DRN-4989498

The complaint

Mr J has complained about the way Healthcare Finance Limited ("HFL") dealt with a claim for money back in relation to dental treatment which he paid for with credit it provided.

What happened

In April 2022, Mr J entered into a two-year fixed sum loan agreement with HFL to fund the provision of dental aligners from a third-party supplier that I'll call "the supplier". The cash price was around £1,500 and Mr J was due to pay back the agreement with monthly repayments of around £70. He said he was initially provided aligners for several months' treatment. Mr J said his initial set of aligners needed to be replaced because they didn't fit. Mr J told us that this happened with the following four sets of aligners. It seems that on some occasions the aligners fitted acceptably initially but that Mr J experienced fitting issues part way through the treatment. Mr J raised these issues with the supplier at the times. I provide a short summary of the information Mr J provided us below.

Mr J told us he received the first set of aligners on 15 May 2022, which did not fit. A new set of aligners arrived on 25 June 2022 but by 25 October 2022 the aligners were not fitting properly. The next set of aligners arrived on 26 November 2022, but they didn't fit properly. Mr J said he was told he might have to wait for four months for his next set. New aligners arrived 1 May 2023 with a schedule for wearing them which was to last two months. But by 4 June 2023 they were not fitting properly. Following a scan in Leeds Mr J received new aligners on 20 July 2023, with a schedule for wearing them which was to last two months. Mr J told us that he experienced fitting issues by 20 August 2023.

The supplier went out of business in December 2023. So, Mr J contacted HFL to make a claim. He said he wanted to stop further payments until his issues were resolved. HFL asked for further information from Mr J and recommended he continue making his payments. HFL considered the claim as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ("s.75"). HFL accepted that Mr J may have met the conditions for the guarantee. It therefore offered to refund Mr J what it said was the value of one set of touch up aligners – £220. Mr J referred his complaint to the Financial Ombudsman.

Our investigator looked into things and concluded that HFL's offer was fair, and it was not unreasonable of it to decline to refund the full cost of treatment.

Mr J didn't agree. He said the treatment didn't work as expected. He said the supplier didn't provide the whole treatment he'd paid for.

As things weren't resolved 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 want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr J and HFL that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I also want to say I'm very sorry to hear that Mr J is unhappy with the treatment results. I can't imagine how he must feel, but I thank him for taking the time to bring the complaint.

What I need to consider is whether HFL – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr J's request for getting money back. But it's important to note HFL isn't the supplier. I can't hold it responsible for everything that went wrong with the supplier.

S.75 is a statutory protection that enables Mr J to make a 'like claim' against HFL for breach of contract or misrepresentation by a supplier paid using a fixed sum loan in respect of an agreement it had with him for the provision of goods or services. But there are certain conditions that need to be met for s.75 to apply. From what I've seen, those conditions have been met. I think the necessary relationships exist under a debtor-creditor-supplier agreement. And the cost of the treatment was within the relevant financial limits for a claim to be considered under s.75.

HFL has broadly accepted Mr J's claim in one sense because it's offered him £220. So, I've gone 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. But I want to explain from the outset that I can only consider Mr J's complaint on that narrow basis – that is, whether it was fair and reasonable for HFL to respond to the claim by offering what it did.

I've focussed on Mr J's breach of contract claim. Even if the supplier couldn't provide all the services it promised because it went out of business, it's not clear this would be a misrepresentation because I don't think it would have been aware it would go out of business when it sold Mr J the treatment.

Implied terms

In cases such as this it is often complex to assess the quality of the service Mr J paid for. Results from such treatments are subject to many variables and there are generally disclaimers by the providers of such services, and accepted risks that results simply cannot be guaranteed.

While Mr J is unhappy with the results of the treatment, he's not provided supporting evidence such as an independent, expert opinion that sets out the treatment he paid for has not been done with reasonable care and skill as implied by the Consumer Rights Act 2015 ('CRA'). I'm mindful it is the manner in which the service was provided, rather than the results of the treatment, that is the crucial issue for me in considering whether there's been a breach of an implied term in relation to the service.

I'm not a dental expert, and neither is HFL. But without sufficient supporting evidence, I don't think HFL was unfair to not uphold the claim on the basis of a breach of an implied term of the contract because I've not seen enough to determine the service wasn't carried out with reasonable skill and care. And I've not seen evidence the goods element – i.e. the aligners, were not of satisfactory quality. I don't think the fact that the supplier agreed to provide further treatment for refinement or 'touch up' in itself shows the original core

treatment wasn't carried out with reasonable care and skill in line with the implied terms of the contract.

Express terms

I also need to consider what I think Mr J's contract with the supplier agreed to provide in terms of treatment so I can determine whether there has been a breach of an express term of it. I don't have a contract signed by Mr J as I understand they were kept in an online application that's no longer available. But it's not in dispute Mr J was due to receive a set of aligners when he entered into the contract in April 2022 and that he received and used the replacement set he received on 25 June 2022. I think the core contract was for those set of aligners that he was due to use for a few months.

I think it likely Mr J signed an agreement with the supplier which included a consent form, as is common with these sorts of treatments. We don't have a signed copy, but I've seen an example copy. This sets out the various risks and uncertainties with such a dental treatment. And it indicates Mr J would have understood the supplier couldn't guarantee specific results or outcomes. Given the nature of the treatment, I don't think those sorts of terms are unfair or unusual. So even if Mr J didn't get the results he wanted after the core treatment I don't think that would be considered a breach of contract.

While I appreciate Mr J is put in a difficult position because some of the evidence isn't available, I can only consider how HFL acted based on what was able to be supplied. In the absence of a specific signed contact, I've looked at S's website from around the time Mr J entered into the contract. This says most treatment lasts between 4 to 6 months. It says if the customer hasn't achieved the results they want, and providing they've met certain conditions, the customer might be eligible for additional 'touch up' aligners. In this regard, I've noted the evidence provided by Mr J that shows the supplier receiving Mr J's 'aligner touch-up' request on four occasions in 2023 starting on 24 January 2023.

Taking into account that Mr J entered into the agreement in April 2022 and the core treatment was due to last between 4 to 6 months, I think I can conclude from that the original core treatment had ended before the supplier went out of business, even taking into account the initial replacements Mr J said the supplier gave him.

Because the information the supplier held in the customer app is no longer accessible following the bankruptcy, it is less easy to decide if the supplier was treating Mr J as if he had finished his main course of treatment. But the evidence and testimony provided in this case suggest to me that it was more likely that was the case.

I'll go on to think about what services the supplier was required to offer after the initial treatment, and whether there's been a breach of contract. Further aligners seem to be part of the supplier's aftercare offering for further refinement (subject to dentist approval). It's not clear whether the supplier agreed to provide Mr J further aligners because it thought the results could be improved upon or whether it was for some sort of failing on its side. We don't have sufficient evidence to conclude.

While Mr J was unhappy with the results, I don't think HFL had sufficient evidence to show the supplier breached the express terms of the contract in respect of the results he achieved.

Guarantee

On the supplier's website from the time, the frequently asked questions ("FAQ") page has a section for further treatment under the guarantee. This suggests customers can request

further aligner ‘touch ups’ after the core treatment at no cost on an ongoing once a year basis.

From what I can see the availability of a ‘touch up’ isn’t the same as saying that particular results will be achieved. It seems like it’s intended for refinement if possible. What the guarantee offered was the possibility of having further aligners provided that during treatment Mr J registered his aligners; wore them as prescribed; completed check ins; stayed up to date on payments; and that, after treatment, Mr J bought retainers every 6 months and wore them as prescribed. A dentist also had to approve the treatment. My understanding is that a dentist would only do so if they assessed that further progress to straighten the teeth would be possible.

HFL accepts Mr J may have been eligible to be covered by the guarantee and it’s made an offer for what it says is the value of a year’s touch up aligner. Mr J thinks he should be provided with a full refund of the treatment costs.

There is a potential breach identifiable because Mr J can no longer use the guarantee. However, given the stage of treatment he was at, the guarantee would never have given him the option of a refund of the core treatment costs. From what I’ve seen, a full refund was only available for the first 30 days after Mr J began his treatment. In this case Mr J’s treatment might be said to start in June 2022, when the second set of aligners – a replacement set – had arrived. Mr J told us that this set of aligners had failed him by 25 October 2022. But this was already outside the 30 day timeline for a full refund. In addition, the full refund was also only available if Mr J had not opened or used the aligners, which he had.

Having consider the above, I don’t think it would be fair or reasonable for me to tell HFL that it should now provide Mr J with a full refund to compensate him for the potential breach that has happened. I don’t think it was unreasonable for HFL to not offer to refund the value for what was provided under the core contract.

There are many ways in which the guarantee could have ceased to be of use to Mr J. He may not have done what was required in terms of buying retainers every six months. The supplier may not have approved further aligners. The guarantee only gave the possibility of annual touch-up aligners – not the certainty that they would actually be provided. And whilst Mr J had received some touch-up aligner sets historically, that is no guarantee that he would have continued to receive them indefinitely in the future.

I accept there’s a potential loss, but it’s not straight-forward to establish the value of the perceived loss. And I’m required to resolve the complaint quickly and with minimum formality. As I’ve explained, I don’t think HFL is required to remedy a failure in relation to the core treatment or results Mr J received. But I think there’s a possible loss because Mr J may have been able to utilise the guarantee.

HFL shared information from the supplier saying the financial value of a ‘touch-up’ treatment is £220. It’s difficult to know for certain if that’s accurate. But this represents a refund of over 10% of the cost of the treatment. Considering we’ll never know if Mr J would have continued to receive any benefits under the guarantee; taking into account he’s received the core treatment, and that he said he was offered further treatment before the supplier went out of business, I think HFL is acting fairly by offering this price reduction to remedy any potential loss. It seems like a fair compromise given I think the total amount paid was substantially for the core treatment.

While I am sorry to hear Mr J is unhappy, with s.75 in mind, I don’t find there are grounds to direct HFL to refund him the full costs of the treatment. For the reasons given above, I

believe the offer of £220 made by HFL is not unreasonable in this case. It is my understanding that some of that offer has already been used to reduce the loan amount to zero, and the remaining sum has been paid to Mr J. HFL should make the award of £220 as directed in this decision, if it has not already done so.

In summary, I think HFL's offer is broadly fair in the circumstances. I should, however, point out Mr J doesn't have to accept this decision. He's also free to pursue the complaint by more formal means such as through the courts.

My final decision

Having considered all of the submissions in this case, my final decision is that the redress offered by HFL is fair. So, I direct Healthcare Finance Limited, to pay Mr J £220, if it has not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 14 April 2025.

Douglas Sayers
Ombudsman