DRN-5041813

The complaint

Miss D has complained about the way Healthcare Finance Limited ("HFL") dealt with a claim for money back in relation to dental treatment which she paid for with a fixed sum loan from it.

What happened

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

Miss D said she was initially provided aligners for around eight months' treatment. In September 2023 she contacted S explaining that with just a few weeks of her treatment left she could not see any results. After providing some photographs of her teeth, S agreed to take a new set of impressions and said it could offer "an alignment touch up" for her. Miss D said she tried to arrange an appointment at one of S's clinics for this but having had no success she agreed to receive a kit to take impressions herself. S agreed to send this on 6 December 2023.

S went out of business shortly after this in early December 2023. Miss D contacted HFL to make a claim. She said the treatment had not provided the desired results and because S had ceased trading, she could not finish the full course.

HFL considered the claim as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 (s.75). HFL said it acknowledged S provided what was known as a lifetime smile guarantee (which provided the possibility of touch up aligners if certain conditions had been met) but it didn't think Miss D met those conditions because she'd not completed certain check ins and she didn't order retainers. So, it declined the claim. Miss D referred her complaint to this service.

Our investigator looked into things and concluded that HFL had not unreasonably declined to refund the full cost of treatment as Miss D had received all of the aligners. However, he thought Miss D had most likely met the conditions of the lifetime smile guarantee at the point S ceased trading, so he thought she'd lost out on the benefit of it. He thought HFL should pay Miss D what it had previously told us was the cost of touch up aligners - £220.

HFL said it reluctantly accepted the investigator's recommendation but wanted it known the evidence in support of Miss D meeting the conditions of the lifetime smile guarantee was scarce.

Miss D did not accept the assessment and asked an ombudsman to review her complaint. She said in essence that the services she lost access to when S ceased trading must be worth more than £220.

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.

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

S.75 is a statutory protection that enables Miss D to make a 'like claim' against HFL for breach of contract or misrepresentation by a supplier paid using a fixed sum loan in respect of an agreement it had with her for the provision of goods or services. But there are certain conditions that need to be met for s.75 to apply. From what I've seen, those conditions have been met. I think 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 Miss D's claim in one sense because it's accepted the investigator's recommendation and offered her £220. So, I've gone 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. But I want to explain from the outset that I can only consider Miss D's complaint on that narrow basis – that is, whether it is fair and reasonable for HFL to respond to the claim in the way it has now agreed.

Miss D entered into the agreement in March 2023, and it was expected to last for eight months. She wasn't happy with the results of the treatment in September 2023. Therefore, she tells us S agreed to send her a kit for a new mould of her teeth with a view to providing further 'touch up' aligners to try and improve the results for her. S went out of business, and Miss D said she didn't receive those 'touch up' aligners. Miss D's concerns are that she hasn't finished her treatment, and now cannot, as S is no longer in business. She believes she should receive a full refund.

Implied terms

In cases such as this it is often complex to assess the quality of the service Miss D 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 Miss D is unhappy with the results of the treatment, she's not provided supporting evidence such as an independent, expert opinion that sets out the treatment she 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 the implied term relating to reasonable care and skill in relation to the service.

I'm not a dental expert, and neither is HFL. Without sufficient supporting evidence, I don't think HFL was unfair to not uphold the claim on the basis of a breach of an implied term of the contract. I've not seen enough to determine the service the supplier offered wasn't carried out with reasonable care and skill or that the goods element – i.e, the aligners, were not of satisfactory quality. I don't think the fact that S was considering whether 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 Miss D's contract with the supplier 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 Miss D as I understand it was kept in an online application that's no longer available. So, there's a lack of evidence. But it's not in dispute Miss D was due to receive a set of aligners when she entered into the contract in March 2023 and that she received all of them and used most of them. I think the core contract was for those set of aligners that she was due to use for eight months.

I think it likely Miss D signed an agreement with the supplier 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 Miss D would have understood the supplier 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 Miss D didn't quite get the results she wanted from the core treatment I don't think that would be considered a breach of contract.

While I appreciate Miss D 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 the supplier's website from around the time Miss D 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.

I'll go on to think about what services the supplier was required to offer during or after the initial treatment, and whether there's been a breach of contract. Further aligners seem to be part of the supplier's offering for refinement (subject to dentist approval). It's not clear whether the supplier agreed to provide Miss D further aligners as it had only agreed to send a new impression kit and hadn't yet approved a plan of touch up aligners before it ceased trading. It's not clear if it had agreed to do this to improve results or because of a failure on its part. There is insufficient evidence to conclude either way.

While I'm sympathetic Miss D was unhappy with the results, I don't think HFL had sufficient evidence to show the supplier breached the express terms of the contract in respect of the results she achieved.

Guarantee

On the supplier's website from the time of Miss D's purchase, the frequently asked questions (FAQ) page has a section for further treatment under the lifetime smile guarantee. This suggests customers can request further aligner 'touch ups' during or after the core treatment at no cost.

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 Miss D registered her aligners; wore them as prescribed; completed check ins; stayed up to date on payments and, after treatment, Miss D bought retainers every 6 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 saw photographs of Miss D's teeth and agreed to provide a kit for her to take new impressions of her teeth and that Miss D said this

happened when she had around two sets of aligners left to use. It's not clear that Miss D did not use those last aligners as they have been opened. And the evidence on whether Miss D met the conditions for the guarantee is slightly incomplete and conflicting. It's not clear Miss D did meet the conditions. But in any event, HFL agreed to make an offer for what it says is the value of touch up aligners.

Miss D thinks she should be provided with a full refund of the treatment costs. There is a potential breach identifiable because Miss D can no longer use the guarantee. However, given the stage of treatment she was at, the guarantee would never have given her 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 Miss D began the treatment around March 2023, and only if Miss D 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 Miss D with a full refund to compensate her for the potential breach that has happened. HFL didn't unreasonably decline to refund the full value for what was provided under the core contract.

There are also many ways in which the guarantee could have ceased to be of use to Miss D. She may not have done what was required in terms of buying retainers every six months. S may not have approved further aligners, although I appreciate it appears it was considering this before it went out of business. The guarantee only gave the possibility of 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 the perceived loss. And I'm required to resolve the complaint quickly and with minimum formality. Miss D may have been able to utilise the guarantee, and it looked like it may have been on the way to being agreed before S ceased trading.

HFL has previously shared information from the supplier 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. And even if I accept that Miss D was unable to use the last couple of sets of aligners – (which again isn't entirely clear from the available evidence), it represents an amount that is proportionally more than 2/16ths of the cost of the treatment.

Considering it's not clear that Miss D didn't use the last two aligners, given we'll never know if Miss D would have continued to receive any benefits under the guarantee, and taking into account she's received most of the core treatment, and that she said she was offered the possibility of further treatment before the supplier went out of business, I think this price reduction is a fair remedy for any potential loss.

While I am sorry to hear Miss D is unhappy, with s.75 in mind, I don't find there are grounds to direct HFL to refund her the full costs of the treatment. I think the payment of £220 is broadly fair in the circumstances. I should however, point out Miss D doesn't have to accept this decision. She's also free to pursue the complaint by more formal means such as through the courts.

Finally, I note Miss D may have stopped making payments towards the agreement and that HFL has instructed a debt collector to contact her. Given the circumstances, HFL may wish to consider removing any adverse information if Miss D clears the arrears. But, for the avoidance of doubt, given I don't know exactly what's happened, and that these events happened after HFL issued its final response, I'm not deciding that aspect within this final decision. If Miss D is unhappy with how HFL treats her going forward, it may be something our service is able to consider separately.

My final decision

My final decision is that I direct Healthcare Finance Limited to pay Miss D £220 plus 8% interest on that sum from when it declined to meet her claim on 6 February 2024 until the date of settlement*.

* If Healthcare Finance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss D how much it's taken off. It should also give Miss D a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 27 February 2025.

Michael Ball
Ombudsman