DRN-5410908

The complaint and what happened

Mr M complains that Healthcare Finance Limited ("HFL") failed to pay out on a claim he made to it about the failure of a supplier to deliver the dental treatment which he paid for with credit it provided.

I've included relevant sections of my provisional decision from March 2025, which form part of this final decision. In my provisional decision I set out the reasons why I was planning to uphold this complaint in part. In brief that was because I thought that Mr M had suffered a loss as a result of a breach of the contract between him and the supplier.

I asked both parties to let me have any more information they wanted me to consider. HFL accepted my provisional findings and Mr M didn't respond.

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.

Having done so, I'm upholding it in part, and I'll reiterate why, but first I've included here the relevant sections of my provisional decision:

> ***"What happened***
>
> *In October 2022 Mr M 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 his teeth. It was expected that the core treatment would last for some months. However, it does seem that there were some problems with the fit of some of the aligners and Mr M it wasn't until November 2023 that Mr M bought a set of retainers from the supplier. Unfortunately it then went into administration in December 2023.*
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> *It would appear that Mr M ceased making repayments on his loan with HFL in February 2024. He consequently received an arrears letter in June 2024 and contacted HFL to say that he did not think he should have to continue making repayments as the supplier had gone into administration and so he had received, "…an incomplete service…"*
>
> *HFL considered Mr M's concerns as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ('Section 75'). It rejected his claim and said that Mr M had not done all he needed in order to qualify for the lifetime guarantee scheme offered by the supplier. So there had been no breach of contract. Unhappy with that response, Mr M brought a complaint to us. He told us that he should not have to pay for incomplete treatment and the lack of an ongoing service from the supplier. He also raised concerns about HFL having chased him for payment via arrears letters.*
>
> *Our investigator considered how HFL had acted in light of its responsibilities under Section 75. Ultimately, she thought it was not unreasonable of it to have declined to refund the cost of treatment.*
>
> *Mr M did not accept that, and so the case has been passed to me to make a final decision.*

What I've provisionally decided – and why

I've considered all the available evidence and arguments to provisionally decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I'm currently planning to uphold the complaint in part.

Section 75 enables Mr M 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 Mr M'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 him something when handling Mr M's claim. And if so, what that should be.

But I want to explain from the outset that I can only consider Mr M's complaint on that narrow basis – i.e. whether it was fair and reasonable for HFL to respond to his claim as it did. I cannot hold it responsible for Mr M's experience with the supplier or his feelings about the treatment. 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 he has a valid claim under Section 75 and to respond fairly to that claim if so.

Mr M's concerns are that he was still undergoing treatment, and cannot receive the ongoing service that was agreed upon. So he believes he should receive a full refund as what he paid for has not been provided.

To be clear, I don't accept that Mr M hadn't completed his core treatment when the supplier went into administration, despite the fact that it does seem there were problems with the core set of aligners. It's important to remember that the treatment itself is not something that is ongoing until the customer is satisfied with the results. Mr M says he didn't use all the core aligners he received, and describes the treatment as "unsuccessful". But he cannot confirm how many aligners were unused, or provide evidence of that as he says he can no longer find them.

But it's also important to bear in mind that, if I conclude that the supplier would most likely have provided Mr M with some further treatment or intervention, that doesn't necessarily mean that equates to a breach of contract which HFL must now respond to by providing a full refund. I will explain.

In cases such as this it is often complex to assess the quality of the service Mr M 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 Mr M has not provided an independent, expert opinion that sets out that the treatment he 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 refuse to refund the cost of treatment.

I need to consider what I think Mr M'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 Mr M as I understand they were housed in an online application which no longer holds that content since the supplier went into administration. Mr M says he never received a contract, only a loan agreement. 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 Mr M commenced his treatment in 2022. 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 Mr M 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 as relevant to my considerations in this case. So I think it forms the basis of the essential contract between him and the supplier, regardless of whether he remembers ever seeing it or not, 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 his satisfaction with the results of the treatment. That means I don't find a breach of any explicit terms of the contract between Mr M 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 Mr M 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.

However, whether Mr M may have been able to access some further support via the supplier's lifetime guarantee scheme is a more complex one. What that offered was the possibility of having aligner touch-ups every year, provided that Mr M met certain criteria, 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 approve the provision of more aligners if s/he assessed that further progress to straighten the teeth would be possible through a touch-up aligner.

On paper, it seems clear that Mr M did not meet all of the eligibility requirements for the supplier's lifetime guarantee. But I can also see from the terms and conditions that it was possible for customers to re-qualify for the guarantee scheme in certain circumstances. Especially if the question at issue was the completion of what were called 'smile check-ins'. The literature suggests it wouldn't have been that difficult for customers to complete a check-in at a later date and re-qualify for the guarantee. Everyone agrees that Mr M had ordered and paid for retainers, but the evidence suggests he may not have completed 'smile check-ins'. On the other hand, Mr M has set out that he repeatedly tried to contact the supplier during 2023 and got no response. So I have to accept the possibility that not having completed them may not have been Mr M's fault. Overall, in this case, I am persuaded that it is more likely than not that the supplier would have supported Mr M in re-qualifying for the guarantee scheme.

But, given the stage of treatment he was at, that guarantee would never have given him 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 Mr M began him treatment at the end of 2022, and only if Mr M had not opened or used any of the aligners. So it would not be fair or reasonable for me to tell HFL that it should now provide Mr M with a full refund to recompense him for the supplier going into administration. The supplier itself would never have been contractually obliged to do that.

Based on the evidence available to me, I am currently minded to direct HFL to compensate Mr M with the value of a set of aligners, which is essentially the loss of one year's 'use' of the lifetime guarantee. While I can't be certain, I am satisfied that the £220 is a fair compromise price reduction offer, and have seen evidence provided by the supplier to HFL to confirm that it was roughly the cost of a set of touch-up aligners.

Hypothetically, it is possible that Mr M could have requested and received a set of aligners every year for the rest of his life – if the supplier had chosen to include him in the guarantee scheme. But that hypothetical possibility doesn't lead me to conclude that it would be fair for me to direct HFL to provide more than 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 Mr M. Firstly, he may not have done what he needed to in terms of continuing to buy retainers from

the supplier in future years. And crucially, the supplier may not have approved providing him 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 currently think the fair and reasonable outcome in this case is for HFL to recompense Mr M in the way I've described above. Identifying exactly how many annual touch-up aligners Mr M may have asked for; may have qualified for; and may have been approved for, is pretty much impossible.

Mr M has also raised concerns about HFL recording missed payments and/or arrears on his credit file, and he would like them removed. Lenders are required to provide accurate information to the credit reference agencies (CRAs), and I have no evidence to suggest that HFL has provided any inaccurate information. Mr M agrees he stopped making payments, and it was clearly his choice to do so. Mr M says he was advised by his bank to stop making payments. If that is the case, and he is now concerned that advice was poor, he will need to speak to his bank about that. At this point, I have no basis on which to direct HFL to remove any adverse markers it has reported to the CRAs.

Although I am very sorry to hear of Mr M's disappointment with this situation, with Section 75 in mind, I don't think it would be fair or reasonable to conclude that HFL should refund him the costs of this treatment. Or to direct it to correct any information it has reported about this account to the CRAs. However, I am currently minded to uphold the complaint in part and direct HFL to treat him as if he were eligible for the lifetime guarantee. At this point, I plan to direct it to refund him in the amount of £220."

As mentioned above, HFL accepted my provisional decision and Mr M has not responded. Therefore I have seen nothing which alters my findings as set out therein. And so it follows that I uphold this complaint in part.

Putting things right

In all the circumstances I consider that fair compensation should lead HFL to refund Mr M the amount of £220, the estimated value of one set of touch-up aligners. It can deduct that amount from any sums owed to it by Mr M.

My final decision

For the reasons I've explained, I uphold this complaint in part and Healthcare Finance Limited must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 April 2025.
Siobhan McBride
Ombudsman