DRN-4981794

The complaint

Mrs H 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 2022 Mrs H 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 three months.

It seems clear that Mrs H was not happy with the results of the treatment and indeed says she was provided with several 'aligner touch ups' to try and improve the outcome. Indeed, it seems that she had a further appointment with the supplier to assess her request for another set of aligner touch-ups in December 2023 when the supplier went into administration.

In December 20203, Mrs H therefore contacted HFL to make a claim, asking for a refund of the treatment costs, which it considered as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ('Section 75'). Initially, HFL rejected her claim. And so, Mrs H brought a complaint to us.

Our investigator considered how HFL had acted in light of its responsibilities under Section 75. She identified that Mrs H was eligible for the supplier's lifetime guarantee scheme, and as a result, HFL accepted that Mrs H had suffered a loss. It offered to refund her what it said was the value of one set of touch up aligners. This was in the amount of £220.

Our investigator concluded that HFL's offer was fair and it was not unreasonable of it to decline to offer Mrs H a refund.

Mrs H 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 Mrs H 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 Mrs H'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 Mrs H's claim.

But I want to explain from the outset that I can only consider Mrs H'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 Mrs H'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.

Mrs H's concerns are that she is unhappy with the results of the treatment and now cannot get any more aligners or retainers from the supplier. She says all she wants is, *"…to receive and the treatment I agreed and paid for…"* And so she believes she should be eligible for a refund.

Whilst there are a series of other questions for me to think about in deciding this case, I think it will be helpful for me to set out and clarify a few of Mrs H's key concerns up front, before I go on to explain and explore them in depth:

- Mrs H has received the service she had paid for, which was the core set of aligners designed to straighten her teeth in a comparatively short timeframe (three months). Ultimately, that was what she had paid for using this loan from HFL. The treatment is not ongoing until the customer is satisfied with the results.

- She would always have had to pay extra for retainers, and will need to buy them now from a different supplier. She is concerned that she has, *"…no way to access these retainers…"* But I understand HFL has provided details of other potential suppliers, so there is no identifiable financial loss there.

- Everyone agrees that she did qualify for the lifetime guarantee scheme.

- That lifetime guarantee scheme did not provide the option of a refund.

I will turn first to the issue of the core treatment and service which HFL paid the supplier for on Mrs H's behalf in 2022. In cases such as this it is often complex to assess the quality of the service Mrs H 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 H 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.

I think Mrs H accepts that results were never guaranteed. But I need to consider what I think Mrs H'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 H 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 H commenced her treatment in 2022. 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 Mrs H 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 Mrs H 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 Mrs H and the supplier. Whilst Mrs H's complaint hasn't been focused on that point, it is important that I am satisfied about it.

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 H 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 now accepts that Mrs H was eligible to be covered by the supplier's lifetime guarantee scheme. So she has therefore experienced a potential loss as a result of that no longer being available to her. Specifically, the possible loss of a set of touch-up aligners at the end of 2023 when she asked for them.

It's important to understand that all that guarantee offered was the *possibility* of having aligner touch-ups every year, provided that Mrs H 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.

But Mrs H thinks she should be provided with a refund of the treatment costs, saying she, *"…met all the criteria…to…receive a full refund for the services provided.*" As explained above, this is not correct. The guarantee scheme was not a money back guarantee scheme if desired results weren't achieved. It's clear from the information I have that a full refund was only available for the first 30 days after Mrs H began her treatment in 2022, and only if Mrs H had not opened or used the aligners. So given she had completed the core treatment and had used all the aligners, the guarantee scheme would never have given her the option of any refund of the treatment costs. So it would not be fair or reasonable for me to tell HFL that it should now provide Mrs H with even a partial refund to recompense her for the breach that has happened: the supplier would never have been obliged to do so.

Finally, I have thought in some detail about the amount HFL has offered Mrs H. 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 Mrs H 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 Mrs H. Firstly, she may not have done what she needed to in terms of continuing to pay for 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 Mrs H in the way that it has. Identifying exactly how many annual touch-up aligners Mrs H *may* have asked for; *may* qualified for; and *may* been approved for, is pretty much impossible.

Although I am sorry to hear of Mrs H'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 the cost of treatment. What it has already offered is fair and it need not do anything else. If the £220

refund has not been applied to Mrs H'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 Mrs H to accept or reject my decision before 12 March 2025.

Siobhan McBride
Ombudsman