DRN-5354117

The complaint

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

What happened

In October 2022 Miss W entered into a two-year 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 £1,650 and Miss W was due to pay back the agreement with monthly payments of around £70. I understand she was provided aligners for a few months and said she carried on with further 'touch up' aligners from S in 2023.

S went out of business in December 2023, so Miss W contacted HFL to ask for help. She said she would no longer be receiving the service and wasn't happy with the results of the treatment, so she wanted to stop paying towards the loan. HFL considered the claim as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ("s.75"). HFL acknowledged S provided a 'lifetime' guarantee and it offered Miss W £220 which it said was equal to the monetary value of a 'touch up' aligner set she may have been eligible for under the guarantee.

Miss W decided to refer her complaint to the Financial Ombudsman. One of our investigators looked into things and ultimately thought HFL's offer was broadly fair.

Miss W didn't agree. She said she didn't want to pay for treatment that S was unable to provide. She also said S could no longer provide retainers. 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 Miss W 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 Miss W's request for getting her money back. But it's important to note HFL isn't the supplier.

S.75 is a statutory protection that enables Miss W 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 her 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 Miss W's claim because it offered her £220. 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 more than it has when handling Miss W's claim. But I want to explain from the outset that I can only consider Miss W's complaint on that narrow basis – that is, whether it was fair and reasonable for HFL to respond to her claim by offering what it did.

I've focussed on Miss W'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 Miss W the treatment.

Implied terms

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

Miss W has not provided supporting evidence such as an independent, expert opinion that sets out the treatment she paid for has not been carried out 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 don't think the fact that S agreed to provide further treatment for refinement or 'touch up' in itself shows the original core treatment wasn't carried out with reasonable care and skill in line with the implied terms of the contract.

Express terms

I also need to consider what I think Miss W'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 Miss W as I understand they were kept in an online application that's no longer available. There's a lack of evidence. But it's not in dispute Miss W was due to receive a set of aligners when she entered into the contract in October 2022 and that she received and used them. I think the core contract was for those set of aligners that she was due to use for a few months.

I think it likely Miss W 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 Miss W would have understood S couldn't guarantee specific results or outcomes. So even if Miss W didn't quite get the results she wanted after the core treatment, without sufficient evidence to show otherwise, I don't think that would be considered a breach of contract.

While I appreciate Miss W is put in a difficult position because some of the evidence isn't

available, I can only consider how HFL acted based on what was able to be supplied. In the absence of a specific signed contract, I've looked at S's website from around the time Miss W 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. Miss W said S offered her further 'touch up' aligners. But I haven't seen evidence S would extend the original core treatment.

I don't think the fact S offered Miss W further 'touch up' aligners in itself shows there was a breach of any express terms of the contract. Further aligners seem to be part of S's aftercare offering for further refinement (subject to dentist approval), which I'll come on to later. It's not clear whether S offered Miss W further aligners because it thought the results could be improved upon or whether it was for some sort of failing on its side. We don't have sufficient evidence to conclude.

While I'm sympathetic Miss W wasn't happy with the results, I don't think HFL had persuasive enough evidence to show S breached express terms of the contract in respect of the results she achieved.

Guarantee

On S's website from the time, 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 Miss W registered her aligners; wore them as prescribed; completed virtual check ins; and stayed up to date on payments. It also said after the core treatment Miss W was required to buy retainers every 6 months at her 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.

I think Miss W is seeking a refund of the treatment costs, or to end the agreement. There is a potential breach identifiable because Miss W can no longer use the guarantee. However, given the stage of treatment she was at, the guarantee would never have given her 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 Miss W began her treatment in October 2022, and only if Miss W 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 Miss W with a full refund or to end the agreement to recompense her for the potential breach that has happened. I don't think it was unreasonable for HFL to not offer to refund the value for what was provided under the core contract, but I've thought about what it has offered.

There are many ways in which the guarantee could have ceased to be of use to Miss W. Firstly, she may not have done what she needed to in terms of buying retainers. The retainers were not supplied under the original contract – Miss W needed to buy them separately. S may not have approved providing her with further '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.

Even if I accept there's a potential loss, 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 Miss W received. But I think there's a possible loss because Miss W may have been able to further utilise the guarantee – although I can't be certain.

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. Taking into account she's received the core treatment, and that she'd already received further 'touch up' treatment, I think HFL is acting fairly by offering this price reduction to remedy any potential loss. 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 Miss W is unhappy, with s.75 in mind, I don't find there are grounds to direct HFL to refund her the full cost of the treatment or to end the agreement. I think its offer is broadly fair in the circumstances. I should, however, point out Miss W doesn't have to accept this decision. She's also free to pursue the complaint by more formal means such as through the courts.

Finally, I note Miss W *may* have stopped making payments towards the agreement. I primarily need to consider what happened up to the point HFL issued its final response letter because those events relate to what it has had the chance to consider. Given the circumstances, HFL may wish to consider removing any adverse information if Miss W clears any arrears. But, for the avoidance of doubt, given I don't know exactly what's happened, and that these events, if relevant, likely happened after HFL issued its final response, I'm not deciding that aspect within this final decision. If Miss W is unhappy with how HFL treats her going forward, it may be something our service is able to consider separately.

My final decision

For the reasons given above, my final decision is that Healthcare Finance Limited has done enough to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 7 April 2025.
Simon Wingfield
Ombudsman