DRN-5055253

The complaint

Miss F 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 credit it provided.

What happened

In January 2023 Miss F entered into a 25 month fixed sum loan agreement with HFL to fund the provision of dental aligners from a third-party supplier that I'll call "S". The cash price was around £1,500 and Miss F was due to pay back the agreement with monthly payments of around £65.

Miss F told us that she had undertaken the initial treatment and had two further treatments of aligners. The total treatment time was in the region on 12 months. But S went out of business in December 2023, so Miss F contacted HFL to make a claim, requesting a refund.

HFL considered the claim and offered Miss F £220 to compensate her for the 'touch up' aligners she may have been eligible for under the guarantee.

Miss F didn't agree. She said she thought S would carry on providing her with aligners until she was happy with the results. She said that part of the proposition she had agreed to was ongoing support, which was not now available as S had gone into liquidation. Miss F considered the contract was in breach and wanted her money back.

Our investigator thought the offer from HFL was fair. Miss F was unhappy and 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 want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Miss F and HFL that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I also want to say I'm very sorry to hear that Miss F is unhappy with her treatment. I can't imagine how she must feel, but I thank her for taking the time to bring her complaint.

What I need to consider is whether HFL – as a provider of financial services – has acted fairly and reasonably in the way it handled Miss F's request for getting her money back. But it's important to note HFL isn't the supplier.

Section 75 of the Consumer Credit Act 1974 ("s.75") is a statutory protection that enables Miss F 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 broadly accepted Miss F's claim in one sense because agreed to offer her £220 which it said was the cost of a set of 'touch up' aligners. 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 something different when handling Miss F's claim. But I want to explain from the outset that I can only consider Miss F's complaint on that narrow basis – that is, whether it was fair and reasonable for HFL to respond to her claim by offering what it did.

I've focussed on Miss F's breach of contract claim. Even if S couldn't provide all the services it promised because it went out of business, it's not clear this would be a misrepresentation because I don't think it would have been aware it would go out of business when it sold Miss F the treatment.

Implied terms

In cases such as this it is often complex to assess the quality of the service Miss F paid for. Results from these sorts of treatments are subject to many variables and there are generally disclaimers by the providers of such services, and accepted risks that results cannot be guaranteed.

Miss F has 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 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 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 S offered wasn't carried out with reasonable skill and care.

Express terms and guarantee

I also need to consider what I think Miss F'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 Miss F 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 Miss F was due to receive a set of aligners when she entered into the contract in January 2023 and that she received and used them. I think the core contract was for those set of aligners that she was due to use over approximately six months.

I don't know for certain, but I think it likely Miss F 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 Miss F would have understood S couldn't guarantee specific results or outcomes.

Given the nature of the treatment, I don't think that sort of term is unfair or unusual. So even if Miss F didn't quite get the results she wanted after the core treatment I don't think that in itself would be considered a breach of contract.

I've thought about whether HFL's offer is a fair way to resolve the complaint. In the absence of a specific signed contract, I've looked at S's website from around the time Miss F 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, they might be eligible for additional 'touch up' aligners under the guarantee. 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. The guarantee provided the possibility of having further aligners, provided that Miss F met certain conditions. It also said after the core treatment Miss F was required to buy retainers every 6 months at her own cost and wear them as prescribed. Moreover, a dentist was required to approve the further treatment. My understanding is that a dentist would only do so if they assessed that further progress to straighten the teeth would be possible.

Miss F thinks she should be provided with a full refund of the treatment costs. There is a potential breach identifiable because Miss F can no longer use the guarantee. However, given the stage of treatment she was at when our investigator looked into things, the guarantee would never have given her the option of a refund of the core treatment cost. From what I've seen, a full refund was only available for the first 30 days after Miss F began her treatment in September 2023, and only if Miss F 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 F with a full refund to recompense her for the potential breach that has happened.

There are many ways in which the guarantee could have ceased to be of use to Miss F. Firstly, she may not have done what she needed to in terms of buying retainers. The retainers were not supplied under the original contract – Miss F needed to buy them separately. But S may not have approved providing her with touch-up aligners if its dentists had assessed that they would not be beneficial. The guarantee only gave the possibility of annual touch-up aligners – not the certainty that they would actually be provided. And whilst touch-up aligners had been agreed to on previous occasions, after Miss F had used the initial aligners provided by S, that is no guarantee they would have continued to be agreed to.

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. As I've explained, I don't think HFL is required to remedy a failure in relation to the core treatment or results Miss F received. But I think there's a possible loss because Miss F may have been able to utilise the guarantee.

HFL shared information from S 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 Miss F would have continued to receive any benefits under the guarantee, and taking into account she's received the core treatment, I think HFL's offer to refund this price to the loan amount to remedy any

potential loss seems reasonable. It seems like a fair compromise given I think the total amount paid was substantially for the core treatment.

Finally, I note Miss F may have stopped making payments towards the agreement. I primarily need to consider what happened up to the point HFL issued its final response letter because those events relate to what it has had the chance to consider. Given the circumstances, HFL may wish to consider removing any adverse information if Miss F clears any arrears (if there are any). But, for the avoidance of doubt, given I don't know exactly what's happened, and that these events, if relevant, likely mostly happened after HFL issued its final response, I'm not intending to decide that aspect within the decision. If Miss F is unhappy with how HFL treats her going forward, it may be something our service is able to consider separately.

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

My final decision

For the reasons given above, my final decision is that I find that the offer by Healthcare Finance Limited of a partial refund of £220 against the loan amount was a fair offer based on all the circumstances of this complaint. Once that refund has been made, if it hasn't already, I do not think Healthcare Finance Limited needs to do anything else to put things right in this case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 31 March 2025.

Douglas Sayers
Ombudsman