DRN-5067159

The complaint

Mr B complains that Healthcare Finance Limited ("HFL") failed to pay out on a claim he made to it about the failure of a supplier to deliver the dental treatment which he paid for with credit it provided.

What happened

In April 2023 Mr B entered into a 25-month fixed sum loan agreement with HFL to fund the provision of dental aligners to straighten his teeth from a third-party supplier. It was expected that the treatment would last for a few months.

Although seemingly generally happy with the progress of the treatment, in December 2023, Mr B contacted HFL to make a claim, highlighting that as the supplier had gone into administration, he would not be able to order retainers from it. He said these had been, *"…promised for the completion of* [his] *orthodontic treatment..."* and that, without them, this equated to a breach of contract on the supplier's part. He therefore believed he should be entitled to a full refund.

HFL considered Mr B's claim as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ('Section 75'). Ultimately, HFL declined his claim as it said Mr B had not complied with the requirements to qualify for the particular guarantee scheme offered by the supplier, that may have offered further support. Unhappy with that response, Mr B brought a complaint to us.

Our investigator considered how HFL had acted in light of its responsibilities under Section 75. However, she did not uphold the complaint and concluded, in summary, that there was insufficient evidence to say that the supplier had not provided the service Mr B paid for with reasonable skill and care, or that there was a breach of contract. Therefore she did not think it unfair or unreasonable for HFL to reject Mr B's claim under Section 75.

Mr B doesn't accept that and asked an Ombudsman to look into things.

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.

Section 75 enables Mr B to make a claim against HFL for breach of contract by the supplier of the goods/service in question. Certain criteria apply to Section 75 in respect of things like the cost of the goods or services and the parties to the agreement. I am satisfied there are no concerns in respect of these criteria so I have moved on to consider if there is persuasive evidence of a breach of contract or misrepresentation by the supplier that means HFL should have acted differently in the way it handled Mr B's claim.

But I want to explain from the outset that I can only consider Mr B's complaint on that narrow basis – i.e. whether it was fair and reasonable for HFL to reject his claim. I cannot hold it responsible for Mr B's experience with the supplier or feelings about the treatment.

I also think it would be helpful for me to clarify upfront that retainers – required to maintain progress achieved by the aligners in the core treatment – were not promised by the supplier, nor were they part of the treatment that Mr B paid for using the loan from HFL. They cost extra and needed to be ordered and paid for separately by Mr B, and were not provided on a contractual basis.

But I have considered carefully the key questions as to whether there has been a breach of contract by the supplier in this instance.

In cases such as this it is often complex to assess the quality of the service Mr B paid for. Results from such treatments are, of course, subject to many variables and there are generally disclaimers by the providers of such services, and accepted risks that results simply cannot be guaranteed. I, of course, am not a dental expert. And Mr B has not provided an independent, expert opinion that sets out that the treatment he paid for has not been done with reasonable 'care and skill', as implied by the Consumer Rights Act 2015 ('CRA'). It is that, rather than the results of the treatment, that is the crucial issue for me in considering whether it was fair and reasonable for HFL to reject his claim. And in any event, it does not seem that Mr B is particularly unhappy with the results of the treatment he paid for, namely the aligners to straighten his teeth.

But I need to consider what I think Mr B's contract with the supplier agreed to provide in terms of treatment. In that way, I can determine whether there has been a breach of an explicit term of it. I don't have a contract signed by Mr B as I understand they were housed in an online application which no longer holds that content since the supplier went into administration. However, HFL has been able to provide a sample document called a *"Consent and History Form".* This document is not dated, but is noted to be 'v3.7'. HFL says it would have been in use at the time that Mr B commenced his treatment in the summer of 2023. Where there are evidential uncertainties, as here, it is my role to determine what I think is more likely than not to have happened, or been the case.

In the absence of anything else, I think it is more likely than not that Mr B would have been provided with a document sufficiently similar in layout and content to the sample I have for me to be able to rely on it. So I have considered the content of it carefully.

There is a key section, just above where Mr B would likely have been asked to sign, which reads:

> *"I understand that* [the supplier] *cannot guarantee any specific results or outcomes."*

As set out above, the CRA says that there are also implied terms of contracts – not everything has to be fully spelled out. In this scenario, the implied terms of this contract are that the supplier would provide the service Mr B paid for with reasonable care and skill. I've already set out why I don't have the evidence to reach a conclusion that it didn't.

It is clear that Mr B's key concerns are about his ability to maintain the appearance of his teeth without the supplier being in existence. He also says that he ought to have, *"…follow up support…".* In real terms, this would mean being covered by the supplier's lifetime guarantee scheme for possible further treatment. *Possible* treatment only, via the provision of touch-up aligners at no extra cost, if Mr B met various criteria and the suppliers' dentists assessed that further straightening could be achieved. If I were to conclude that Mr B would have been covered by that guarantee, then I might consider there has been a partial breach of contract on that basis.

There was information about this guarantee scheme in the FAQs document which I'm confident would have been available to Mr B in the supplier's app. The guarantee was only

applicable in certain circumstances, and contingent upon the customer's actions. Those included registering aligners; completing 'check ins' with the supplier; buying retainers within a certain timeframe at the end of the core treatment; and continuing to buy retainers from the supplier each year. The evidence is clear that Mr B didn't do any of these things, which he doesn't in fact dispute. He says he wasn't afforded the opportunity to do check ins and it wasn't made clear to him that he needed to order retainers. So he thinks he ought to have the benefit of the lifetime guarantee, despite not having done what was necessary for that. I don't agree. I am satisfied it is more likely than not that the information about the guarantee scheme was available to Mr B. And I cannot hold HFL liable for how the supplier brought it to his attention. It's also clear that Mr B knew about the need to order retainers, as that is the crux of his complaint. So there isn't a clear breach here by the supplier for which I could fairly hold HFL liable.

Whilst I have found that Mr B isn't eligible for the lifetime guarantee scheme, I would also highlight that I don't think that is the pivotal issue here. *Even if he were*, that would not entitle Mr B to the outcome he wants. He thinks he should be provided with a full refund of the treatment costs. Given the stage of treatment he was at, that guarantee would never have given him that option anyway. Although I am sorry to hear of Mr B's disappointment with this situation, with Section 75 in mind, I don't think it would be fair or reasonable to conclude that HFL should refund him the costs involved or provide other compensation.

My final decision

For the reasons I've explained, I don't uphold this complaint and Healthcare Finance Limited doesn't need to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 March 2025.

Siobhan McBride
Ombudsman