DRN-5030196

The complaint

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

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

Mr A purchased orthodontic dental treatment from a remote supplier ('the supplier') for £1,639 using a fixed sum loan from HFL in February 2023.

Mr A says the supplier has now gone out of business, and he contacted HFL to say:

- He is unhappy with the treatment and says it has had a detrimental impact on his dental health;
- despite receiving follow up treatment he had issues with the fit of his aligners and pain and this resulted in significant damage to his teeth and jaw;
- he stopped wearing the aligners and requested a cancellation from the supplier shortly before it ceased trading – but he was ignored by it;
- the supplier didn't provide him with retainers to help maintain the results he had achieved;
- multiple dentists have confirmed the problems he is experiencing with his dental health are directly related to the treatment from the supplier.

Mr A approached HFL for a refund. It considered the claim under Section 75 of the Consumer Credit Act 1974 ('Section 75'). It would not offer him a refund and said he wasn't eligible for aftercare under the 'Lifetime Guarantee' (abbreviated for my decision) as he had not completed the required smile 'check-ins' or ordered retainers.

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

Section 75 can allow Mr A 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 A or misrepresented it.

Misrepresentation

Mr A'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 A 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 A 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 A 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. This is particularly the case when in this field there are certain reasonably expected potential side effects or other variables which can impact the treatment and the end results.

I know Mr A has indicated he is unhappy with the treatment he received. He has said to HFL that it caused significant damage to his teeth and jaw and led to issues with his bite and ongoing pain. I am sorry to hear this. However, this testimony does not persuasively show HFL that the treatment received from the supplier was carried out without reasonable care and skill. I say this also noting that jaw issues and other dental health issues are listed as possible complications (depending on the patient's underlying conditions / medical history) in the supplier's 'Consent' documentation for patients to agree to (and which I refer to later on).

Mr A provided HFL with limited information about the dialogue he had with the supplier about dental health issues he had during the treatment. There was no correspondence showing that the supplier had admitted it had acted negligently. And while I note Mr A told HFL he had seen other dentists who confirmed the problems he had were directly related to the treatment I don't see where he provided HFL with expert evidence at the time to show the supplier operated without reasonable care and skill in providing the treatment.

It is also important to note that even if I agreed Mr A had not achieved certain results he was expecting (and ended up discontinuing the treatment) 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 know Mr A has pointed out that he had follow up treatment after his initial aligner set. And has provided further information to show this. He had indicated this must show that his treatment was not carried out properly. However, receiving further 'touch-ups' is not persuasive evidence that the supplier has admitted it acted without reasonable care and skill, noting 'touch-ups' are part of its usual aftercare offering where a customer is not happy with results and further opportunities for refinement are identified.

In summary, based on the limited evidence available to it (and noting the lack of expert evidence to support Mr A'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.

Although the manner in which the treatment was carried out is the focus of this complaint – for completeness I also note there was no persuasive evidence presented to HFL at the time of the claim 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 A bought the treatment and which has been made available to me by HFL, alongside other information such as Mr A's testimony.

I consider all parties agree Mr A entered into a contract for aligner treatment with the supplier. I acknowledge that I don't have a copy of Mr A's specific treatment plan or the contractual agreement signed. But from the information I have (including Mr A'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.

From what I can see Mr A took out his 7 month plan around February 2023 so he should have been finished with his initial course by around September 2023. This makes sense as it appears that he was approved for an additional 2 month 'touch-up' around this time. HFL's records show that Mr A's treatment had been completed and Mr A hasn't persuasively shown that he didn't complete this initial course of aligner treatment or that he was unable to do so due to a fault of the supplier. I know he has referred to the standard of treatment being unacceptable (which I have already discussed above) but ultimately I am satisfied he received the core aligner treatment he signed up to. And I am not persuaded that being approved for 'touch-up' treatments in itself persuasively shows that the core treatment was not provided.

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

I know Mr A says he did not finish his treatment due to adverse effects so never achieved the results he wanted. I am sorry to hear that. However, I also consider it likely Mr A 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 A 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 A would have signed. Furthermore, Mr A 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. I also note that this form lists the common side effects that could occur with such a treatment. So my starting point is that Mr A's failure to get the results he wanted (even if it were due to certain side effects) is not a breach of the express terms of the contract based on the likely agreement between Mr A and the supplier that the outcome is uncertain and not guaranteed.

I note Mr A has referred to being in the process of cancelling the treatment when the supplier went out of business. And says the supplier didn't respond to this. However, I don't see where he had a contractual right to cancel and get his money back at this stage, or where the supplier agreed to this. I am aware there is a money back guarantee as part of the supplier's aftercare provision, but that is based on the return of unused and unopened aligners from the treatment plan for a pro-rated refund. And based on Mr A's claim to HFL it appeared he had completed the initial aligner treatment– so would not be eligible for this in any event.

Mr A has also said he was unable to order retainers from HFL so lost results he had achieved. I don't see where he presented information to HFL to support this when he made his claim to it or to show that he was unable to reasonably mitigate the issue by ordering retainers elsewhere. But in any event – the contract HFL financed was for aligners – not retainers. These are a separate purchase. So issues with ordering retainers is unlikely to be covered by the Section 75 claim he made to HFL in any event.

In summary, while I am sorry to hear Mr A is unhappy with the aligner treatment, I don't consider HFL had persuasive information to show it the supplier had breached its contract with him in respect of the quality of that treatment or the results. So (and with Section 75 in mind) I don't think HFL would be expected to agree to further action, such as paying compensation or writing off amounts owed under the finance agreement.

Aftercare

I note both HFL and our investigator have commented on whether Mr A qualifies for aftercare under the 'Lifetime Guarantee'.

However, it is important to note this guarantee is not a guarantee of a refund if the aligner treatment is not to the customer's satisfaction. It is a qualified guarantee in respect of future refinements on an ongoing basis subject to the treating dentist approving it, and the customer also doing certain things like wearing aligners as prescribed and ordering retainers going forward.

HFL and our investigator have referred to Mr A not 'checking in' or ordering retainers as required to qualify for the aftercare provision. I think it is debatable as to whether Mr A would have been disqualified from the 'Lifetime Guarantee' on the basis of this criteria. Mr A has insisted he did check in as required, and said he tried to order retainers. And even if he had not done everything he needed to do, I note that the supplier in its literature does have some discretion to allow customers to re-qualify for aftercare. However, that is based on ongoing criteria including wearing the aligners as prescribed and preserving the results by wearing the retainers. And when Mr A approached HFL with his claim – it was clear that he had chosen to discontinue the prescribed aligner treatment and said that retaining the shape his teeth were in would have '*caused myself more harm'*. So, in any event it is highly questionable whether he would have qualified for the 'Lifetime Guarantee' going forward.

I also note, even if the supplier did agree that Mr A qualified for aftercare - Mr A's Section 75 claim to HFL made it clear to HFL that he wished to cancel any ongoing treatment. This was amongst serious allegations toward the supplier about how the treatment to date had caused significant lasting damage to his teeth. To all intents and purposes it was clear that Mr A wanted to sever ties with the supplier and considered it a risk to his health. So, I can't fairly say HFL should have concluded (in any event) that Mr A had likely lost out on future treatment under the 'Lifetime Guarantee' as a result of the supplier ceasing operations here.

Once again I am sorry to hear about what Mr A has said in respect of the impact of the treatment on his health but I don't consider HFL acted unfairly in declining to compensate him here based on the information reasonably available to it at the time.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 April 2025.

Mark Lancod
Ombudsman