DRN-5089700

The complaint

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

What happened

In September 2022 Mrs G entered into a 25-month fixed sum loan agreement with HFL to fund the provision of dental aligners from a third-party supplier to straighten her teeth. It was expected that the treatment would last for around four months.

Mrs G was not happy with the fit of some of the aligners or the results of the treatment and she says that the supplier provided several 'aligner touch ups' to try and improve the outcome. However, she was still not satisfied by the time that supplier went into administration in December 2023.

In February 2024, Mrs G therefore contacted HFL to make a claim, requesting a full refund of all treatment costs, which it considered as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ('Section 75'). Ultimately, HFL accepted that Mrs G had suffered a loss and refunded her what it said was the value of one set of touch up aligners, which it considered may have been provided by the supplier, and to which Mrs G may have had a contractual right. This was in the amount of £220, which it deducted from her outstanding debt. Unhappy with that response, Mrs G brought a complaint to us. She told us that she was paying for a service she had not received from the supplier and that she was therefore entitled to a full refund.

Our investigator considered how HFL had acted in light of its responsibilities under Section 75. However, he did not uphold the complaint and concluded that HFL's offer was fair and it was not unreasonable of it to decline to refund the full cost of treatment.

Mrs G 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 Mrs G 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, and indeed HFL has accepted Mrs G's claim in this regard. 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 offered more than it has when handling Mrs G's claim.

But I want to explain from the outset that I can only consider Mrs G's complaint on that narrow basis – i.e. whether it was fair and reasonable for HFL to respond to her claim by

offering what it did. I cannot hold it responsible for Mrs G's experience with the supplier or her understandable feelings about the treatment. I understand how strong those feelings are, but HFL is not the supplier. It is not responsible for everything the supplier did, or failed to do. HFL simply has a legal duty to consider whether she has a valid claim under Section 75 and to respond fairly to that claim if so.

Mrs G's concerns are that she was still undergoing treatment, and now cannot complete that, as the supplier is no longer in business. She says there, *"…has not been an outcome…"* to the treatment. So she believes she should receive a full refund as what she paid for has not been provided.

To be clear, I don't accept that Mrs G hasn't finished her treatment. From the information I have I am satisfied that, on balance, the fundamental service paid for was the provision of a set of aligners used for straightening teeth over a relatively short term. As mentioned, that treatment began in late 2022 and was expected to last a matter of several months. The treatment itself is *not* something that is ongoing until the customer is satisfied with the results. This is very important, and is not something that Mrs G accepts. She says that the, *"…treatment plan had not achieved what it was expected to do…"* Even if that is the case, that does not equate to a breach of contract which would entitle her to a refund under Section 75. I will explore this in more detail.

What is clearly the case though is that she is not happy with the results of the treatment. Therefore, the supplier had provided her with some further aligners to try and improve the results for her.

In cases such as this it is often complex to assess the *quality* of the service Mrs G 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 Mrs G has not provided an independent, expert opinion that sets out that the treatment she 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 respond to her claim as it did.

I need to consider what I think Mrs G'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 Mrs G 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 Mrs G commenced her treatment in 2022. 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 Mrs G 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 think it forms the basis of the written contract between her and the supplier, and have considered the content of it carefully.

Importantly, the final section before the customer was required to sign set out that:

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

I'm satisfied the supplier never said that it could guarantee her satisfaction with the results of the treatment. That means I don't find a breach of any explicit terms of the contract between

Mrs G and the supplier. But that is only the first question I have considered.

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 Mrs G 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.

However, HFL apparently accepts that Mrs G may have been able to access some further support via the supplier's lifetime guarantee scheme. What that offered was the *possibility* of having aligner touch-ups every year, provided that Mrs G carried on buying retainers from the supplier, and that a dentist approved the provision of the touch-up aligners. So it was far from guaranteed. My understanding is that a dentist would only approve the provision of more aligners if s/he assessed that further progress to straighten the teeth would be possible through a touch-up aligner.

This means that, if it had continued trading, under the terms of the lifetime guarantee, the supplier could easily have turned round to Mrs G and told her that it would not provide any further aligners because they wouldn't straight her teeth any further. And from the evidence I have, I can't conclude that would have been a breach of contract. Because satisfaction with results was not guaranteed.

Despite her not having bought any retainers from the supplier, HFL thought that Mrs G had potentially lost out as the supplier was no longer trading and could not provide her with a further touch-up aligner after it went into administration. And so it ultimately offered to pay her the value of a set of those aligners.

But Mrs G thinks she should be provided with a full refund of the treatment costs. I have set out why I don't find that there has been a breach of an explicit contract term in respect of treatment results, or indeed those terms implied in the contract. Whilst I am clear that she did not meet all of the eligibility requirements for the supplier's lifetime guarantee, HFL has made an offer as if she were. But even if I thought she were eligible, given the stage of treatment she was at, that guarantee would never have given her the option of a refund of the treatment costs. It's clear from the information I have that a refund was only available for the first 30 days after Mrs G began her treatment in 2022, and only if Mrs G had not opened or used the aligners. So it would not be fair or reasonable for me to tell HFL that it should now provide Mrs G with a full refund to recompense her for the supplier going into administration. The supplier itself would never have been contractually obliged to do that.

I have also thought about the amount HFL has offered Mrs G so far. I am satisfied that the £220 is a fair estimate of the cost of a set of touch-up aligners, as I have seen evidence provided by the supplier to HFL to confirm that. So essentially it has compensated her for the loss of one year's 'use' of the lifetime guarantee. And that is despite the fact that she had not met all the contractual requirements to be eligible for it.

Hypothetically, it is possible that Mrs G could have requested and received a set of aligners every year for the rest of her life – if the supplier had chosen to include her in the guarantee scheme. But that hypothetical possibility doesn't lead me to conclude that HFL has been unfair in what it has offered, namely the value of one year's benefit from the guarantee scheme.

There are many ways in which the lifetime guarantee could have ceased to be of use to Mrs G. Firstly, the supplier could easily have said that she didn't qualify for it as she hadn't bought retainers within the required timeframe. But even if that weren't the case, she may not have done what she needed to in terms of continuing to buy retainers from the supplier in future years. And crucially, the supplier 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.

So taking that into account, and noting the informal remit of this service to resolve disputes, I don't find that it was unfair or unreasonable of HFL to recompense Mrs G in the way that it has. Identifying exactly how many annual touch-up aligners Mrs G *may* have asked for; *may* have qualified for; and *may* have been approved for, is pretty much impossible.

Although I am very sorry to hear of Mrs G'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 her the costs of this treatment. What it has already refunded is fair.

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 else.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 20 February 2025.

Siobhan McBride
Ombudsman