DRN-4972092

The complaint

Miss S 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 May 2023 Miss S 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 between four and eight months, and she has confirmed that she received all the individual aligners that constituted the treatment plan.

However, Miss S was not entirely happy with the results of the treatment by November 2023 and says that she contacted the supplier. She says that the supplier told her to carry on using the final aligner and that if her, *"…teeth weren't on track…"*, she would then, *"…be given further treatment of 6/12 months following another scan."* Miss S says when she subsequently tried to get further treatment, the supplier didn't respond to her. In any event that supplier went into administration in December 2023.

In December 2023, Miss S therefore contacted HFL to make a claim, requesting a full refund of all treatment costs and cancellation of the loan, which HFL 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 Miss S had not complied with the requirements to qualify for the particular guarantee scheme offered by the supplier, that may have provided further treatment. Unhappy with that response, Miss S brought a complaint to us.

Our investigator considered how HFL had acted in light of its responsibilities under Section 75. However, he did not uphold the complaint and did not think it unfair or unreasonable for HFL to reject Miss S's claim under that legislation.

Miss S doesn't accept that, saying she wasn't able to finish the treatment she had paid for, 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 Miss S to make a claim against HFL for breach of contract by the supplier of the goods/service in question. Or for misrepresentation of the same. 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. 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 Miss S's claim.

But I want to explain from the outset that I can only consider Miss S'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 Miss S'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. It does not place HFL *in the place* of the supplier, or require it to do anything and everything the supplier may have done.

Miss S's concerns are that she isn't happy with the results of her treatment, and now cannot, as the supplier is no longer in business, get any further support from it. So she believes she should receive a full refund of the cost of the treatment. However, she has confirmed that she received and used all the aligners that were part of the initial treatment plan.

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

So I need to consider what I think Miss S'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 Miss S 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 Miss S 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 Miss S 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. She denies that, and says that unless HFL has a copy with her signature on it, it cannot be "held against" her. I am not looking to hold anything against Miss S. But I have to use what evidence I can in order to decide what I think the explicit terms of the contract between her and the supplier most likely were. That is simply the first of several questions I need to consider. So I have reviewed the content of the sample document carefully.

The key relevant section is the final one before the customer was required to sign which 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 Miss S's satisfaction with the results of the treatment. That means I don't find a breach of any explicit terms of the contract between her 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. Whether any implied terms have been breached is another question I have considered. In this scenario, the implied terms of this contract are that the supplier would provide the service Miss S 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, there is a third and final issue for me to consider in terms of the supplier's lifetime

guarantee scheme. What that offered was the *possibility* of having aligner touch-ups every year, provided that Miss S 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.

I am happy to accept what Miss S says the supplier told her on the phone – that it would consider providing her with further treatment if she was still unhappy with her results after concluding her treatment with the final set of aligners. Subject to her having a scan. This fits with my understanding of how the need for 'touch-up aligners' was considered by the supplier, at times as part of the lifetime guarantee scheme. However, in this instance I think it was most likely that the supplier suggested that possibility as a gesture of goodwill to reassure Miss S, rather than because it considered that she was eligible for the lifetime guarantee scheme.

I say that because the evidence suggests that Miss S didn't do everything she needed to in order to qualify for the guarantee. One of the supplier's requirements was that customers complete regular check ins during treatment, which HFL says the supplier confirmed she did not. Miss 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.

Miss S responded to the investigator's view highlighting that she did do one check-in as required and wasn't offered any more. But she can offer no further evidence of that. I am fully aware that she can't do that 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. Also, HFL hasn't said that Miss S completed no check ins at all – merely that she didn't do them as required. Which would have been more than once. And so, although I don't doubt Miss S's genuinely held recollections, I am ultimately persuaded by HFL's evidence.

Additionally, as she wasn't happy with the results of the treatment, Miss S hadn't ordered and paid for a set of retainers. This was also required if customers were to be eligible for the lifetime guarantee. Quite reasonably, Miss S points out that she didn't do that because she effectively wasn't ready for the retainers. I understand her point, however, the fact remains that she has not met the requirements to qualify for the lifetime guarantee scheme as set out.

But whilst I have found that Miss S isn't eligible for the lifetime guarantee scheme, I also don't think that is the pivotal issue here. *Even if she were*, that would not entitle Miss S to the outcome she wants. Miss S thinks she should be provided with a full refund of the treatment costs. Given the stage of treatment she was at, that guarantee would never have given her that option anyway. It's clear from the information I have that a refund was only available for the first 30 days after Miss S began her treatment in 2023, and only if Miss S had not opened or used any of the aligners.

Although I am sorry to hear of Miss S'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 involved or provide other compensation.

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 Miss S to accept or reject my decision before 23 December 2024.

Siobhan McBride
Ombudsman