DRN-5026036

The complaint

Mr S complains about how Healthcare Finance Limited ('HFL') responded to a claim 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 S purchased orthodontic dental treatment from a remote supplier ('the supplier') for a cash price of £1,519 using a fixed sum loan from HFL in January 2023.

Mr S says the supplier has now gone out of business, and he is unhappy because:

- He did not get the results promised to him;
- the supplier has acted by 'abandoning medical treatment part-way through' and he did not get support to address medical issues that continued to occur;
- he will not be receiving aftercare he is entitled to under the supplier's 'Lifetime Guarantee' (abbreviated for my decision).

Mr S approached HFL telling it he had cancelled his direct debit and requested that it cease pursuing him for payment. It considered the claim under Section 75 of the Consumer Credit Act 1974 ('Section 75').

HFL said that according to its records Mr S had finished his treatment. Therefore, it would pay Mr S £220 to reflect the loss of aftercare provision under the 'Lifetime Guarantee'.

Mr S is not happy with this and brought a complaint about the claim outcome to this service. Our investigator said that HFL had acted fairly. Mr S has asked for the matter to be looked at again 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 that in his response to our investigator Mr S has said that his case needs to be considered within the context of others who had treatment with the supplier, including those who have received refunds. While I can understand Mr S making this point, my focus is on the individual circumstances of his complaint against HFL.

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 S is unhappy with the dental treatment he bought from the supplier. I am also sorry to hear about the impact of this on him and what he has says is the 'serious toll' on his health. 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 S in its position as a provider of financial services. In looking at how it handled the claim Mr S brought to it I consider the information reasonably available to it at the time, along with the relevant protections available to Mr S. I consider Section 75 to be particularly relevant here.

Section 75 can allow Mr S 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 S or misrepresented it.

Limited information

It is worth noting there are challenges presented by limited information in respect of Mr S'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 S's testimony.

Misrepresentation

Mr S'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 S 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 S the treatment.

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

Breach of contract

When considering whether there has been a breach of contract by the supplier I consider the express terms of the contract along with any terms implied by relevant law. Here I consider the Consumer Rights Act 2015 ('CRA') to be of particular relevance in considering any implied terms.

The way the treatment was provided

The CRA implies terms into consumer contracts to say that services will be provided with reasonable 'care and skill'.

While there is no specific definition of reasonable care and skill – of particular relevance will be what is considered good practice in the particular industry in question.

The difficulty here is Mr S has purchased a complex cosmetic/medical product where specific expert knowledge is necessary to understand it. I am not an expert in this area (nor is HFL) and without an expert report that explains what has gone wrong here and why or

some other similarly persuasive evidence it is difficult to fairly conclude that the treatment wasn't carried out properly. I know that Mr S has indicated he is unhappy with the results achieved to date and has intimated that the supplier was negligent. However, without an expert report covering Mr S's specific case it does not persuasively show that the treatment he received from the supplier was carried out without reasonable care and skill in any event.

It is also important to note that even if I agreed Mr S had not achieved certain results he was expecting, a finding in respect of reasonable care and skill is not dependent on the results achieved but the manner in which the treatment was carried out. And while particular results may be indicative of how a treatment was carried out – it is common, particularly in the medical/cosmetic field for outcomes to vary for a number of reasons other than a lack of care or skill by the practitioner.

I note Mr S says he had received follow on treatment in the form of being approved for 'touch-ups' at the end of his initial treatment because the results were not effective. I can't see that there was a clear evidence showing the exact nature of the follow up treatment Mr S received or why. I know he has shown some screenshots of what he says is communication with the supplier showing he booked a video call with it in June 2023 about his dissatisfaction with the results he got from his initial treatment. But this – and the other limited information (including messages from September 2023 which lack detail about the nature of the issues with his treatment) are not persuasive in showing to HFL a lack of reasonable care and skill by the supplier in this particular case.

Furthermore, receiving follow on treatment in itself does not persuasively show that there was a lack of reasonable care and skill in the way the treatment was carried out. I say this noting that the availability of 'touch-ups' to refine results appears to be part of the supplier's regular aftercare offering.

In summary, based on the evidence available to it (and noting the lack of expert evidence to support Mr S's case) I am not in a position to say that in considering the Section 75 claim presented to it HFL should fairly have concluded the treatment was carried out without reasonable care and skill.

I note that when Mr S contacted HFL he said that the 'product subsequently broke'. But it isn't clear what he meant by this. One of the things Mr S says to this service is that a 'retainer' broke. The retainer isn't part of the service funded by HFL so wouldn't be something it is responsible for. Mr S might have meant that an aligner broke – however, I don't see where he provided persuasive evidence to HFL to show the goods element of the treatment (the aligners themselves) breached the requirement under the CRA to be of 'satisfactory quality'.

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 S bought the treatment and which has been made available to me by HFL, alongside other information such as Mr S's testimony.

I consider all parties agree Mr S entered into a contract for aligner treatment with the supplier. I acknowledge that I don't have a copy of Mr S's specific treatment plan or the contractual agreement signed. But from the information I have (including Mr S'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 S does not dispute that he received the initial set of aligners and that he used these. However, when Mr S approached HFL with a complaint he indicated his treatment was not complete.

From what I understand the supplier's aligner plans generally last around 4-6 months. After which a customer would get retainers to preserve the results. I can see Mr S took out the plan in January 2023– so should have been finished by about June 2023. Mr S says his plan was actually for 8 months. It isn't clear that is the case but I think it likely Mr S's plan concluded by September 2023. And I note that this is reinforced by Mr S saying he was approved for a further 'touch-up' plan at this time as he wasn't happy with the results from his initial treatment. However, I don't think this means the core treatment was likely incomplete. It appears that had ended and further refinements were approved as part of an aftercare offering (subject to the approval of the treating dentist).

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 S and there is no breach of contract in that sense.

A more accurate assessment of Mr S's claim (to me) is that he was unhappy with the results from the treatment he got compared to the expectation he had going in.

I don't know what Mr S's projected outcome was - unfortunately neither Mr S or HFL appear to have that information (and now the supplier is out of business this information held on its treatment system appears to be lost). We also don't have an expert report or similar information showing what results Mr S actually achieved following the initial treatment.

However, while this situation is not ideal I am not persuaded the lack of information disadvantages Mr S in the way that might be expected. I conclude this because, on balance, I am not persuaded the results of the treatment were contractually guaranteed to match a certain projection in any event. I will explain.

I consider it likely Mr S signed an agreement with the supplier which included a consent form – as is usually the case with such treatments. We don't have the one Mr S signed but HFL has provided the standard consent/terms and conditions form the supplier used and that states the various and numerous risks, uncertainties and variables with such a dental treatment. It seems likely to be the same form Mr S would have signed. Furthermore, Mr S has not persuasively disputed awareness or agreement to the 'informed consent' clause including the provision I refer to below contained in the documentation 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 the projection – this is not a breach of contract based on the likely agreement between Mr S and the supplier that the outcome is uncertain and not guaranteed.

In summary, while I am sorry to hear Mr S is unhappy with the results, I don't consider that HFL had persuasive information to show it the supplier had breached its contract in respect of the results Mr S achieved. So, despite Mr S's clear dissatisfaction with the results, I don't think HFL would be expected to agree to a refund.

I note Mr S has indicated to this service that one of his aligners (although he refers to retainers) broke and has suggested it might have been the last one of the core treatment – or the first to the 'touch-up' treatment he was approved for. However, it isn't clear from what he says, and I don't see persuasive evidence was presented to HFL to show that part of his core treatment was likely faulty or that there were issues with any 'touch-up' treatment. I also note that if there were issues with the 'touch-up' treatment (and that isn't clear) HFL has offered to remedy the loss of aftercare with compensation in any event.

I am aware the supplier did provide a contractual 'guarantee' of sorts in relation to aftercare. 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 receipt of initial treatment (if a customer is not satisfied with results and at the discretion of the treating dentist) 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.

HFL has not disputed that Mr S met the preliminary criteria to qualify for aftercare coverage. So I have not focused on this. However, in order 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 S 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 S would have to continue to spend money on retainers twice a year; and
- there is no certainty Mr S 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 or Mr S's dissatisfaction with achieving the desired results from it. 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.

Furthermore, despite the 'lifetime' nature of the guarantee this would not have come at no further cost to Mr S, 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 recognise that Mr S says he had been approved for a further 'touch-up' just before the supplier went out of business. However, I also have to factor in that it isn't certain if Mr S would have continued being approved for treatment beyond this. And that it isn't clear that Mr S did not benefit from this to an extent.

I note HFL has provided information from the supplier to indicate that the financial value of 'touch-up' treatment is £220. Ultimately, it is difficult to say if that is exactly what it is worth. But it does represent around a 15% refund of the cash price of Mr S's treatment. And considering the uncertainties about the extent of Mr S's ongoing receipt of future benefits, and the fact Mr S has received the aligners so that he could complete the core treatment, it doesn't seem unreasonable that HFL in considering the Section 75 claim would deem this an effective 'price reduction' to remedy any perceived loss of aftercare benefit from the supplier ceasing trading. So in the particular circumstances here I think this is a fair resolution to the claim brought to it.

I know Mr S has used his life expectancy to work out that he thinks the loss of the guarantee has left him thousands of pounds out of pocket. But I think this does not take into account the qualifications and additional expense associated with maintaining the guarantee I have discussed above. Furthermore, 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 S paid via finance was substantially for the initial core treatment received already and not any refinements via aftercare. So a significant refund would seem disproportionate here.

I note that HFL has shown that it has applied the £220 payment to reduce Mr S's account balance. So there is nothing further for me to direct it to do here.

Following my decision, it is up to Mr S 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 S considers HFL has not been positive and sympathetic in respect of this he may decide to complain about it separately.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 March 2025.

Mark Lancod
Ombudsman