DRN-5271798

The complaint

Ms S 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 February 2023 Ms S 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 a few months.

It seems clear that Ms S was not happy with the results of the treatment and Ms S says that the supplier provided several 'aligner touch ups' to try and improve the outcome. However, she was still not satisfied with the results by the time that supplier went into administration in December 2023.

In February 2024, Ms S 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 Ms S 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 Ms S may have had a contractual right. This was in the amount of £220. Unhappy with that response, Ms S brought a complaint to us. She told us that the contract had not been honoured by 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, she 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.

Ms S 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 Ms S 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 Ms S'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 Ms S's claim.

But I want to explain from the outset that I can only consider Ms S'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 Ms S's experience with the supplier or her 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.

Ms S's concerns are that she was still undergoing treatment, and now cannot complete that, as the supplier is no longer in business. She also says that the aligners damaged her teeth and so she needs to be compensated for the cost of having that fixed. So she believes she should receive a full refund as what she paid for has not been provided, and money to pay for the damage.

To be clear, I don't accept that Ms S 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 early 2023 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 Ms S accepts. She says that the supplier promised, *"…as part of the contract that they will get your teeth looking like the final scan…that they generate…"* This is not correct. It may be what Ms S believed when she signed up to treatment. But it is not what the written documentation says, which is what HFL must now rely on. 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 Ms S 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 Ms S 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 also note that when Ms S contacted the supplier to complain about the damage caused to her teeth it asked her to provide some evidence from a dentist as to how much it would cost to repair that damage. However, she admits she never did.

I need to consider what I think Ms S'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 Ms S 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 Ms S 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 Ms S 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 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. So, in fact, it never promised Ms S as part of the contract that her results would match the scan of her teeth that it generated. That means I don't find a breach of any explicit terms of the contract between Ms S 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 Ms S 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, nor can I ask HFL to consider offering any compensation for possible damaged teeth.

However, HFL apparently accepts that Ms S 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 Ms S carried on buying retainers, 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 do so 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 Ms S 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 Ms S 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 Ms S 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 Ms S began her treatment in 2023, and only if Ms S 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 Ms S 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 Ms S 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 Ms S 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 Ms S. 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 Ms S in the way that it has. Identifying exactly how many annual touch-up aligners Ms S *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 Ms S's disappointment and indeed distress 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 need not do anything else.

I am not certain whether HFL has already paid Miss H 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 Ms S the £220 it has already offered her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 17 February 2025.

Siobhan McBride
Ombudsman