the aligners and support services) which isn't a financial services provider and doesn't fall within my remit regarding Section 75. Miss U has focussed her displeasure at S (which is no longer extant) and this is understandable considering the circumstances because she's still not happy as her teeth still aren't as she'd want them. Whatever the issues there maybe with S here, and just because Miss U says she has lost out, it doesn't necessarily follow that HFL has treated Miss U unfairly or that it should refund her. And this decision is solely about how HFL treated Miss U. I hope this crucial distinction is clear.

Miss U has said she's not been paying HFL and it has sent her notices that she needs to pay. This was a three party arrangement where Miss S purchased goods and services from S and used money she borrowed from HFL to pay for this purchase. Just because S is no longer in existence doesn't mean she doesn't owe HFL the money she borrowed from it. So if HFL has put negative information on her credit file then I'm not persuaded its treated her unfairly in that regard. She agreed to borrow money from it and also agreed to pay it back in instalments and she also agreed to the terms of that borrowing. These terms included information about what HFL would do if Miss S didn't pay. So I' don't think HFL has treated her unfairly here by doing what was agreed.

I should also note that Miss U has raised a large number of issues in this dispute. I've considered them all. However I've chosen to address only those arguments which she's raised which I see as key to this dispute and key to reaching a fair outcome on this matter.

The CCA

The CCA introduced a regime of connected lender liability under S75 that afforded consumers ("debtors") a right of recourse against lenders ("creditors") that provide the finance for the acquisition of goods or services from a third-party merchant (the "merchant"). S75 says:

"*If the debtor under a debtor-creditor-merchant agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the merchant in respect of a misrepresentation or breach of contract, she shall have a like claim against the creditor, who, with the merchant, shall accordingly be jointly and severally liable to the debtor."*

So the test is here, did HFL consider Miss U's S75 claim to it fairly, or in other words are the pre-requisites of the CCA in place (financial limits and Debtor Creditor Supplier arrangement) and then is there a breach of contract or material misrepresentation made out here against S that HFL should fairly be held responsible for. I'm satisfied the financial limits test is made out here as well as the arrangement requirement. So I now consider breach and misrepresentation as I see these as the key aspects of Miss U's complaint.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that traders must perform the service with reasonable care and skill. The CRA also implies terms into the contract that goods supplied will be of satisfactory quality. The CRA also sets out what remedies are available to consumers if their rights under a goods or services contract are not met.

I've seen a sample copy of the "*Consent and History Form*" by HFL, which is issued to each customer of S and explains how their aligners system works. It explains the benefits and risks of the aligners and how the retainers should be used once the treatment plan has been completed. The customer is required to sign the form under a section entitled "Informed Consent". This includes the following explanation of the treatment "*I understand that S cannot guarantee any specific results or outcomes*." Bearing in mind what we know of this sales process from similar complaints, I think it likely Miss U did sign such a form and thus understood that no outcomes could be guaranteed. This is a crucial issue because Miss U's arguments are along the lines of she had a guarantee which should mean that at the end of the treatment she should have the teeth she wanted. However as the terms make clear this simply isn't the case. There was no guarantee of results in terms of having the teeth Miss U wanted.

Miss U isn't able to provide the contract between Miss U and S, nor can HFL. This is because it was held on the S application which they no longer have access to since S ceased trading. So, I don't know what it said about what Miss U could expect during the treatment or the end result once completed. But presumably it included things such as the provision of the aligners, ongoing support and the guarantee (subject to certain conditions being met). In bringing a claim under S75 it is for the claimant to show that there was a breach of contract or misrepresentation as they would have to in legal proceedings against S (if it were still in existence). HFL is required to consider such claims to it fairly. So not having the contract does make Miss U showing HFL has treated her unfairly harder than otherwise would be the case. But it is clear that Miss U can point to the implied terms under the CRA to make her claim.

It is clear that Miss U did receive the aligners and did participate in the service required of her by using the aligners for some extended time. However it seems clear she didn't comply with the guarantee's terms including when ordering retainers and keeping up to date with payments. Nevertheless HFL have offered her £220 as this equates to another touch up treatment. However it hasn't offered her more because each time she wanted to benefit from the guarantee she had to show compliance with the terms up to that point. And it should also be remembered there was no guarantee of results in any event. So although Miss U has said her teeth aren't to her liking there's no evidence she's lost out as a result of S no longer providing these services. This is because she wasn't guaranteed any results and didn't comply with the guarantee. So in the circumstances I think this offer is fair.

Miss U says HFL should give her all her money back. I don't see why it should. There was no guarantee of results and Miss U benefited from treatment from S for an extended period of time. Just because she hasn't received the results she wanted that doesn't mean she's shown that there is a breach of contract or misrepresentation which HFL should rectify by more than the offer its already made. And I think this is a fair offer in the circumstances.

I do appreciate that this isn't the decision Miss U wants to read. And that it leaves her disappointed. But that doesn't make it fair for HFL to do any more here because I'm not persuaded it has treated her unfairly in considering Miss U's S75 claim to it. So Miss U's complaint is unsuccessful.

My final decision

For the reasons set out above, I do not uphold the complaint against Healthcare Finance Limited. It has nothing further to do on this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss U to accept or reject my decision before 6 January 2025.

Rod Glyn-Thomas
Ombudsman