DRN-5441047

The complaint

Mr M complains about how Healthcare Finance Limited ('HFL') responded to a claim he made to it in respect of dental treatment he 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.

Mr M purchased orthodontic dental treatment from a remote supplier ('the supplier') for a cash price of £1,639 using a fixed sum loan from HFL in October 2023.

Mr M says the supplier has now gone out of business and he contacted HFL to raise a claim. He said, that he won't be getting further benefits - such as ongoing consultations with a dentist or aftercare under the supplier's 'Lifetime Guarantee' (abbreviated for my decision). He also says he was promised free retainers and never got this.

Mr M asked HFL to look into this as a breach of contract and whether he was entitled to money back. It considered the claim under Section 75 of the Consumer Credit Act 1974 ('Section 75').

HFL responded to say Mr M could receive a pro-rated refund if he returned unused and sealed aligners. Mr M says he returned aligners but is not happy HFL has not paid him a partial refund. He brought his complaint to this service.

HFL said Mr M had not returned unused and sealed aligners – so it wouldn't refund him for the treatment he received. However, it did offer to pay him £220 compensation for loss of aftercare benefits. Our investigator agreed this was a fair offer.

Mr M 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 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 sorry to hear Mr M is unhappy with the dental treatment he bought from the supplier. I am also sorry to hear about the impact of this on him. However, it is important to note that my decision here is about the actions of HFL– and what it should fairly have done for Mr M in its position as a provider of financial services. In looking at how it handled the claim Mr M

brought to it I consider the information reasonably available to it at the time, along with the relevant protections available to Mr M. I consider Section 75 to be particularly relevant here.

Section 75 can allow Mr M 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 Mr M or misrepresented it.

Limited information

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

Misrepresentation

Mr M'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 Mr M 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 the supplier was aware it would be going out of business when it sold Mr M 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.

<u>The way the treatment was provided</u>

The CRA implies terms into consumer contracts to say that services will be provided with reasonable 'care and skill'.

Mr M's claim to HFL, from what I can tell was not specifically about the quality of the treatment he received. So I would not have expected it to address this. However, for completeness I have briefly considered it.

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 Mr M 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. This is particularly the case when in this field there are certain reasonably expected potential side effects or other variables which can impact the treatment and the end results.

I know Mr M has indicated he is unhappy with the treatment he received. However, it is also important to note that even if I agreed Mr M had not achieved certain results he 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.

In summary, based on the limited evidence available to it (and noting the lack of expert evidence to support Mr M'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.

For completeness, I also note there is no persuasive evidence to show that Mr M presented HFL with evidence that 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 Mr M bought the treatment and which has been made available to me by HFL, alongside other information such as Mr M's testimony.

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

From what I understand the supplier's aligner plans generally last around 4-6 months but Mr M said his was for 3 months. I can see Mr M took out his plan in October 2023 so he should have been finished with his initial course by early 2024. And likely by the time HFL responded to his request for a refund in February 2024.

I know Mr M has said he didn't finish his treatment, and that he returned 8 used and 3 unused aligners to HFL to show this (of the 11 total aligners) – but there isn't persuasive evidence of that. I say this noting that HFL confirmed it received 11 used aligners and has provided a photo of what it says is Mr M's return form – filled out to show he is returning 11 aligners and no unused ones. This form has Mr M's transaction ID on it - so it seems credible. Overall, I don't consider that Mr M has persuasively shown he failed to complete his initial course of aligner treatment. Or (as he appears to claim on the returns form) that he was due to receive 12 aligners but received 11.

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. So prima facie – the core of the agreement was provided by the supplier to Mr M and there is no breach of contract in that sense.

Furthermore, when Mr M approached HFL with his claim it appeared he had not completed his treatment. So at the time the claim was made to HFL I don't consider it was unreasonable in looking to remedy this by offering a pro-rated refund under the supplier's 'money back' provision for unopened and unused aligners. But as it transpired Mr M appears to have used all the aligners I don't consider HFL has a contractual obligation to reimburse him for these.

I know when he returned the aligners to HFL Mr M mentioned that he never achieved the results he wanted. However, I also consider it likely Mr M 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 Mr M 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 Mr M would have signed. Furthermore, Mr M has not persuasively disputed 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 Mr M's failure to get the results he wanted is not a breach of the express terms of the contract based on the likely agreement between Mr M and the supplier that the outcome is uncertain and not guaranteed.

In summary, while I am sorry to hear Mr M is unhappy with the treatment, I don't consider HFL had persuasive information to show it the supplier had breached its contract with him in respect of the provision of the core treatment. So (and with Section 75 in mind) I don't think HFL would be expected to agree to a refund on this basis.

Mr M has also mentioned that he did not receive retainers he says the supplier promised as an incentive offer. However, he has not provided persuasive evidence that retainers were included in the amount he paid the supplier via HFL's finance agreement. And I note that from what I am aware of this supplier - these are usually a paid for add on after treatment. So I don't think there is clearly a breach of contract in this respect that HFL should have accepted liability for.

I note in his claim to HFL Mr M pointed out that as the supplier had gone out of business he would not get any continuing support from it such as 'check-ins'. While this treatment appears to be primarily remote and largely self-directed (which appears to be reflected in the lower price compared to traditional treatment) I don't dispute that there is an aspect of the general aftercare service Mr M lost in the form of the ability to contact the supplier about any issues that may arise while completing the course of aligners. However, I wouldn't go as far to say the supplier promised regular 'consultations' as he is has claimed – I think the 'check-ins' were primarily in respect of ensuring Mr M was making progress to maintain his eligibility for the 'Lifetime Guarantee'. Furthermore, in deciding what is fair here I note:

- Mr M appears to have subsequently chosen to continue with his treatment and use all the aligners;
- Mr M hasn't persuasively shown how he was disadvantaged (in respect of the results he achieved) by not being able to contact the supplier in the final stage of treatment;
- HFL has made an offer to remedy the loss of aftercare provision (which I will come

on to below).

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.

The initial qualifying criteria involves completing ‘check-ins’ during treatment and then ordering aligners. But HFL has not disputed that Mr M would have been eligible on this basis. And I think that is fair in the circumstances as the supplier went out of business during his treatment. So I am not going to dwell on that here.

Not getting the aftercare is prima facie a breach of contract. However, to qualify for ‘touch-ups’ under the ‘Lifetime Guarantee’ it appears the key 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 Mr M 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’ Mr M would have to continue to spend money on retainers twice a year - he might have done this but there is no certainty this would have happened indefinitely; and
- there is no certainty Mr M would be approved for further ‘touch-ups’ each year – as this is at the discretion of the supplier’s dentist.

I do accept there is a potential loss here though. It just isn’t easy to assess what the value of any perceived loss might be. 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 Mr M’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 aftercare under the ‘Lifetime Guarantee’. Something, that is uncertain and difficult to quantify.

I note HFL has provided information from the supplier to indicate 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 Mr M's treatment. And considering the uncertainties about the extent of Mr M's ongoing receipt of future benefits, and the fact Mr M has received the aligners so that he 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 Mr M paid via finance was substantially for the initial core treatment he had received already and not any refinements via aftercare. So a significant refund would seem disproportionate here.

To be clear my decision does not mean that Mr M stops being liable for the remaining balance on the finance (as he has enquired about). Following my decision, it is up to Mr M if he 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 his credit file as a result of an agreement it reaches. My decision here is not about this matter – but if Mr M considers HFL has not been positive and sympathetic in respect of this he may decide to complain about it separately.

Putting things right

If HFL has not already done so it should pay Mr M the £220 compensation. If Mr M is in arrears then it can apply it to the outstanding balance. If he is up to date with payments it can give him the choice of having the money returned directly.

My final decision

I partially uphold this complaint and direct Healthcare Finance Limited to pay Mr M £220,.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 May 2025.

Mark Lancod
Ombudsman