DRN-5137290

The complaint

Mr P has complained about the way Healthcare Finance Limited ("HFL") dealt with a claim for money back in relation to dental treatment which he paid for with credit it provided.

What happened

In July 2023, Mr P 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 £1,700 and Mr P was due to pay back the agreement with monthly payments of around £70.

S went out of business in December 2023, so Mr P contacted HFL to make a claim, requesting a refund. HFL considered the claim as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ("s.75"). HFL said in accordance with S's terms and conditions Mr P could return unopened aligners for a pro-rata refund.

Mr P told us he finished wearing his last set of aligners on 12 December 2023. In effect, Mr P had completed his treatment plan, so he had no unopened aligners to return. But Mr P was unhappy that he would be denied the benefit of the ongoing service that had been offered in S's 'Lifetime Smile Guarantee'. And Mr P was unhappy with the results of the treatment as his teeth were not as straight as he expected.

Mr P decided to refer his complaint to the Financial Ombudsman. Our investigator looked into things and thought HFL should offer Mr P £220 to compensate him for the 'touch up' aligners he may have been eligible for under the guarantee. HFL agreed to make that payment of redress. The amount would be applied to reduce the loan amount if still outstanding. Mr P didn't agree.

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 Mr P 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.

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

S.75 is a statutory protection that enables Mr P 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 him 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 Mr P's claim in one sense because it offered him a pro-rata refund of unopened aligners. And HFL later offered Mr P £220. 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 Mr P's claim. But I want to explain from the outset that I can only consider Mr P's complaint on that narrow basis – that is, whether it was fair and reasonable for HFL to respond to his claim by offering what it did.

I've focussed on Mr P'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 Mr P the treatment.

Implied terms

In cases such as this it is often complex to assess the quality of the service Mr P 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.

While Mr P is unhappy with the results of the treatment, he has not provided supporting evidence such as an independent, expert opinion that sets out the treatment he 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.

I know that will be a disappointment to Mr P. But this is an evidence-based service and I have a responsibility to determine a case based on all the submissions made to me. In this case, there is insufficient evidence to reach the outcome that Mr P hoped for.

Express terms and guarantee

I also need to consider what I think Mr P'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 Mr P, 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 Mr P was due to receive a set of aligners when he entered into the contract in July 2023 and that he received and used them. I think the core contract was for those set of aligners that he was due to use for a few months.

I don't know for certain, but I think it likely Mr P 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 Mr P 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 Mr P didn't quite get the results he wanted after the core treatment, I don't think that in itself would be considered a breach of contract.

I've thought about whether our investigator's assessment 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 Mr P 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 Mr P met certain conditions. It also said after the core treatment Mr P was required to buy retainers every 6 months at his 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.

Mr P thinks he should be provided with a full refund of the treatment costs. There is a potential breach identifiable because Mr P can no longer use the guarantee. However, given the stage of treatment he was at when our investigator looked into things, the guarantee would never have given him 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 Mr P began his treatment in July 2023, and only if Mr P 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 Mr P with a full refund to recompense him for the potential breach that has happened.

There are many ways in which the guarantee could have ceased to be of use to Mr P. Firstly, he may not have done what he needed to in terms of buying retainers. The retainers were not supplied under the original contract – Mr P needed to buy them separately – which he indicated he did. But S may not have approved providing him 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.

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 Mr P received. But I think there's a possible loss because Mr P 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 Mr P would have continued to receive any benefits under the guarantee, and taking into account he's received the core treatment, I think our investigator's recommendation for HFL to offer this price reduction 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.

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

Putting things right

I uphold this complaint and direct Healthcare Finance Limited, to the extent not done so already, to pay Mr P £220.

My final decision

For the reasons given above, my final decision is that I uphold this complaint and direct Healthcare Finance Limited, to the extent not done so already, to pay Mr P £220.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 10 April 2025.

Douglas Sayers
Ombudsman