DRN-5410110

The complaint

Mrs O complains about Healthcare Finance Limited's (HFL) response to her claim brought under section 75 Consumer Credit Act 1974 (s.75) in respect of dental aligner treatment she bought using a fixed sum loan from it.

What happened

Around May 2023 Mrs O bought a course of dental aligner treatment from a supplier I'll call S at a cost of £1,559. She paid a deposit of £66.05 and financed the remainder with a fixed sum loan from HFL.

Mrs O said the course of treatment consisted of 32 aligners to be worn consecutively over a period of 15 months at night times. S ceased trading in December 2023. Mrs O contacted HFL in February 2024 asking to speak to someone regarding her contract with S.

HFL considered Mrs O's communication as a claim for a potential breach of contract under s.75. HFL said it acknowledged S provided a lifetime smile guarantee (the guarantee) which might have provided the possibility of refinement to her treatment or a pro rata refund for unused aligners. But it said S's records showed Mrs O didn't qualify for it as she hadn't met the necessary conditions. So, it didn't think Mrs O had a valid claim under s.75.

Mrs O then referred a complaint to this service.

I issued a provisional decision setting out why I planned to uphold Mrs O's complaint in part. I said:

> *"What I need to consider in this complaint is whether HFL – as a provider of financial services – has acted fairly and reasonably in the way it handled Mrs O's request for getting money back. But it's important to note HFL isn't S. I can't hold it responsible for everything that went wrong with S.*
>
> *S.75 is a statutory protection that enables Mrs O to make a 'like claim' against HFL for breach of contract or misrepresentation by a supplier paid using certain types of credit. 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.*
>
> *Implied terms*
>
> *In cases such as this it is often complex to assess the quality of the service Mrs O paid for. Results from such 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.*
>
> *While Mrs O has indicated that she's unhappy with the results of the treatment, she's 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 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. Even if it could be argued that the service was somehow carried out without reasonable and care and skill because S ceased trading before Mrs O had used all of the aligners, I've not seen enough to determine Mrs O lost out as a result, for example because her results were affected by this. I've not seen evidence the goods element – i.e, the aligners, were not of satisfactory quality either. I remind myself that the treatment was largely self-directed in the sense that a set number of aligners were provided and the expectation was that Mrs O use the aligners in prescribed way over a number of months – which is what she did.

Express terms

I also need to consider what I think Mrs O'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 Mrs O 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 Mrs O was due to receive a set of aligners when she entered into the contact in May 2023 and that she received and used all of them. I think the core contract was for those set of aligners.

Mrs O said that after S ceased trading she never received any of the support she was
supposed to get such as orthodontist appointments. Because of the lack of evidence in this case it's very difficult to know what S was contractually obliged to provide in addition to the core treatment. But even if the support Mrs O said she was supposed to receive was part of the contract, again, no persuasive evidence has been provided that Mrs O's results were worse than they would have been if she'd received this support.

I do accept that continuing treatment without any line of communication with S could have been stressful for Mrs O. However, HFL was not acting unreasonably by declining to compensate her for this. With a few exceptions (which I don't think apply here) the courts do not typically tend to make awards of compensation for non-financial losses such as distress and inconvenience in claims for breach of contract. I remind myself again that I am looking at how HFL responded to a claim under s.75 which only holds HFL liable to Mrs O for S's breach of contract or misrepresentation.

I think it's likely Mrs O 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 Mrs O would have understood S couldn't guarantee specific results or outcomes. Given the nature of the treatment, I don't think those sorts of terms are unfair or unusual. So even if Mrs O didn't quite get the results she wanted after the core treatment I don't think that would be considered a breach of contract.

While I appreciate Mrs O 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 contact, I've looked at S's website from around the time Mrs O entered into the contract. It says if the customer hasn't achieved the results they want, and providing they've met certain conditions, the customer might be eligible for additional 'touch up' aligners.

The core treatment had not finished when S ceased trading, but Mrs O has confirmed she completed the full course of aligners after this. And although Mrs O has said she was caused some discomfort by some of the aligners, I've not seen persuasive evidence that the aligners did not fit while Mrs O was using them and she seems to accept in the testimony she's provided that she was able to use each aligner. So, I think Mrs O benefited from the core part of the treatment.

While I'm sympathetic Mrs O was unhappy with the results, I don't think HFL had sufficient evidence to show S breached the express terms of the contract in respect of the results she achieved.

The guarantee

On S's website from the time she bought the treatment, the frequently asked questions ("FAQ") page has a section for further treatment under the guarantee. This suggests customers can request further aligner 'touch ups' either during or after the core treatment at no cost.

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. What the guarantee offered was the possibility of having further aligners provided that during treatment Mrs O registered her aligners; wore them as prescribed; completed check ins; stayed up to date on payments. And that, after treatment, she bought retainers every 6 months and wore them as prescribed. A dentist also had to approve the treatment. My understanding is that a dentist would only do so if they assessed that further progress to straighten the teeth would be possible.

HFL said that based on information it received from S, Mrs O was not eligible to be covered by the guarantee at the time it sent its response to her complaint because she didn't complete the required check ins during her treatment. Mrs O said she was only ever asked to complete one check in and she has provided photographs she said she took of her teeth in accordance with S's check in requirements. I've seen those photographs, but I can't see when they were created. So, I don't think they show on balance that Mrs O completed a check in. Should Mrs O be able to supply more information showing when this photograph was taken she should provide this in response to the provision decision.

Nevertheless, in ceasing the provision of the aftercare services part way through the core aligner treatment, I still consider there was a prima facie breach of contract.

S's website sets out that someone could requalify for the guarantee if they registered their aligners, continued to wear them as prescribed and checked in (and if they were up to date with repayments).

No one knows whether Mrs O would have checked in or not had S not ceased trading, but she's said she did continue with her treatment and wore all of her aligners after this. The very fact Mrs O said she was able to use all of those aligners in order without significant issue perhaps suggests she must have worn them as prescribed. So, she could potentially have requalified if S had still been trading and if

she had checked in at any point over the following eight or so months. What's important here is that S ceased trading well before Mrs O had completed the core treatment, and so she lost out on her opportunity to requalify for the guarantee. She was denied a significant period of time within which she could have demonstrated that she met the necessary conditions of it. So, I think she has suffered a potential loss as a result of the guarantee becoming unavailable when S ceased trading.

HFL has previously shared information from S saying the financial value of a 'touch-up' treatment potentially available under the guarantee 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 Mrs O has lost out on the potential to receive the benefits of the guarantee, but not knowing exactly how that might have been utilised or for how long and also taking into account she used all of the aligners, I think £220 seems like a fair compromise for any likely breach of contract given I think the total amount paid was substantially for the core treatment.

Overall, with everything considered, including s.75, I find HFL treated Mrs O unfairly by declining to meet her claim. I find it should pay her £220..."

HFL accepted my provisional decision.

Mrs O provided more photographs of her teeth, with dates from her calendar roll on her phone that she said were used when S asked her to check in her aligners. She said her whole treatment was pointless because she was unable to purchase retainers from S and now her teeth have moved back to where they were before she started the treatment. She re-iterated her belief that the remainder of her loan should be cancelled.

The complaint has therefore been passed back to me for a final decision.

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've thought very carefully about everything Mrs O has said in response to my provisional decision. However, I've not seen anything that makes me think the conclusion I planned to reach was unfair or unreasonable.

Mrs O said that her treatment was effectively undone because the position of her teeth regressed when she was unable to purchase retainers from S – it having ceased trading before she'd finished using her course of aligners. I don't think this was a breach of contract because the provision of retainers doesn't appear to have been part of Mrs O's contract with S and she had to pay for them separately.

I appreciate that she was unable to do this after S ceased trading. I am aware however that retainers are widely available for purchase from many dentist practices, and I've seen no reason why they could not have been purchased elsewhere when Mrs O finished her course of aligners. I don't think Mrs O was prevented from purchasing retainers because S ceased trading.

Overall, I don't find HFL unreasonably declined to meet Mrs O's request to cancel the remainder of her loan repayments on the basis she was unable to purchase retainers from S.

In response to my provisional decision Mrs O provided additional photographs she said were

taken for check-ins along with the date they were on her camera roll. And she re-iterated that she completed any check-ins that S asked her to complete. I thank her for this additional information. However, now that HFL has accepted my provisional conclusion that Mrs O lost out on the potential benefits of the guarantee, I don't think it's necessary for me to make a finding as to whether she did or did not likely complete check-ins before S ceased trading.

Having concluded that Mrs O lost out on the potential benefits of the guarantee this doesn't automatically mean she should get all of her money back or have her loan cancelled. The guarantee only made provisions for a full refund in the first 30 days and only if Mrs O had not opened or used the aligners – which of course was the not the case here.

Furthermore, even though I think Mrs O lost out on the opportunity to requalify and potentially benefit from the guarantee, it's still uncertain as to how long she may have continued to qualify or benefit for it. For example, it may have ceased to be of use further down the line if she didn't continue to meet the conditions of it such as purchasing retainers every six months or if a dentist didn't approve touch-up aligners.

So, Mrs O has suffered a potential loss, but it's difficult to quantify it.

Overall, I think compensation of £220 (which HFL has said is the monetary value of one set of annual touch-up aligners) is a fair compromise given this uncertainty and taking into account Mrs O completed the course of aligners – which is substantially what she paid for and not the guarantee. So, I still find a fair and reasonable outcome to this complaint is that HFL should pay £220 to Mrs O but nothing more.

My final decision

For the reasons I've explained above, I uphold Mrs O's complaint in part. To put things right Healthcare Finance Limited must pay Mrs O £220.

If Mrs O is in arrears, then Healthcare Finance Limited can apply the amount to the balance of her loan. But if Mrs O is up to date with payments it should give her the choice of having it paid directly to her instead.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 18 April 2025.

Michael Ball
Ombudsman