DRN-5351558

The complaint

Miss R complains about how Healthcare Finance Limited ('HFL') responded to a claim she made to it in respect of dental treatment she 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.

Miss R purchased orthodontic dental treatment with a cash price of £1,639 from a remote supplier ('the supplier') using a fixed sum loan from HFL in March 2023 .

Miss R says the supplier has now gone out of business, and she complained to HFL that:

- She had not received the service she paid for – her teeth are 'pretty much the same as how they were back when I started treatment';
- She had not finished treatment 'at the time that they had ceased operations (finishing meaning that the expected outcome was achieved)'; and
- She experienced poorly fitted aligners that 'caused my gums to become inflamed and bleed'.

HFL considered the claim under Section 75 of the Consumer Credit Act 1974 ('Section 75'). It would not offer Miss R anything as its records showed that she completed the treatment and had not met the terms of the aftercare provision known as the 'Lifetime Guarantee' (abbreviated for my decision).

Miss R was not happy with this and brought her complaint about the claim outcome to this service. After which HFL made an offer to compensate Miss R £220 for the loss of aftercare benefits.

Our investigator said that HFL had made a fair offer. Miss R 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 also aware that Miss R contacted HFL after it issued its Final Response Letter in January 2024. However, my decision here is about the subject matter referred to in this letter – rather than events following it.

I am sorry to hear Miss R is unhappy with the dental treatment she bought from the supplier. I am also very sorry to hear about the impact she says it has had on her mental health. I understand the experience has been extremely distressing for Miss R and I wish her well for the future.

I think it would be helpful for me to note that my decision here is not a formal investigation into the actions of the supplier. But looking at how HFL, as the finance provider, responded to the claim Miss R made to it based on the information reasonably available to it at the time. In deciding what is fair I consider Section 75 to be particularly relevant here.

Section 75 can allow Miss R 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 Miss R or misrepresented it.

Limited information

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

Misrepresentation

Miss R'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 Miss R 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 Miss R the treatment.

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

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 Miss R 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. Noting that there are certain reasonably expected risks around potential side effects and adverse impacts in this field.

I know Miss R has said she is unhappy with the results she got and has sent photos in to show this. She has also provided detailed arguments saying that her treatment was not the correct duration and that to achieve straight teeth with 15 aligners would be 'near impossible'. I am not sure that Miss R presented all of this information to HFL when she made her claim so I wouldn't have expected it to address this. However, in any event, without expert information concluding the same it is difficult to conclude that HFL should have concluded that the treatment received from the supplier was carried out without reasonable care and skill.

It is also important to note that even if I agreed Miss R had not achieved certain results she was expecting, 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 note that Miss R was approved for 'touch-up' treatment and provided HFL evidence of this. However, being approved for more treatment in itself is not persuasive evidence that the supplier acknowledged it acted without reasonable care and skill. Noting that refinements if a customer is unhappy with progress are part of its regular aftercare offering. I am mindful that Miss R has said in regard to her initial 'touch-up' treatment that these were uncomfortable and caused gum pain and irritation. She has also sent in pictures to show this and an email showing the supplier responded to the issue suggesting some ways to alleviate it. I am sorry to hear about the discomfort experienced. But I am not in a position to say that based on the information it had HFL should have concluded the supplier had acted without reasonable care and skill in providing the treatment. Also noting that gum inflammation is referred to as a possible side effect in the supplier's standard consent form (which I refer to below).

In summary, based on the evidence available to it (and noting the lack of expert evidence to support Miss R'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 I note Miss R has referred to fitting issues both for her 'touch-up' aligners and for her initial aligner set. It isn't really clear from the evidence presented to HFL what the issue was with the initial aligner set. And without expert or similarly persuasive evidence it is difficult to conclude that the later issues with the 'touch-up' set were due to a faulty product or similar. So based on the evidence provided to it I don't think HFL were acting unreasonably in not concluding 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 Miss R bought the

treatment and which has been made available to me by HFL, alongside other information such as Miss R's testimony.

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

When Miss R approached HFL about her claim she said that her treatment was not complete. However, I don't think HFL were unreasonable in concluding her initial treatment had been completed. I can see that the information it had from the supplier indicated this. And based on when her treatment started and the usual length of the supplier's plans (4-6 months) it would appear that she would have been finished with the initial course of treatment when she made her claim.

Miss R does not dispute she received the initial course of aligners and that she used these but she told HFL she couldn't finish the treatment as she 'physically couldn't get the aligners to fit my teeth'. From the evidence presented to HFL I don't think there was persuasive evidence showing Miss R was unable to use aligners due to a fault of the supplier. I do note Miss R has provided information showing she requested a 'touch-up' treatment about a week or so before her last aligner was due to finish – she says this was because the aligner did not fit. I don't think HFL had this information when it considered the claim. However, in any event I note the supplier did provide a 'touch-up' treatment consisting of several replacement aligners. So 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. Prima facie – the core of the agreement was provided by the supplier to Miss R and there is no breach of contract in that sense.

A more accurate assessment of Miss R's claim (to me) is that she was unhappy with the results from the treatment she got compared to the expectation she had going in.

I don't know what Miss R's projected outcome was - unfortunately neither Miss R or HFL appear to have that information (and now the supplier is out of business this information held on its treatment system appears to be lost). We also don't have an expert report or similar information showing what results Miss R actually achieved following the initial treatment.

However, while this situation is not ideal I am not persuaded the lack of information disadvantages Miss R in the way that might be expected. I conclude this because, on balance, I am not persuaded the results of the treatment were contractually guaranteed to match a certain projection in any event. I will explain.

I consider it likely Miss R 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 Miss R 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 Miss R would have signed. Furthermore, Miss R has not persuasively disputed her 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.

So my starting point is that regardless of how close the results are to the projection – this is not a breach of contract based on the likely agreement between Miss R and the supplier that the outcome is uncertain and not guaranteed.

In summary, while I am sorry to hear Miss R is unhappy with the results, I don't consider that HFL had persuasive information to show it the supplier had breached its contract in respect of the results Miss R achieved. So, despite Miss R's clear dissatisfaction with the results, I don't think HFL would be expected to agree to a refund.

I note that Miss R was approved for a further 'touch-up' which she did not receive because the supplier went out of business. This seems to be part of its aftercare provision. I am aware the supplier did provide a contractual 'guarantee' of sorts in relation to aftercare. Which I will turn to now.

Aftercare

From what I have seen the supplier offers further aligner 'touch-ups' after the core treatment at no extra cost. The information I have suggests it offers this after treatment is completed (if a customer is not satisfied with results) and on an ongoing once a year basis under a 'Lifetime Guarantee' banner.

From what I can see the availability of a 'touch-up' is not the same as saying that particular results will definitely be achieved. It appears more of an opportunity for refinement if possible. And despite the use of the term 'guarantee' I consider the 'Lifetime Guarantee' is not a guarantee of particular results. From what I have read it is a qualified guarantee in respect of ongoing aftercare.

It appears the 'touch-up' aftercare is basically a new set of aligners at no further cost to the patient which serves to provide the free refinement. However, in order to get a 'touch-up' there are certain qualifying criteria such as completing 'check-ins' and ordering retainers on time.

HFL initially said Miss R would not qualify for aftercare because she had not completed 'check-ins'. However, it has now changed its stance and noted that Miss R had been approved for 'touch-ups' so likely would have met the eligibility criteria. For this reason I don't think it necessary for me to go into this in any detail. However, I note this information about Miss R's approval for 'touch-ups' appears to have been provided by her when she made her initial claim in December 2023. So I consider it fair that HFL adds 8% simple yearly interest to the award of compensation for aftercare (discussed below) from the date it gave the outcome of the claim (31 Jan 2024) to the date of settlement.

To qualify for 'touch-ups' under the 'Lifetime Guarantee' it appears the key ongoing criteria is that the supplier's dentist needs to approve it. To support this finding I note that the supplier's website information about the 'Lifetime Guarantee' refers to the requirement to 'receive touch-up approval from a UK registered [supplier] dentist or orthodontist'.

There also seems to be ongoing criteria in respect of any rolling yearly 'touch-up' under the 'Lifetime Guarantee'. This includes the customer ordering retainers after treatment and replacing retainers every 6 months (at their cost) and wearing these as prescribed.

I recognise Miss R will not be able to receive further treatment via 'touch-ups' under the 'Lifetime Guarantee' because the supplier is now out of business. However, any loss in relation to this aspect of the contract is not easy to assess. I say this because:

- in order to qualify for the ongoing 'touch-ups' Miss R would have to continue to spend money on retainers twice a year; and
- there is no certainty Miss R would be approved for further 'touch-ups' each year – as this is at the discretion of the supplier's dentist.

I note Miss R has said she purchased several sets of retainers in advance already. I am not sure if this would qualify Miss R for the 'Lifetime Guarantee' for several years upfront, as it seems these have to be ordered as you go along. But in any event Miss R would also have to be approved for treatment too. I note Miss R has provided evidence to show she was approved for a further 'touch-up' just before the supplier went out of business. So there is clearly some loss of aftercare here, it just isn't easy to assess what the extent of said loss is going forward. It is, however, important to note that any potential loss I am considering is not to remedy a failure in respect of the core treatment or Miss R's dissatisfaction with achieving the desired results from it. As I have said - I don't consider there is persuasive evidence available to HFL that there was a breach of contract in respect of this. The loss here is that of future aftercare under the 'Lifetime Guarantee'. Something, that is uncertain and difficult to quantify.

I note HFL has provided information from the supplier to indicate that the financial value of 'touch-up' treatment is £220. Ultimately, it is difficult to say if that is exactly what it is worth. But it does represent around a 13% refund of the cash price of Miss R's treatment. And considering the uncertainties about the extent of Miss R's ongoing receipt of future benefits, and the fact Miss R has received aligners so that she could complete the core treatment, it doesn't seem unreasonable that HFL in considering the Section 75 claim would deem this an effective 'price reduction' to remedy any perceived loss of aftercare benefit from the supplier ceasing trading.

In deciding what is fair I have thought carefully about the proportionality of the proposed refund. In doing so I consider it is likely that the amount Miss R paid via finance was substantially for the initial core treatment she had received already and not any refinements via aftercare. So a significant refund would seem disproportionate here.

Following my decision, it is up to Miss R if she wishes to approach HFL in respect of discussing any plan to settle any outstanding amounts on the finance (if applicable) and what HFL will do in respect of her credit file as a result of an agreement it reaches. My decision here is not about this matter – but if Miss R considers HFL has not been positive and sympathetic in respect of this she may decide to complain about it separately.

Putting things right

HFL should pay Miss R the £220 (and out of pocket interest) if it hasn't already. If she is in arrears it can apply it to the balance of her account – otherwise it should give her a choice of having it paid directly to her.

My final decision

I partially uphold this complaint and direct Healthcare Finance Limited to pay Miss R £220 compensation plus 8% simple yearly interest calculated from 31 January 2024 to the date of settlement.

If HFL considers it should deduct tax from the interest element of my award it should provide a certificate of tax deduction to Miss R.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 27 March 2025.

Mark Lancod
Ombudsman