DRN-5504397

The complaint

Ms W complains about how Healthcare Finance Limited (HFL) responded to a claim she made to it under section 75 Consumer Credit Act 1974 (s.75) in respect of dental treatment she paid for using the fixed sum loan it provided.

What happened

In March 2023 Ms W bought a course of dental aligner treatment from a supplier I'll call S at a cost of £1,639. She paid a deposit of £69.44 and financed the remainder with a fixed sum loan from HFL.

During the course of her treatment Ms W said she had problems with the fit of the aligners and some of them broke. S agreed to provide 'touch-up' aligners somewhere between June and August 2023. Ms W asked S for further refinement in October 2023 but S's dentist said that no further movement of her teeth was possible and declined to provide more touch-up treatment.

Shortly after Ms W finished the course of aligners, S ceased trading. Ms W said this meant she didn't get the service she paid for as S offered a lifetime smile guarantee (the guarantee) as part of its aftercare and she would no longer be able to benefit from this. She was also unhappy with the results she had achieved.

HFL considered its liability to Ms W under s.75. However, it didn't think there was a valid claim for breach of contract as it said records provided by S showed she had not met the eligibility criteria of the guarantee and therefore there was no benefit for her to lose.

Ms W then referred a complaint to this service.

I issued a provisional decision explaining why I planned to uphold Ms W's complaint in part. I said:

> *"I see that another entity responded to this complaint on HFL's behalf. My references to HFL are taken to include representations made on its behalf.*
>
> *It is important to note that my decision here is about the actions of HFL– and what it should fairly have done for Ms W in response to her claim in its position as a provider of financial services. In looking at how it handled the claim Ms W brought to it I've considered the information reasonably available to it at the time, along with the relevant protections available to Ms W. I consider s.75 to be particularly relevant here.*
>
> *S.75 provides that in certain circumstances Ms W can hold HFL liable for a breach of contract or misrepresentation by S. There are certain criteria which have to be met in order for s.75 to apply, and I am satisfied these are met here.*
>
> *In response to the investigator's assessment Ms W has asked that I focus on the loss of the guarantee after S ceased trading as being the breach of contract and not*

anything that happened before this. So that is largely what I have done.

For the sake of clarity however, what I would briefly say about the events before S ceased trading is that:

- *There is no persuasive evidence (such as an independent expert report) to show there was a lack of reasonable care and skill in providing the service or showing the goods were not of satisfactory quality (terms implied into contracts by the Consumer Rights Act 2015).*

- *I've seen an example copy of the kind of consent form that Ms W was likely to have signed at the time of the sale and this set out that specific results or outcomes could not be guaranteed.*

- *There is no persuasive evidence that an express term of the contract was breached in relation to the results Ms W achieved.*

I don't find HFL would therefore have been unreasonable to decline Ms W's claim on the basis of the results achieved not being satisfactory to her, or on the basis of the way the service was provided. I'll therefore move on to considering 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 could request further aligner 'touch ups' after the initial aligners had been supplied.

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 Ms W registered her aligners; wore them as prescribed; completed check-ins; stayed up to date on payments. And that, after treatment, she bought retainers every six 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 Ms W didn't complete check-ins so wasn't eligible for the guarantee. This is seemingly based on data provided by S. But I haven't seen this data so I've no way of testing its accuracy. And in this particular case, from the information Ms W provided, including dated photographs of her teeth, records of video calls with S, evidence of her ongoing communications about fit issues in June 2023 and acceptance from S on more than one occasion that she would be assessed for possible touch-up aligners, I find on balance that Ms W must have completed check-ins and most likely satisfied the conditions of the guarantee when S ceased trading.

Ms W said this entitled her to a full refund. There is a potential breach of contract identifiable because Ms 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 costs. From what I've seen, a full refund was only available for the first 30 days after Ms W began the treatment around March 2023, and only if she had not opened or used the aligners – which of course was not the case here.

Ms W paid for a course of aligners which she received and used, and I think the amount she paid to S was predominantly for those aligners rather than the

guarantee. So, I don't find it would be fair to require HFL to provide a full refund to Ms W in the circumstances.

Quantifying Ms W's actual loss is not easy. For example, in order to qualify for the ongoing 'touch- ups' Ms W would have to continue to spend money on retainers twice a year. She might have done this, but it isn't clear if she would have done it indefinitely. And as Ms W found out in November 2023, there's also no certainty she would be approved for further 'touch-ups' each year – as this was at the discretion of S's dentist.

On the point about dentist approval, unlike the investigator, I don't think that S's refusal to provide more touch-up aligners in November 2023 meant that Ms W would never have been able to benefit from potential touch-up aligners in the future. Things might have changed and even if it's uncertain, I don't think one can completely rule out the possibility that a dentist may have approved touch-up aligners at some point further down the line if Ms W had continued to meet the conditions of the guarantee. So, I don't find S's refusal to approve touch-up aligners in November 2023 would have been a fair reason to decline Ms W's claim under s.75 on the basis the guarantee was no longer of any use to her.

It's important to note also that any potential loss I am considering is not to remedy a failure in respect of the core treatment or any dissatisfaction with achieving the desired results from it. The loss here is that of future aftercare under the guarantee. Something, that is uncertain and difficult to quantify.

HFL has previously shared information from S saying the financial value of an annual set of 'touch-up' treatment potentially available under the guarantee is £220. It's difficult to know for certain if that's accurate. But this would represent a refund of over 10% of the cost of the treatment. Considering Ms W 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 received and used all of the aligners, I think the cash equivalent of one set of touch up aligners seems like a fair compromise for any likely breach of contract. Especially given I also think the total amount paid was substantially for the core treatment.

Overall therefore, while I find it would have been reasonable for HFL to have met Ms W's claim, I find its liability to her was likely to have been limited and I find £220 to be a fair sum for it to pay her."

HFL accepted my provisional findings.

Ms W did not. She said that qualifying for the guarantee automatically entitled her to a full refund of what she paid so that is what she should receive.

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 also thought very carefully about everything Ms W has said in response to my provisional decision. However, I've not seen anything that makes me think the conclusion I reached (or the reasons for doing so) was unfair or unreasonable.

There was no automatic entitlement to a full refund if Ms W qualified for the guarantee in her circumstances. As I explained in my provisional decision, S only appears to have offered a full refund where retainers were returned unused within the first 30 days after purchase. Ms W highlighted parts of HFL's complaint response letter to her which she said made it clear a refund was automatic upon qualification for the guarantee. In particular she's highlighted a sentence that follows HFL's conclusion that she did not qualify for the guarantee which says "We therefore regret to inform you that you are not able to claim for a refund". I think Ms W means this implied that if she had qualified for the guarantee, she would have received a full refund.

From my experience of dealing with similar complaints I've not come across situations where HFL was automatically offering full refunds simply because a customer qualified for the guarantee when S ceased trading, particularly where the full course of aligners supplied had been used before this (as was the case here). I also don't think HFL's complaint response suggests what Ms W thinks it does. I don't think it implied that qualifying for the guarantee was an automatic route to a full refund. It seems likely to me that HFL simply structured its letter in a way that set out its reasons for finding there was not a valid claim for breach of contract under s.75 and then went on to conclude that it would not therefore provide a full refund. And in any event the complaint response letter was not a legally binding document like a contract, so it didn't form the basis of Ms W's rights or HFL's obligations in respect of her potential claim.

Importantly, I've not seen anything that made S contractually obliged to provide a full refund where the guarantee could not be fulfilled. So, S's refusal to provide this was not a breach of contract by itself. With that being the case, I have to think about what a fair price reduction might have looked like for the loss of the guarantee – which as I've said in my provisional decision, was a potential breach of contract in the circumstances but the potential loss to Ms W as a result is uncertain and difficult to quantify.

I recognise that Ms W sees it differently, but I still think the core contract here appears fundamentally to have been for the aligners – which were provided and used. The guarantee appears to have been an aftercare offering. So, I don't think it was the core contract given what the original purpose of the contract seems to have been (i.e. dental realignment via sets of plastic aligners) and given that its continued availability after treatment was contingent on certain criteria being met indefinitely, including Ms W having to purchase aligners every six months.

I still think therefore that the amount Ms W paid to S was predominantly for the aligners rather than the guarantee and that any price reduction she should have received ought reasonably to have reflected this.

With this in mind, and given the uncertainty that Ms W would have continued to meet the criteria of the guarantee indefinitely or that a dentist would have approved touch up aligners on every occasion, I still think that £220 is a fair price reduction in this case for any potential breach of contract that may have occurred. I recognise there is no exact science to working out Ms W's potential loss but the evidence and comments that Ms W has provided do not persuade me that it would be reasonable to direct HFL to pay her any more than this.

My final decision

For the reasons I have explained, I direct Healthcare Finance Limited to pay Ms W £220.

If HFL wants to use the £220 to reduce the sum of any arrears on the agreement I consider this to be reasonable. However, if there are no arrears, then it should give Ms W the choice of having this paid directly to her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 23 May 2025.

Michael Ball
Ombudsman