DRN-5053878

The complaint

Ms M complains about the way that Healthcare Finance Limited ('HFL') responded to a claim she made to it in respect of dental treatment she paid for using the fixed sum loan it provided.

What happened

In August 2023 Ms M bought a course of dental aligner treatment from a supplier I'll call S at a cost of £1,664. She paid a deposit of £70.50 and financed the remainder with a fixed sum loan from HFL.

Ms M said she received around 9 plastic aligners to be worn consecutively over a course of a few months.

In December 2023, S ceased trading. Ms M contacted HFL in February 2024 explaining that she hadn't achieved her desired results and would have to seek additional treatment elsewhere. She said she should not have to pay for a service she did not receive in full.

HFL treated Ms M's communication as a claim under section 75 Consumer Credit Act 1974 (s.75) and considered its liability to her. It said that Ms M qualified for S's lifetime smile guarantee (the guarantee) when it ceased trading which meant she was able to return any unused and unopened aligners for a pro-rated refund. It offered to do this.

Dissatisfied Ms M referred a complaint to this service.

Shortly after this HFL looked at things again and offered to pay Ms M £220 which it said was the value of one set of annual touch up aligners under the guarantee. Ms M did not accept this offer.

Our investigator thought HFL's offer was fair and didn't think it needed to do any more.

Ms M didn't agree and asked an ombudsman to review her complaint. She maintained that her treatment was finished when S ceased trading so she should not have to pay for it.

The complaint has therefore been passed to me.

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 see that another entity responded to this complaint on HFL's behalf. My references to HFL are taken to include representations made on its behalf.

It is important to note that my decision here is about the actions of HFL– and what it should fairly have done for Ms M in response to her claim in its position as a provider of financial services. In looking at how it handled the claim Ms M brought to it I've considered the information reasonably available to it at the time, along with the relevant protections

available to Ms M. I consider s.75 to be particularly relevant here.

S.75 provides that in certain circumstances Ms M can hold HFL liable for a breach of contract or misrepresentation by S. There are certain criteria which have to be met in order for s.75 to apply, and I am satisfied these are met here. Therefore, I've considered whether S has breached its contract with Ms M or misrepresented it.

Misrepresentation

I've not seen that there was persuasive evidence available to HFL when it considered Ms M's claim that S had misrepresented its service to her at the time of the sale. 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 I've not been provided with persuasive evidence that S was aware it would be going out of business when it sold Ms M the treatment. I have therefore focused on breach of contract.

Breach of contract

In considering whether there has been a breach of contract by S, I've looked at the express terms of the contract along with any terms implied by relevant law. I consider the Consumer Rights Act 2015 (CRA) to be of particular relevance in considering any implied terms.

Implied terms

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

This is generally determined with reference to what is considered good practice in the relevant industry and what a reasonably competent provider of that service would provide.

What is difficult here is that Ms M bought a complex cosmetic/medical product which requires expert knowledge to properly understand. Neither me nor HFL are experts in this area. And without expert evidence that explains what has gone wrong and why or some other similarly persuasive evidence, it is hard to fairly conclude that the treatment wasn't carried out properly.

It is also important to note that even if I agreed Ms M had not achieved certain results she 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 don't think HFL was unfair to not uphold the claim on the basis of a breach of an implied term of the contract because I've not seen enough to determine the service the supplier offered wasn't carried out with reasonable skill and care, and I've not seen evidence the goods element – i.e, the aligners, were not of satisfactory quality.

Express terms

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

I don't think its disputed that Ms M entered into a contract for aligner treatment with S. I don't have a copy of Ms M's specific treatment plan or the signed supply agreement. However, from the information I do have (including Ms M'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.

Ms M said that she didn't receive all of the aligners she was supposed to receive because S ceased trading. She said when she bought the treatment she was told that she'd be provided with more aligners after the core treatment. Without sight of the supply contract or anything showing Ms M's treatment plan, I don't know exactly how many aligners Ms M was supposed to receive. However, I understand S would typically supply the full course of aligners in one single package at the beginning and that treatment was largely self-directed. It doesn't appear to be in dispute that Ms M received this package and used all of the aligners she was sent. So, it appears S did supply the core treatment and Ms M was not prevented from using the aligners under that core treatment by S's demise. I've not seen enough to persuade me that S had promised to provide Ms M with more aligners under the core treatment that she did not receive.

I note however that S's website said that if a customer hadn't achieved the results they wanted, and providing they had met certain conditions, they might be eligible for additional 'touch up' aligners under the terms of the guarantee either while they were using their aligners or after they finished with them. I'll go on to think about the implications of this and whether there has been a breach of contract. I think when Ms M said she was expecting to receive more aligners at the end of her treatment, this is likely what she was alluding to.

Ms M has also indicated dissatisfaction with her results compared to the expectations she had when she bought the treatment.

I don't know what Ms M's projected outcome was – that information seems to have been stored on S's app which is no longer available. Neither is it particularly clear what results Ms M achieved.

While this isn't ideal, I am not persuaded Ms M's claim was disadvantaged by it. I say this because, on balance, I'm not persuaded the results of the treatment were contractually guaranteed to match a certain projection in any event.

I consider it likely Ms M signed an agreement with S which included a consent form – as is usually the case with such treatments. We don't have the one Ms M 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 Ms M would have signed. The form contained a statement that S could not guarantee specific results or outcomes.

This doesn't appear to me to be a particularly unusual or onerous term in the provision of such a treatment. It would not be reasonable to expect (taking account of 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, if Ms M's results were not in line with any projection that was made, this was not a breach of contract given what was likely agreed between Ms M and S that the outcome was uncertain and not guaranteed.

In summary, I don't consider that HFL had persuasive information to show the supplier had breached its contract in respect of the results Ms M achieved. So, I don't think it would be

expected to agree to a refund on that basis either.

The guarantee

On the supplier'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 Ms M registered her aligners; wore them as prescribed; completed check ins; stayed up to date on payments. And that, after treatment, Ms M 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.

HFL accepts Ms M may have been eligible to be covered by the guarantee and it's made an offer for what it says is the value of an annual set of touch up aligners.

Ms M thinks she should be provided with a bigger refund of the treatment costs. There is a potential breach of contract identifiable because Ms M 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 Ms M began the treatment, and only if she 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 Ms M with a full refund to compensate her for the potential breach that has happened. I don't think it was unreasonable that HFL didn't offer to refund the value of what was provided under the core contract.

Quantifying Ms M's potential loss as a result of the loss of the guarantee is not easy. For example, in order to qualify for the ongoing' touch- ups' Ms M would have to continue to spend money on retainers twice a year. She might have done this, but it isn't clear if she would have done it indefinitely. It's also unclear whether a dentist would have approved further touch up aligners.

It's important to note also that any potential loss I am considering is not to remedy a failure in respect of the core treatment or any dissatisfaction with achieving the desired results from it. The loss here is that of future aftercare under the guarantee. Something, that is uncertain and difficult to quantify.

HFL has previously shared information from S saying the financial value of an annual 'touch-up' treatment is £220 – regardless of how many aligners might be prescribed. 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 Ms M would have continued to receive any benefits under the guarantee and taking into account she'd received and completed the core treatment, 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 Ms M 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 its offer is broadly fair in the circumstances. I should, however, point out Ms M 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 Ms M stopped making payments towards the agreement and that HFL issued a default notice in March 2024. I primarily need to consider what happened up to the point HFL issued its final response letter because those events are what it has had the chance to consider. Given the circumstances, HFL may wish to consider removing any adverse information if Ms M clears the arrears. But, for the avoidance of doubt, given I don't know exactly what's happened, and that these events happened mostly after HFL issued its final response, I'm not deciding that aspect within this final decision. If Ms M is unhappy with how HFL treats her going forward in respect of any arrears or financial difficulties, 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 the extent not done so already, to pay Ms M £220.

If Healthcare Finance Limited wants to use the £220 to reduce the sum of any arrears on the agreement I consider this to be reasonable. However, if there are no arrears, then it should give Ms M the choice of having this paid directly to her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 29 May 2025.

Michael Ball
Ombudsman