DRN-5167754

The complaint

Mr W complains about how Healthcare Finance Limited ('HFL') responded to a claim he made to it in respect of dental treatment he paid for using the fixed sum loan it provided.

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

Mr W purchased orthodontic dental treatment from a remote supplier ('the supplier') for a cash price of £1,639 using a fixed sum loan from HFL in November 2022.

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

- He never completed his course of treatment due to issues it was causing him (jaw pain/alignment issues);
- He contacted the supplier about the issues via its app but didn't get a response.

Mr W approached HFL to see if it could help him. It considered the claim under Section 75 of the Consumer Credit Act 1974 ('Section 75'). It would not offer him compensation and said he wasn't eligible for aftercare under the supplier's 'Lifetime Guarantee' (abbreviated for my decision) as he had not completed the required smile 'check-ins' or ordered retainers.

Mr W is not happy with this response and brought a complaint about the claim outcome to this service. Our investigator said that HFL had not acted unfairly. Mr W has asked for the matter to be looked at again by an ombudsman.

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

Section 75 can allow Mr W 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 W or misrepresented it.

Limited information

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

Misrepresentation

Mr W's claim to HFL appears to be about breach of contract rather than misrepresentation. But in the interest of completeness, in any event I don't consider there to be persuasive evidence available to HFL when it considered the claim that the supplier had misrepresented its service to Mr W at the outset. 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 W the treatment.

Therefore, I have focused on breach of contract here. Which I turn to now.

Lifetime Smile Guarantee

It is important to note that after HFL responded to his claim Mr W underlined that 'I did not request a refund nor raise the lifetime smile guarantee'. I agree that he did not specifically raise this as part of his claim. He has also reiterated this after our investigator produced his view. Therefore it isn't something I will be focusing on here.

In any event, I note that in order to qualify for the 'Lifetime Guarantee' (and regardless of completing 'check-ins' or other criteria) a customer has to complete the course of aligners as prescribed. Something which Mr W has been clear to HFL that he didn't do. I consider that Mr W's claim against HFL is in respect of the adverse effects of treatment which he said stopped him completing the treatment. So I have gone on to consider this in respect of establishing any breach of contract which HFL is liable for.

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 W 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. This is particularly the case when in this field there are certain reasonably expected potential side effects or other variables which can impact the treatment and the end results.

I know that Mr W has indicated he is unhappy with the treatment he received. He has said that it caused him jaw pain and that he needs corrective treatment. I am sorry to hear this. However, this testimony does not persuasively show that the treatment received from the supplier was carried out without reasonable care and skill. I say this also noting that jaw pain is specifically listed as a possible side effect in the supplier's 'Consent' documentation for patients to agree to (and which I refer to later on).

It is also important to note that even if I agreed Mr W had not achieved certain results he was expecting (and ended up discontinuing the treatment) 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 know Mr W is frustrated as he says he reached out to the supplier via the app after he visited a retail site about his issues with the treatment. And there isn't information to show the content of that contact. However, due to the complexities at play here, unless the supplier specifically admitted wrongdoing in the correspondence, it would not necessarily have been sufficient for HFL to reasonably conclude that the treatment was not carried out with reasonable care and skill in any event.

In summary, based on the limited evidence available to it (and noting the lack of expert evidence to support Mr W'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 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 W bought the treatment and which has been made available to me by HFL, alongside other information such as Mr W's testimony.

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

From what I understand the supplier's aligner plans generally last around 4-6 months. After which a customer would get retainers to preserve the results. Mr W says he recalls his plan being about 3-4 months, which fits with this. I can see Mr W took out his plan in November 2022– so should have been finished by about March or April 2023. However, when Mr W approached HFL he said that he never completed the treatment due to side effects like jaw pain/alignment issues.

Mr W does not dispute that he received the initial set of aligners in order to complete the treatment. And while I am sorry to hear about the adverse effects he describes, Mr W did not supply persuasive evidence to HFL that he wasn't able to complete the treatment due to the fault of the supplier. 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 W and there is no breach of contract in that sense.

I know Mr W says he did not finish his treatment so never achieved the results he wanted. But I don't think this in itself is a breach of contract, particularly in the absence of evidence showing that Mr W's failure to complete the course was the fault of the supplier.

I also consider it likely Mr W 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 W 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 W would have signed. Furthermore, Mr W has not persuasively disputed 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 also note that this form lists the common side effects that could occur with such a treatment.

So my starting point is that Mr W's failure to get the results he wanted (even if it were due to certain side effects) is not a breach of the express terms of the contract based on the likely agreement between Mr W and the supplier that the outcome is uncertain and not guaranteed.

In summary, while I am sorry to hear Mr W is unhappy with not finishing the treatment, the impact on him he describes and ultimately failing to achieve the results he wanted, I don't consider that HFL had persuasive information to show it the supplier had breached its contract in respect of this. So (and with Section 75 in mind) I don't think HFL would be expected to agree to further action, such as paying compensation or writing off amounts owed under the finance agreement.

My final decision

I don't uphold this complaint.

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

Mark Lancod
Ombudsman