DRN-5367980

The complaint

Miss N 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 September 2023, Miss N entered into a 25 month 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 £1,750 and Miss N was due to pay back the agreement with monthly payments of around £75.

S went out of business in December 2023, so Miss N contacted HFL to make a claim, requesting a refund on 13 December 2023. HFL considered the claim as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ("s.75"). HFL issued a final response letter on 31 January 2024 and said that, in accordance with S's terms and conditions, Miss N could return unopened aligners for a pro-rata refund.

Miss N told us that by the time she had received the communication on 31 January 2024, she had already opened all of the aligners. Miss N told us she had experienced issues with aligners not fitting properly around the time she raised her complaint. She had tried the unopened aligners in the hope she would find one that did fit properly. So, on completion of the treatment Miss N was unhappy with the results.

Miss N decided to refer her complaint to the Financial Ombudsman. Our investigator looked into things and thought HFL should offer Miss N £220 to compensate her for the 'touch up' aligners she may have been eligible for under the guarantee. HFL agreed to make that payment of redress. The amount would be applied to reduce the loan amount if still outstanding.

Miss N didn't agree. Miss N told us she is that she had been promised a good result from the treatment and that hasn't happened. And as S are no longer trading Miss N has been denied the ongoing support that might have led to a better result eventually. Miss N told us she has now had some dental work performed privately and that has given her the result she thought she would have received from the treatment offered her by S.

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 N 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.

I also want to say I'm very sorry to hear that Miss N is unhappy with her treatment. I can't imagine how she must feel, but I thank her for taking the time to bring her complaint.

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 N'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 N 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 N's claim in one sense because it offered her a pro-rata refund of unopened aligners. But Miss N told us she had experienced fitting issues with her aligners from approximately the time she had raised her complaint. Miss N told us she tried all of the aligners in the hope that she would get one to fit. So, she had no unopened aligners she could send back to HFL to benefit from the pro rata refund it offered in its final response letter.

So, 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 something different when handling Miss N's claim. But I want to explain from the outset that I can only consider Miss N'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 N'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 N the treatment.

Implied terms

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

I have read all of the submissions made to us in this case. And that includes all of the testimony that Miss N has provided. I want Miss N to know that I found her testimony to be plausible. But whilst I believe Miss N's testimony has been provided in good faith, I have to have regard for what evidence has been produced that supports that testimony.

In this case Miss N has not been able to provide any evidence of her raising issues with HFC about aligners not fitting at the time she raised her claim for a refund. Neither has Miss N been able to provide any evidence of contemporaneous evidence (photos, emails etc) which show that the aligners had indeed stopped fitting properly. Miss N has not provided supporting evidence such as an independent, expert opinion that sets out the treatment she paid for has not been done 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 suggesting the above points were things that Miss N ought to have known she should be providing to support her claim, at the time she brought it to HFL. But when considering whether HFL has acted fairly in dealing with the claim raised by Miss N, I have to note that they were presented with no evidence to support the testimony that Miss N raised subsequently, and nothing that might have suggested to them that they should reach an outcome that would be fairer or different to the one they reached.

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 know that will be a disappointment to Miss N, particularly as she has had to spend more money to get the result she wanted from another source; a dental practitioner. But this is an evidence-based service and I have a responsibility to determine a case based on all the submissions made to me. In this case, there is insufficient evidence to think that HFL were unfair in only offering a pro rata refund when they issued their final response letter. And I have seen insufficient evidence to find HFL at fault for denying Miss N an amount more than the £220 they subsequently offered. I provide more explanation for why I say that below.

Express terms and guarantee

I also need to consider what I think Miss N'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 N, as I understand they were kept in an online application that's no longer available. So, there's a lack of evidence. But it's not in dispute Miss N was due to receive a set of aligners when she entered into the contract in September 2023 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 don't know for certain, but I think it likely Miss N 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 N would have understood S couldn't guarantee specific results or outcomes. Given the nature of the treatment, I don't think that sort of term is unfair or unusual. So even if Miss N didn't quite get the results she wanted after the core treatment, I don't think that in itself would be considered a breach of contract.

I've thought about whether our investigator's assessment is a fair way to resolve the complaint. In the absence of a specific signed contract, I've looked at S's website from around the time Miss N 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 under the guarantee. 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 N met

certain conditions. It also said after the core treatment Miss N 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.

Miss N thinks she should be provided with a fuller refund of the treatment costs than she has been offered. Miss N was prepared to accept a full refund minus £500 for the treatment she received.

There is a potential breach identifiable because Miss N can no longer use the guarantee. However, given the stage of treatment she was at when our investigator looked into things, 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 N began her treatment in September 2023, and only if Miss N 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 N with a full refund to recompense her for the potential breach that has happened.

There are many ways in which the guarantee could have ceased to be of use to Miss N. 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 N needed to buy them separately. But S 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.

I accept there's a potential loss, but 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 N received. But I think there's a possible loss because Miss N may have been able to utilise the guarantee.

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. Considering we'll never know if Miss N would have continued to receive any benefits under the guarantee, and taking into account she's received the core treatment, I think our investigator's recommendation for HFL to offer this price reduction to remedy any potential loss seems reasonable. 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 N 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. I think our investigator's recommendation is broadly fair in the circumstances. I should, however, point out Miss N doesn't have to accept this decision. She's also free to pursue the complaint by more formal means such as through the courts.

Putting things right

I direct Healthcare Finance Limited, to the extent not done so already, to pay Miss N £220.

My final decision

For the reasons given above, my final decision is that I uphold this complaint and direct Healthcare Finance Limited, to the extent not done so already, to pay Miss N £220.

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

Douglas Sayers
Ombudsman