DRN-5173729

The complaint

Miss P 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 June 2023 Miss P 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. Miss P says it was expected that the treatment would last for around six to nine months.

Miss P says that she finished using the core set of aligners, but it seems clear that she was not happy with the progress of the treatment and indeed that the supplier approved her to receive 'aligner touch ups' to try and improve the outcome. However, the supplier went into administration in early December 2023, and Miss P did not receive the aligner touch ups that had been approved.

In January 2024, Miss P 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 Miss P had suffered a loss and offered her what it said was the value of one set of touch up aligners, which it considered would have been provided by the supplier, and to which it believed Miss P had a contractual right. This was in the amount of £220. Unhappy with that response, Miss P brought a complaint to us.

Our investigator began looking into her concerns and considered how HFL had acted in light of its responsibilities under Section 75. It was at this point that Miss P first raised concerns with us (or HFL) about the quality of the core aligners that she had received. She said they were ill fitting and some had cracked.

The investigator 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.

Miss P doesn't accept that, saying that she would never have agreed to the treatment unless results were guaranteed, 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 Miss P to make a claim against HFL for breach of contract by the supplier of the goods/service in question, or a misrepresentation. 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 Miss P'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 Miss P's claim.

But I want to explain from the outset that I can only consider Miss P'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, based on the evidence she provided to it. I cannot hold it responsible for Miss P's experience with the supplier or her feelings about the treatment. 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.

Miss P's initial concerns were that her teeth are not straight, despite her having used all the aligners provided under the core treatment, and, as the supplier is no longer in business, she cannot receive any further treatment via its guarantee scheme. She has also characterised her later concerns about the quality of the aligners themselves as a breach of the Consumer Credit Act 1974 ('the CCA'). And highlighted the lack of oversight; support and customer service she received from the supplier during the treatment.

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

But I need to consider what I think Miss P'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 Miss P 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 Miss P commenced her treatment in 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 Miss P 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 final section of the document before the customer was required to sign that sets out:

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

Miss P says that, as I do not have a copy of this contract with her signature on it, I cannot rely on it. She says that she doesn't remember signing anything like this and would never have agreed to pay almost £2,000 if results weren't guaranteed. However, she has not provided any contradictory evidence which sets out that the supplier *did* guarantee that customers would get specific results, or would get their money back. Given all the circumstances of the service in question here, I think it is highly unlikely that there would ever have been such a guarantee.

So I'm satisfied the supplier never said that it could guarantee Miss P's satisfaction with the results of the treatment, the core aspect of which I have already found was provided and completed. That means I don't find a breach of any explicit terms of the contract between

Miss P and the supplier. But this is only the first question I have had to consider when reviewing this complaint.

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 Miss P 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.

Turning to Miss P's concerns about the quality of the aligners, there are several issues to explore here. Firstly, the complaint I am able to consider is only HFL's response to the claim Miss P made to it in January 2024. I am not considering a complaint about the quality of a course of dental treatment provided by the supplier. Based on the evidence I have, it does not appear that Miss P raised concerns about the quality of the aligners when she made her claim to HFL. So I can't therefore say that should have been a basis on which it should have offered Miss P more than it did.

But, even if she had raised those concerns, I don't think she has evidenced that the quality of the aligners was so compromised that it amounts to a breach of contract. She says that she wore all the aligners, as instructed by the supplier, and the fact that the supplier agreed to provide further treatment does not necessarily mean that there was a fundamental problem with the core aligners themselves. Simply that it accepted that Miss P's teeth could be further refined with touch-up aligners. So, there is insufficient evidence to say that the quality of the aligners amounted to a breach of contract under either the CCA or CRA.

However, HFL accepts that Miss P was eligible to be covered by the supplier's lifetime guarantee scheme. I think that is fair, despite the fact that she never bought retainers from the supplier. Ordinarily, those would need to be paid for, as an additional cost to the treatment, before a customer could benefit from the lifetime guarantee scheme. But given that the supplier had clearly approved the provision of touch-up aligners, I think it's reasonable for Miss P not to have ordered retainers. Essentially, she wasn't ready for them.

Crucially, what that lifetime guarantee offered was the *possibility* of having aligner touch-ups every year, provided that Miss P carried on buying retainers from the supplier, and that a dentist approved the provision of the touch-up aligners. My understanding is that a dentist would only do so if s/he assessed that further progress to straighten the teeth would be possible through a touch-up aligner. Which clearly the dentist in this case did agree at the end of 2023.

Because HFL accepted that Miss P was eligible for that guarantee, it identified that she had lost out as the supplier was no longer trading and so did not deliver that touch-up aligner at the end of 2023. That means it essentially accepted that there was a breach identifiable because Miss P could no longer use the lifetime guarantee. And so it offered the cost of a set of aligners, estimated at £220.

But Miss P thinks she should receive a full refund so that she can go and seek an entirely new course of treatment elsewhere.

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. And that Miss P received and completed the core treatment she paid for using the loan from HFL. Whilst I accept that she experienced difficulties gaining support from the supplier as she has detailed, she hasn't evidenced that has really caused her any loss. She received and wore the aligners that were prescribed. The supplier agreed to provide more aligners when her teeth weren't as straight as they could be.

Moreover, given the stage she was at, the lifetime guarantee would never have given her the option of a refund of the treatment costs in any event. It's clear from the information I have that a full refund was only available for the first 30 days after Miss P began her treatment in 2023, and only if Miss P had not opened or used the aligners.

Finally, I have thought in some detail about the monetary amount HFL has offered Miss P so far. While I can't be certain, I am satisfied that the £220 is a fair compromise price reduction offer, and have seen evidence provided by the supplier to HFL to confirm that it was roughly the cost of a set of touch-up aligners. So essentially it has compensated her for the loss of one year's 'use' of the lifetime guarantee. Hypothetically, it is possible that Miss P could have requested and received a set of aligners every year for the rest of her life. Which we all hope will be many years. But that hypothetical possibility doesn't lead me to conclude that HFL has been unfair in what it has offered.

There are many ways in which the lifetime guarantee could have ceased to be of use to Miss P. Firstly, she may not have done what she needed to in terms of continuing to buy retainers from the supplier. Perhaps more importantly, and as I've already discussed, 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.

Finally, I would highlight that Miss P has not had to pay for a set of retainers, estimated to be £160, in order to benefit from the lifetime guarantee on this occasion. Technically, she was required to do so, but as I've already said, it is reasonable that she didn't. However, the fact still remains that she hasn't been put to that expense.

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 offer Miss P what it has. Identifying exactly how many annual touch-up aligners Miss P *may* have asked for; *may* have qualified for; and *may* have been approved for, is pretty much impossible.

Although I am sorry to hear of Miss P'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 offered is fair and it need not do anything else.

I am not certain whether HFL has already paid Miss P the £220 it offered. If not, I require it to honour that offer now.

My final decision

For the reasons I've explained, I don't uphold this complaint and Healthcare Finance Limited need only pay Miss P the £220 it has already offered her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 28 March 2025.

Siobhan McBride
Ombudsman