DRN-5062627

## The complaint

Mr H complains about how Healthcare Finance Limited ('HFL') responded to a claim he 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 H purchased orthodontic dental treatment from a remote supplier ('the supplier') using a fixed sum loan from HFL in February 2023 .

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

- The aligners did not fit and he did not see any significant changes to his teeth;
- He will not benefit from the aftercare offered by the supplier (which I will refer to as the 'Lifetime Guarantee').

Mr H approached HFL for a refund via a claim under Section 75 of the Consumer Credit Act 1974 ('Section 75').

HFL did not agree to compensate Mr H and said he did not qualify for the 'Lifetime Guarantee'.

Mr H escalated his complaint about the claim to this service. As a result of this HFL agreed to pay Mr H £220 to reflect the loss of aftercare benefits. Our investigator thought this was fair but Mr H did not agree (he wants a full refund) so the matter has been passed to me for a final decision.

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

Section 75 can allow Mr H 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 H or misrepresented it.

Limited information

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

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 H 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 H has said he is unhappy with the results and has not noticed a difference in his teeth. He says the treatment has '*not got anywhere close to providing the result expected'*. However, this in itself does not persuasively show that the treatment received from the supplier was carried out without reasonable care and skill.

It is also important to note that even if I agreed Mr H 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 H has said that his tooth broke during the aligner treatment. I am sorry to hear that, but similarly there is no expert or other persuasive evidence to show this was a result of the way the treatment was carried out by the supplier.

I know Mr H has indicated that the supplier should not have taken him on as a candidate if he was not able to get any results. However, I don't have persuasive evidence that by accepting him for treatment the supplier acted in a way that would be considered below the usual level of skill and care in that industry.

In summary, based on the evidence available to it (and noting the lack of expert evidence to support Mr H'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 Mr H has mentioned one of his aligners broke when he was using it. However, it seems the supplier remedied this by providing a replacement. More broadly there is no persuasive evidence 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 H bought the treatment and which has been made available to me by HFL, alongside other information such as Mr H's testimony.

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

Despite some delays due to a broken aligner and Mr H breaking a tooth he does not dispute that he received the set of aligners he contracted for and that he used them over the intended treatment period. So 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 H and there is no breach of contract in that sense.

A more accurate assessment of Mr H'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 H's projected outcome was - unfortunately neither Mr H 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 H actually achieved following the initial treatment.

However, while this situation is not ideal I am not persuaded the lack of information disadvantages Mr H 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 H 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 H 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 H would have signed. Furthermore, Mr H has not persuasively disputed his 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 know Mr H has said that as the consent documentation could not be provided it should be disregarded. However, I disagree. With limited information I have to decide what is most likely to be the case – and ultimately Mr H in his testimony has accepted that he knew that results were not guaranteed in any event.

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 H and the supplier that the outcome is uncertain and not guaranteed.

I know that Mr H has now said his teeth look exactly the same as when he went in and that any treatment should produce some results even if it can't guarantee a particular result. However, he also has previously stated that his 'teeth had not changed in any significant way' – which indicates he did get some results. Either way, there isn't persuasive evidence to show Mr H's teeth didn't move at all. And while Mr H's results might have regressed through not ordering retainers (I know that Mr H has said he couldn't order retainers because the supplier went into administration) – this isn't a breach of the contract funded by HFL as retainers are a separate purchase. Furthermore, and in any event, to mitigate any regression Mr H could have ordered retainers elsewhere.

Misrepresentation

I know Mr H has mentioned misrepresentation. But I don't consider that he presented persuasive evidence of misrepresentation to HFL at the time he made his claim to it. In order to make out misrepresentation there would need to be persuasive evidence presented to it that the supplier made a statement that was untrue at the time Mr H entered into the contract, and which induced him into the transactional decision he otherwise wouldn't have made. I can't see that he did that here. However, for completeness I have covered off the key points Mr H has made to this service.

I know Mr H has implied that the supplier claiming its services were an alternative to traditional braces constitutes a misrepresentation if he does not get similar results to braces. And that no one mentioned that he might not get specific results. But I don't think these things constitute false statements of fact here. And while I acknowledge the supplier in its promotional materials says that its service 'can' straighten teeth faster than traditional braces – in light of the uncertain nature of cosmetic/medical treatment, and the consent documentation I have seen I don't think this is enough to constitute a clearly false statement of fact in the circumstances here.

Mr H has also indicated that because he won't get the promised aftercare this is a misrepresentation. However, 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 H the treatment.

In summary, while I am sorry to hear Mr H is unhappy with the results, I don't consider that HFL had persuasive information to show it the supplier had breached or misrepresented its contract in respect of the results Mr H achieved. So, despite Mr H's clear dissatisfaction with

the results, I don't think HFL would be expected to agree to the full refund that Mr H considers he is entitled to.

However, 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 treatment is completed (if a customer is not satisfied with results) 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 originally said that Mr H would not qualify for the aftercare due to the requirements to check in during treatment and order retainers after. However, it no longer disputes that Mr H would have qualified for the 'Lifetime Guarantee' based on information our investigator presented to it about the disruption to Mr H's treatment (from his broken tooth and aligner replacement) and how that impacted his ability to comply with the requirements. So I don't see it necessary to focus on this point. I broadly agree that based on the information that has come to light since Mr H made his claim to HFL he would not have been outright disqualified from aftercare.

However, 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 H 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 H would have to continue to spend money on retainers twice a year; and
- there is no certainty Mr H 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 H'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 H, 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 note HFL has provided information from the supplier to indicate that the financial value of a 'touch-up' treatment is £220. Ultimately, it is difficult to say if that is exactly what it is worth. But it does represent almost a 15% refund of the cash price of Mr H's treatment. And considering the uncertainties about the extent of Mr H's ongoing receipt of future benefits, and the fact Mr H has received the core treatment he signed up to it doesn't seem unreasonable that HFL in considering the Section 75 claim should deem this an effective 'price reduction' to remedy any perceived loss of aftercare benefit from the supplier ceasing trading.

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 H paid via finance was substantially for the initial core treatment he had received already and not any refinements via aftercare. So a significant refund would seem disproportionate here.

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

**Putting things right**

HFL should compensate Mr H with £220. If he is in arrears on his finance then HFL can apply the amount to the arrears. If Mr H is not in arrears he can elect to be paid it directly or to reduce the balance of his finance account (if applicable).

**My final decision**

I uphold this complaint and direct Healthcare Finance Limited to pay Mr H £220 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 February 2025.

Mark Lancod
**Ombudsman**