DRN-5017074

## The complaint

Ms R 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 September 2023 Ms R 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. Ms R says it was expected that the treatment would last for around three to four months.

Ms R says that she only used half of the core set of aligners, namely those for her lower jaw, as she found it uncomfortable to wear aligners on both upper and lower jaw at the same time. She also says that the later sets of aligners for her lower jaw wouldn't fit, and that she tried repeatedly to get in touch with the supplier about the problems she was encountering, but without success. In fact, the supplier went into administration in early December 2023.

In January 2024, Ms R contacted HFL to let it know that she had cancelled the direct debit in place to make the loan repayments to it as the supplier had gone out of business, leaving her with, *"…finished treatment…"*, but which had, *"…not worked."* She asked HFL to accept that situation. Instead, it effectively treated her email as a claim for a refund of treatment costs, which it considered as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ('Section 75').

In February 2024 HFL accepted that Ms R had suffered a loss and offered her a pro-rated refund to reflect the number of aligners she had actually used. In order to take advantage of that offer, she needed to return any unopened, unused aligners. It seems that by June 2024 it had not received any aligners from Ms R. HFL then contacted her again and offered her, in the alternative, 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 it believed Ms R had a contractual right. This was in the amount of £220. Unhappy with either of those offers, Ms R brought a complaint to us. She had also raised concerns about the quality of the aligners.

Our investigator looked into her concerns and considered how HFL had acted in light of its responsibilities under Section 75. But she did not uphold the complaint and concluded that HFL's offers were fair and it was not unreasonable of it to decline to refund the full cost of treatment.

Ms R doesn't accept that, saying that she should not have to pay anything for unsuccessful, incomplete treatment, 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 Ms R to make a claim against HFL for breach of contract by the supplier

of the goods/service in question, or a misrepresentation. 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 Ms R'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 Ms R's claim.

But I want to explain from the outset that I can only consider Ms R'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, based on the evidence she provided to it. I cannot hold it responsible for Ms R's experience with the supplier or her clearly very strong 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.

Similarly, I acknowledge that Ms R has provided a lot of testimony in this case in an attempt to demonstrate that there is an identifiable breach of contract here which HFL must remedy. However, I will focus on what I consider to be the key, pivotal, issues in this decision. I mean no discourtesy to Ms R in doing that. It is my role to provide informal answers as quickly as possible, and that necessitates me having such a focus when resolving disputes.

Ms R's primary concerns are that her teeth are not straight, and, as the supplier is no longer in business, she cannot receive any further treatment via its guarantee scheme. It is slightly unclear why she initially characterised the treatment as finished, but unsuccessful, when she complained to HFL. But that she has told us that she only used half the aligners. She has sent photographs which appear to show a series of opened packages and it isn't clear how many unused aligners she may have, or why she chose not to return them to HFL for a pro rata refund.

In any event, she believes HFL ought to have offered her a full refund in response to her claim, and that is the complaint I have to consider.

In cases such as this it is often complex to assess the quality of the service Ms R 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 Ms R 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 Ms R'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 Ms R 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 Ms R 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 Ms R 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.

There is a key final section of the document before the customer was required to sign that

sets out:

> *"I understand that* [the supplier] *cannot guarantee any specific results or outcomes."*

So I'm satisfied the supplier never said that it could guarantee Ms R's satisfaction with the results of the treatment, the core aspect of which was provided to her. (The extent to which she finished it remains unclear.) That means I don't find a breach of any explicit terms of the contract between Ms R and the supplier. But this is only the first question I have had to consider when reviewing this complaint.

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 Ms R 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.

Turning to Ms R's concerns about the quality of the aligners, in short, I don't think she has evidenced that the quality of the aligners was so compromised that it amounts to a breach of contract. She says that bits of plastic fell off some of the aligners, and she believes she swallowed them during the night. But there is insufficient evidence to say that the quality of the aligners amounted to a breach of contract under either the CCA or CRA.

I cannot identify any grounds on which HFL ought to have offered Ms R a full, rather than a pro-rated, refund. In saying that, I am confident that, in choosing to wear only half the prescribed aligners, "to see if they worked", Ms R was very significantly deviating from the treatment plan set out by HFL. Consequently, it wouldn't be fair for me to direct HFL to provide a full refund for unsuccessful treatment when Ms R effectively decided to create her own treatment plan without any input from the supplier.

However, HFL accepts that Ms R was eligible to be covered by the supplier's lifetime guarantee scheme. I think that is fair, despite the fact that she never bought retainers from the supplier. Ordinarily, those would need to be paid for, as an additional cost to the treatment, before a customer could benefit from the lifetime guarantee scheme. But given what Ms R has said about the situation, and difficulties getting hold of the supplier before it went into administration, I think it's reasonable for Ms R not to have ordered retainers. Essentially, she wasn't ready for them, and it seems unclear as to whether the ordering facility was even available.

Crucially, what that lifetime guarantee offered was the *possibility* of having aligner touch-ups every year, provided that Ms R carried on buying retainers from the supplier, 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. What the position would have been once the supplier had been made aware that Ms R had decided to only wear aligners on her lower jaw, I cannot say.

However, HFL accepted that Ms R was eligible for that guarantee, and identified that she had lost out as the supplier was no longer trading and so there was a breach identifiable because Ms R could no longer use the lifetime guarantee. And so it offered the cost of a set of aligners, estimated at £220.

Given the stage she was at, the lifetime guarantee would never have given her the option of a full refund of the treatment costs in any event. It's clear from the information I have that a full refund was only available for the first 30 days after Ms R began her treatment in 2023, and only if Ms R had not opened or used any of the aligners.

I have also thought in some detail about the monetary amount HFL has offered Ms R so far. While I can't be certain, I am satisfied that the £220 is a fair compromise price reduction offer, and have seen evidence provided by the supplier to HFL to confirm that it was roughly the cost of a set of touch-up aligners. So essentially it has compensated her for the loss of one year's 'use' of the lifetime guarantee. Hypothetically, it is possible that Ms R 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.

Firstly, whether the supplier could have fairly elected to refuse to honour the guarantee on the basis of Ms R's departure from the treatment plan isn't known. But I think it is distinctly possible. That aside, there are many ways in which the lifetime guarantee could have ceased to be of use to Ms R, even if she had been able to initially rely on it. Firstly, she may not have done what she needed to in terms of continuing to buy retainers from the supplier. Perhaps more importantly, and as I've already discussed, 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.

Finally, I would highlight that Ms R has not had to pay for a set of retainers, estimated to be £160, in order to have the benefit of the lifetime guarantee on this occasion. Technically, she was required to do so, but as I've already said, it is reasonable that she didn't. However, the fact still remains that she hasn't been put to that expense.

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 offer Ms R what it has. Identifying exactly how many annual touch-up aligners Ms R *may* have asked for; *may* have qualified for; and *may* have been approved for, is pretty much impossible.

Although I am sorry to hear of Ms R'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 full costs of this treatment. What it has already offered is fair and it need not do anything else.

I expect HFL to honour those offers now, should Ms R wish to accept them. If she would like to pursue a partial refund option, she will need to return any unused, unopened, aligners.

**My final decision**

For the reasons I've explained, I don't uphold this complaint and Healthcare Finance Limited need only honour what it has already offered to Ms R.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 11 April 2025.

Siobhan McBride
**Ombudsman**