DRN-5024831

The complaint

Mr C complains about Healthcare Finance Limited's (HFL) response to his claim brought under section 75 Consumer Credit Act 1974 (s.75) in respect of dental aligner treatment he bought using a fixed sum loan from it.

What happened

In March 2023 Mr C bought a course of dental aligner treatment from a supplier I'll call S, at a cost of £1,639. He paid a deposit of £69.44 and financed the remainder with a fixed sum loan from HFL.

Mr C said that around October/November 2023 he complained to S as he wasn't happy with the results he was achieving. On 25 November S told Mr C that a dentist had determined he would benefit from additional aligners to touch up his treatment. S said it would send him a kit to take impressions of his teeth with a view to providing touch up aligners.

Mr C said he took the impressions and sent them to S, but it ceased trading shortly after and he never received the touch up aligners.

Mr C contacted HFL asking if he would still need to make repayments on his loan seeing as S had ceased trading and he hadn't received any touch up aligners. HFL considered Mr C's communication as a claim for a potential breach of contract under s.75. It said Mr C had not met the conditions for its 'lifetime smile guarantee' (the guarantee) so he did not qualify for any additional services and S was not in breach of contract. So, it declined to take any further action.

Mr C referred his complaint to this service.

Following on from that, after the complaint had been referred, HFL looked into things further and accepted that Mr C may have met the conditions for the guarantee. It therefore offered to refund Mr C what it said was the value of one set of touch up aligners – £220.

Our investigator looked into the complaint and concluded that HFL's offer was fair.

Mr C did not agree with the investigator and asked an ombudsman to review his complaint. He said he should receive a refund of everything he paid for the treatment because it wasn't finished went S ceased trading.

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.

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

S.75 is a statutory protection that enables Mr C to make a 'like claim' against HFL for breach of contract or misrepresentation by a supplier paid using certain types of credit. There are certain conditions that need to be met for s.75 to apply. From what I've seen, those conditions have been met. 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 now broadly accepted Mr C'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 S that means HFL should have offered more than it has. But I want to explain from the outset that I can only consider Mr C'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.

Implied terms

In cases such as this it is often complex to assess the quality of the service Mr C 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 C 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. Without sufficient supporting evidence, I don't find HFL unfairly declined to meet a claim on the basis of a breach of an implied term of the contract. I've not seen enough to determine the service S offered wasn't carried out with reasonable care and skill. Furthermore, I've not seen evidence the goods element – i.e. the aligners, were not of satisfactory quality. I don't think the fact that S 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 C's contract with S 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 C as I understand they were kept in an online application that's no longer available. So, there's a lack of evidence. But it's not in dispute Mr C was due to receive a set of aligners when he entered into the contract in March 2023 and that he received and used them. 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 C signed an agreement with S 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 C would have understood S 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 C didn't quite 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 C 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 contract, I've looked at S's website from around the time Mr C 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.

Taking into account Mr C entered into the agreement in March 2023 and the core treatment was due to last around six months, I think I can conclude from that the original core treatment had ended before S went out of business. Indeed, Mr C has confirmed that he used all of the aligners he was sent under the core treatment.

I'll go on to think about what services S was required to offer either during or after the initial treatment, and whether there's been a breach of contract. Further aligners seem to be part of S's aftercare offering for further refinement (subject to dentist approval). It's not clear whether S determined Mr C would benefit from 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 I'm sympathetic Mr C was unhappy with the results, I don't think HFL had sufficient evidence to show S breached the express terms of the contract in respect of the results he achieved.

Guarantee

On S's website from the time of the sale, 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 C registered his aligners; wore them as prescribed; completed check ins; stayed up to date on payments. And that, after treatment, Mr C bought retainers every six 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.

As I've explained, the evidence shows that S determined Mr C would benefit from further aligners in November 2023. The evidence on whether Mr C met the conditions for the guarantee is slightly incomplete and conflicting. It's not clear Mr C did meet the conditions. But in any event, HFL accepts he 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 aligners.

Mr C thinks he should be provided with a full refund of the treatment costs. There is a potential breach identifiable because Mr C 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 C began the treatment around March 2023, and only if Mr C had not opened or used the aligners. I don't think it would be fair or reasonable for me to tell HFL that it should now provide Mr C 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 C further down the line. He may not have done what was required in terms of buying retainers every six months or S may not have approved further aligners, although I appreciate it appears to have been on the way to agreeing this before it went out of business. The guarantee only gave the possibility of annual touch-up aligners – not the certainty that they would actually be provided.

I accept there's a potential loss, but it's not straight-forward to establish the value of this. 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 C received. But I think there's a possible loss because Mr C may have been able to utilise the guarantee, and it looked like this was on the way to being agreed.

HFL has shared information from S previously 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 C 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 S 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 C 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. I think its offer is broadly fair in the circumstances. I should, however, point out Mr C 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

For the reasons I've explained above, my final decision is that I direct Healthcare Finance Limited, to the extent not done so already, to pay Mr C £220.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 March 2025.

Michael Ball
Ombudsman