DRN-4974502

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 August 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 around four months.

Miss S is not happy with the results of the treatment and that she now cannot get any 'aligner touch ups' to try and improve the outcome. This is because that supplier went into administration in December 2023.

In March 2024, Miss S therefore contacted HFL to make a claim, saying she should not be expected to pay for unsuccessful treatment, which it considered as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ('Section 75'). Ultimately, HFL accepted that Miss S had suffered a loss and refunded her what it said was the value of one set of touch up aligners, which it considered would have been provided by the supplier, and to which Miss S had a contractual right. This was in the amount of £220. 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, she did not uphold the complaint and concluded that HFL's offer was fair and it was not unreasonable of it to decline to refund the cost of the treatment or cancel the loan.

Miss S doesn't accept that 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. 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 Miss S'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 more than it has when handling 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 respond to her claim by offering what it did. I cannot hold it responsible for Miss S's experience with the supplier or her feelings about the treatment. HFL is not the supplier, and is not answerable for everything the supplier did, or did not, 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.

Miss S's concerns are that she is unhappy with the results of the treatment and now cannot get any more treatment from the supplier. So she believes she should receive some sort of refund, and the loan should be cancelled. She says that one set up of touch-up aligners (which is the value of HFL's offer) would not have straightened her teeth, and so the £220 is not satisfactory as she would have had to keep asking for more aligners to achieve the results she wanted.

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.

But 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. So I have considered the content of it carefully.

Crucially, in the final section before Miss S was required to sign, it 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 her satisfaction with the results of the treatment. That means I don't find a breach of any explicit terms of the contract between Miss S 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. 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, HFL accepts that Miss S was eligible to be covered by the supplier's lifetime guarantee scheme. This is despite her not having purchased retainers, which was technically required for her to be eligible. However, HFL has taken a fair and reasonable approach in nonetheless including her in this group of customers, as she was not expected to have completed wearing the original set of aligners at the point that the supplier went into administration. I think that is fair, as it would not have been possible for her to have bought retainers before the supplier folded.

What that guarantee 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.

Because of her being eligible for that guarantee, HFL identified that Miss S had lost out as the supplier was no longer trading and could not provide her with a touch-up aligner when she was unhappy with the results of the core treatment.

But Miss S thinks she should be provided with some sort of refund of the treatment costs, or that her loan should be cancelled. 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. But there is a breach identifiable because Miss S can no longer use the lifetime guarantee. However, given the stage of treatment she was at, that guarantee would never have given her the option of any refund of the treatment costs. It's clear from the information I have that a full 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 the aligners. Miss S has confirmed that she has opened and used all of the aligners she received. So it would not be fair or reasonable for me to tell HFL that it should now provide Miss S with even a partial refund to recompense her for the breach that has happened: the supplier would never have been obliged to do so.

Miss S says it is unfair that she had to return the aligners within 30 days, and unopened. She points out that the first she heard about possible solvency or viability issues for the supplier was at the end of October, before she had completed the treatment. So at that point she couldn't have known that she wouldn't be happy with the results. But those are the contract terms. No refund was available based on the results of the treatment. And as Miss S confirms that she received the aligners in mid-September 2024, the fact that the supplier has gone into administration has no bearing on this case. She would still have had to make that request within the first 30 days.

Finally, I have thought in some detail about the amount HFL has offered Miss S. 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 it has compensated her for the loss of one year's 'use' of the lifetime guarantee. Hypothetically, it is possible that Miss S could have requested and received a set of aligners every year for the rest of her life. Which we all hope will be many years. But that hypothetical possibility doesn't lead me to conclude that HFL has been unfair in what it has offered.

There are many ways in which the lifetime guarantee could have ceased to be of use to Miss S. Firstly, she may not have done what she needed to in terms of continuing to buy retainers from the supplier. Perhaps more importantly, 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 don't find that it was unfair or unreasonable of HFL to recompense Miss S in the way that it has. Identifying exactly how many annual touch-up aligners Miss S *may* have asked for; *may* qualified for; and *may* been approved for, is pretty much impossible.

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 cancel the loan or provide a refund. What it has already offered is fair and it need not do anything else. If the £220 refund has not been applied to Miss S's account, then HFL should do so now.

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 more than it has already offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 5 March 2025.

Siobhan McBride
Ombudsman