DRN-5020345

The complaint

Mr F complains about how Healthcare Finance Limited ('HFL') responded to a claim he made to it in respect of dental treatment paid for using the fixed sum loan it provided.

What happened

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

Mr F purchased orthodontic dental treatment from a remote supplier ('the supplier') using a fixed sum loan from HFL in December 2022.

Mr F says the supplier has now gone out of business, and he is unhappy because he is not going to be getting the 'Lifetime Guarantee' (abbreviated for my decision) which the supplier offered as part of its aftercare. Mr F says he should not have to pay for a service which the supplier is unable to provide.

Mr F approached HFL for a full refund of the treatment. It considered the claim under Section 75 of the Consumer Credit Act 1974 ('Section 75'). It would not offer a refund and said Mr F had failed to carry out the required 'Check-ins' to qualify for the 'Lifetime Guarantee'.

Our investigator looked into a complaint about the claim outcome. Based on the information Mr F had provided he said that HFL should fairly pay Mr F £220 to reflect the loss of aftercare benefits.

HFL disagreed with this. It insists Mr F did not complete the required 'Check-ins' to qualify for aftercare and has asked for the matter to be considered by an ombudsman.

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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

I note here that HFL had another entity respond to this complaint on its behalf. However, my references to HFL are taken to include representations made on its behalf.

I am sorry to hear Mr F is unhappy the supplier has gone out of business. However, it is important to note that my decision here is about the actions of HFL– and what it should fairly have done for Mr F in its position as a provider of financial services. In looking at how it handled the claim Mr F brought to it I consider the information reasonably available to it at the time, along with the relevant protections available to Mr F. I consider Section 75 to be particularly relevant here.

Section 75 can allow Mr F in certain circumstances to hold HFL liable for a breach of contract or misrepresentation by the supplier of the financed dental treatment. There are certain technical criteria which have to be met in order for Section 75 to apply, and I am satisfied these are met here. Therefore, I move on to consider whether the supplier of the treatment has breached its contract with Mr F or misrepresented it.

Limited information

It is worth noting there are challenges presented by limited information in respect of Mr F's individual treatment plan and contract. However, I have looked to decide what is fair based on the information reasonably available to HFL when considering this Section 75 claim. This includes a blank copy of the supplier 'Consent & History' form, archived copies of the supplier FAQs, what limited information HFL was able to get from the supplier, and Mr F's testimony.

Misrepresentation

Mr F's claim to HFL appears to be about breach of contract rather than misrepresentation. But in the interest of completeness, in any event I don't consider there to be persuasive evidence available to HFL when it considered the claim that the supplier had misrepresented its service to Mr F at the outset. Even if it couldn't provide all the services it promised because it went out of business – this would not likely amount to a misrepresentation as there is no suggestion that the supplier was aware it would be going out of business when it sold Mr F the treatment.

Therefore, I have focused on breach of contract here. Which I turn to now.

No persuasive evidence of breach of implied terms in respect of the quality of the treatment

Mr F's claim to HFL does not appear to be focused on the quality of the aligner treatment he received. However, for completeness I do not find there to be persuasive evidence that the treatment was carried out without reasonable '*care and skill'* (as implied into the contract with the supplier by the Consumer Rights Act 2015). I note in making this finding that Mr F purchased a complex cosmetic/medical product. And without an expert report that explains what may have gone wrong here (and why) it is difficult to fairly conclude that the treatment wasn't carried out properly.

The express terms of the contract

In order to determine if there has been a likely breach of any express term(s) of the contract I have considered the supplier's documentation from around the time Mr F bought the treatment and which has been made available to me by HFL, alongside other information such as Mr F's testimony.

I consider all parties agree Mr F entered into a contract for aligner treatment with the supplier. I acknowledge that I don't have a copy of Mr F's specific treatment plan or the contractual agreement signed. But from the information I have (including Mr F's testimony) I am satisfied that on balance the core contract was for a set of aligners used for straightening teeth over a short term treatment duration of several months.

Mr F does not dispute that he received the set of aligners and that he used them over the intended treatment period. He says the treatment began in January 2023 and finished in April 2023 so on this basis I don't think this can be characterised as a case of goods or

services not received or a technically incomplete treatment. So prima facie – the core of the agreement was provided by the supplier to Mr F and there is no breach of contract in that sense.

Mr F does not appear to be complaining about the results of this treatment. However, for completeness I do not think there is persuasive evidence available to HFL of a breach in that sense. I say this noting that Mr F has not persuasively disputed his awareness or agreement to the 'informed consent' clause in the supplier's standard paperwork which includes the provision as follows:

I understand that [the supplier] cannot guarantee any specific results or outcomes

I don't consider this being a particularly unusual or onerous term in the provision of such a treatment. It would not be reasonable to expect (noting all the variables outlined in the consent form – including how often aligners are worn and underlying health issues) that particular results would definitely be achieved in a medical/cosmetic treatment of this kind.

So my starting point is that regardless of how close the results are to any projection – this is not a breach of contract based on the likely agreement between Mr F and the supplier that the outcome is uncertain and not guaranteed. So there is no breach of contract for HFL to have remedied in that sense.

However, I am aware the supplier did provide a contractual 'guarantee' of sorts in relation to aftercare. Which is the focus of Mr F's claim to HFL and which I will turn to now.

Aftercare

From what I have seen the supplier offers further aligner 'touch-ups' after the core treatment at no extra cost. The information I have suggests it offers this after treatment is completed (if a customer is not satisfied with results) and on an ongoing once a year basis under a 'Lifetime Guarantee' banner.

From what I can see the availability of a 'touch-up' is not the same as saying that particular results will definitely be achieved. It appears more of an opportunity for refinement if possible. And despite the use of the term 'guarantee' I consider the 'Lifetime Guarantee' is not a guarantee of particular results. From what I have read it is a qualified guarantee in respect of ongoing aftercare.

It appears the 'touch-up' aftercare is basically a new set of aligners at no further cost to the patient which serves to provide the free refinement. However, in order to get a 'touch-up' there are certain qualifying criteria.

One of the criteria for qualification is that the customer completes required 'check-ins' during their treatment period. The issue here is that HFL says the data it received from the supplier shows that Mr F did not complete the required 'Check-ins' during treatment to qualify.

Mr F is insistent that he did what was required of him and complied with one check in request from the dentist treating him during his January 2023 to April 2023 aligner plan. He has provided credible and consistent testimony to say this request was made through the supplier's app when he got to 'aligner 7' and that he completed it. Based on how Mr F has laid out the duration of his plan (along with pictures of his retainer packets and the 'usage' duration for what is overall described as a '4 month' plan) it seems like 'aligner 7' was to be

used around the 60 day mark – so it makes sense this is when Mr F had a request from the supplier to complete a 'Check-in'.

Mr F has credibly said:

'I also can 100 percent confirm they were done as you had to submit the photos on the app, and one of my photos had to get redone as it wasn't good enough for [the supplier] so had to retake the photo and they were happy.'

HFL has challenged this account and indicated its data shows Mr F did not complete the required 'Check-ins'. It has also indicated Mr F would have had to do more than one 'Check-in'. But based on the fact these are due at least every 60 days (for this particular aligner product) I think it is plausible that within the length of his core treatment period (which Mr F says was actually closer to 90 days) he would only have had one request to 'Check-in' from the supplier.

It is also important to note the 'Check-in' process is not described as a passive one in the supplier's guarantee information taken from its website. This specifically says that the customer has to:

'Respond to each regular Smile Check-in from your dentist…'

So even if I accepted Mr F would have been expected to do more 'Check-ins' (and that isn't clear), it wasn't something he could have done if he had only received one request to do so. And HFL has not provided persuasive evidence to show what requests the supplier sent Mr F to provide a 'Check-in', and whether this was in excess of the one Mr F has identified.

I accept there is some uncertainty about what occurred in Mr F's case. HFL points to the data it has from the supplier to say Mr F didn't complete the required 'Check-ins'. But, on balance it hasn't provided compelling information to discredit what Mr F has said. And ultimately Mr F is only fairly able to provide his testimony and circumstantial evidence to rebut what HFL says – as he no longer has access to the supplier's app.

Furthermore, even if I accepted that Mr F had not carried out the required 'Check-ins' during treatment the supplier had ways that he could re-qualify for the 'Lifetime Guarantee' by keeping up to date with his payments and ordering retainers in future (I note that the information I have suggests Mr F ordered retainers from the supplier as expected in March 2023 and October 2023 too). So it seems Mr F had a good chance of not being disqualified from the aftercare on an ongoing basis.

I do accept HFL's point that Mr F had not approached it with information to suggest he had been approved for a 'touch-up' treatment (which might indicate he was eligible for the 'Lifetime Guarantee') when he made his claim to it. However, all things considered, and noting the information Mr F has provided I think it would be unfair to say the supplier would have definitely excluded him from qualification for the 'Lifetime Guarantee' for the reason HFL says it would have.

However, even if Mr F would have not been excluded from the 'Lifetime Guarantee' it doesn't mean he would necessarily have been approved for 'touch-up' treatment in the future. To qualify for 'touch-ups' under the 'Lifetime Guarantee' it appears the key criteria is that the supplier's dentist needs to approve it. To support this finding I note that the supplier's website information about the 'Lifetime Guarantee' refers to the requirement to 'receive touch-up approval from a UK registered [supplier] dentist or orthodontist'.

There also seems to be ongoing criteria in respect of any rolling yearly 'touch-up' under the 'Lifetime Guarantee'. This includes the customer ordering retainers after treatment and replacing retainers every 6 months (at their cost) and wearing these as prescribed.

I recognise Mr F will not be able to receive further treatment via 'touch-ups' under the 'Lifetime Guarantee' because the supplier is now out of business. However, any loss in relation to this aspect of the contract is not easy to assess. I say this because:

- in order to qualify for the ongoing 'touch-ups' Mr F would have to continue to spend money on retainers twice a year; and
- there is no certainty Mr F would be approved for further 'touch-ups' each year – as this is at the discretion of the supplier's dentist.

I do accept there is a potential loss here though. It just isn't easy to assess what the value of any perceived loss might be. It is, however, important to note that any potential loss I am considering is not to remedy a failure in respect of the core treatment. As I have said - I don't consider there is persuasive evidence available to HFL that there was a breach of contract in respect of this. The loss here is that of future aftercare under the 'Lifetime Guarantee'. Something, that is uncertain and difficult to quantify.

In coming to fair redress I also note that despite the 'lifetime' nature of the guarantee this would not have come at no further cost to Mr F, as he would have had to continue purchasing retainers twice a year too. He might have done this but there is no certainty this would have happened indefinitely.

I note HFL has provided information from the supplier to indicate that the financial value of a 'touch-up' treatment is £220. Ultimately, it is difficult to say if that is exactly what it is worth. But it does represent over a 10% refund of the cash price of Mr F's treatment. And considering the uncertainties about the extent of Mr F's ongoing receipt of future benefits, and the fact Mr F has received the core treatment it doesn't seem unreasonable that HFL in considering the Section 75 claim should deem this an effective 'price reduction' to remedy any perceived loss of aftercare benefit from the supplier ceasing trading.

In deciding what is fair I have thought carefully about the proportionality of the proposed refund. In doing so I consider it is likely that the amount Mr F paid via finance was substantially for the initial core treatment he had received already and not any refinements via aftercare. So a significant refund would seem disproportionate here.

Following my decision, it is up to Mr F if he wishes to approach HFL in respect of discussing any plan to settle any outstanding amounts on the finance (if applicable) and what HFL will do in respect of his credit file as a result of an agreement it reaches. My decision here is not about this matter – but if Mr F considers HFL has not been positive and sympathetic in respect of this he may decide to complain about it separately.

Putting things right

I direct HFL to pay the amount set out below.

My final decision

I direct Healthcare Finance Limited to pay Mr F £220 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 19 January 2025.

Mark Lancod
Ombudsman