DRN-5574404

The complaint

Miss W complains about how Healthcare Finance Limited ('HFL') responded to a claim she made to it in respect of dental treatment she 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.

Miss W purchased orthodontic dental treatment from a remote supplier ('the supplier') for £1,739 using a fixed sum loan from HFL in May 2023.

Miss W says the supplier has now gone out of business, and she contacted HFL in January 2024 to say:

- She has stopped making her loan payments as the supplier is not fulfilling the service it was supposed to;
- she had finished her course of aligners and was in the process of getting new ones when it stopped trading; and
- she contacted the supplier about her teeth not being straight and never received a response back.

HFL considered the claim under Section 75 of the Consumer Credit Act 1974 ('Section 75') and wrote to Miss W with its outcome in February 2024. It would not offer her a refund and concluded that she wasn't eligible for aftercare under the supplier's 'Lifetime Guarantee' (abbreviated for my decision) as she had not completed the required smile 'check-ins' or ordered retainers.

Miss W is not happy with this and brought a complaint about the claim outcome to this service. Our investigator said that HFL had acted fairly. Miss W has asked for the matter to be looked at again by an ombudsman.

I issued a provisional finding on this case which said:

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

I note here that 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 Miss W is unhappy with the dental treatment she bought from the supplier. I am also sorry to hear about the impact of this on her. However, it is important to note that my decision here is about the actions of HFL– and what it should fairly have done for Miss W in its position as a provider of financial services. In looking at how it handled the claim Miss W brought to it I consider the information reasonably available to it at the time, along with the

relevant protections available to Miss W. I consider Section 75 to be particularly relevant here.

I note that since making her initial claim to HFL Miss W has referred to her 'Right of Redress' which is specified in the finance agreement she has with HFL. I am satisfied that the reference in the finance agreement is to make Miss W aware of her rights under Section 75. But, it ultimately, is not a guarantee she will get her money back if she is unhappy with the actions of the supplier.

Section 75 can allow Miss W 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 there was evidence presented to HFL to show the supplier of the treatment has breached its contract with Miss W or misrepresented it.

Limited information

Our investigator has explained there is certain limited information in respect of Miss W's individual contractual documents being available, and her treatment plan. I agree and similarly, I have looked to decide what is fair based on the information reasonably available to HFL when considering this Section 75 claim. Including 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 Miss W's testimony.

I don't consider this claim to be about misrepresentation. 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.

Implied terms

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

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.

As has been explained to date, there are challenges where a Section 75 claim involves alleged failings in respect of a medical/cosmetic product which is inherently complex in nature. I am not an expert in this area and HFL isn't either. I know Miss W has indicted she is unhappy with the results she got to date and refers to the aligners as (at least at times) not fitting her properly. But I don't see where she presented persuasive information to HFL when she made her claim about the standard of treatment she received, in the form of something like an expert report. So I consider it unreasonable to say that HFL should have concluded that the treatment wasn't carried out with reasonable care and skill.

It is also important to note that even if I agreed Miss W had not achieved certain results she 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.

I note that Miss W has referred to some of her aligners not fitting correctly and also wearing down/breaking. However, I don't see where she presented HFL with persuasive evidence to show the goods element of the treatment (the aligners themselves) breached the requirement under the CRA to be of 'satisfactory quality' (noting that fitting issues in this type of complex treatment can be down to a range of factors).

I know that Miss W has shown that she contacted the supplier because she was unhappy with her results around October 2023 (by way of an auto acknowledgement email). And in December 2023 to say she had 'finished treatment but my teeth aren't straight'. And she provided this information to HFL at the time she made her initial claim to it. But I don't think this alone persuasively shows that the treatment was provided without reasonable care and skill or the goods were not of satisfactory quality. There is no admission by the supplier that it didn't act properly, and the correspondence doesn't mention the specific issues Miss W has raised with the quality or fit of the aligners to date (as I would have expected it to had these been an issue). It appears to be more about a general dissatisfaction with results.

I note that Miss W has provided pictures of the aligners to this service which she says shows they are of poor quality. I can't see where she provided this to HFL when she made her claim to it. But in any event – I don't consider the photos alone – while showing wear and tear - are persuasive in showing that the goods she was supplied were of unsatisfactory quality or that the treatment was not provided with reasonable care and skill.

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 Miss W bought the treatment and which has been made available to me by HFL, alongside other information such as Miss W's testimony.

I note that more recently Miss W has said she found a copy of her actual contract with the supplier. I don't see where she sent this to this service or her actual treatment plan. However, I don't consider it likely makes a difference here based on the other information I have. From this (including Miss W'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. After which a customer would get retainers to preserve the results. I can see Miss W took out her plan in May 2023 and has provided information to show she received the aligners on 30 May 2023 and treatment was due to last for 6 months– so should have been finished by the end of November 2023. I note that HFL's records show Miss W's treatment as having been marked as 'complete' by the supplier when she contacted it to raise her claim – so this would make sense. And I note she also said to it she had finished her treatment when she raised her claim.

I know that Miss W has gone on to say she had problems with her initial set of aligners. There was not a lot of information presented to HFL to show the extent of the problems she had with her treatment or her contact with the supplier about this. And the limited contact toward the end of her treatment plan doesn't persuasively shows the original treatment was not provided as it should have been (even if Miss W didn't end up wearing one or two aligners near the end).

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 Miss W and there is no breach of contract in that sense.

A more accurate assessment of Miss W's claim (to me) is that she was unhappy with the results from the treatment she got compared to the expectation she had going in.

I don't know what Miss W's projected outcome was - unfortunately neither Miss W or HFL appear to have that information (and now the supplier is out of business this information held on its treatment system appears to be lost). We also don't have an expert report or similar information showing what results Miss W actually achieved following the initial treatment.

However, while this situation is not ideal I am not persuaded the lack of information disadvantages Miss W in the way that might be expected. I conclude this because, on balance, I am not persuaded the results of the treatment were contractually guaranteed to match a certain projection in any event. I will explain.

I consider it likely Miss W signed an agreement with the supplier which included a consent form – as is usually the case with such treatments. We don't appear to have the one Miss W signed (although Miss W might provide it) 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 Miss W would have signed. Furthermore, Miss W 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 that regardless of how close the results are to the projection – this is not a breach of contract based on the likely agreement between Miss W and the supplier that the outcome is uncertain and not guaranteed.

In summary, while I am sorry to hear Miss W is unhappy with the results, I don't consider that HFL had persuasive information to show it the supplier had breached its contract in respect of the results Miss W achieved. So, despite Miss W's dissatisfaction, I don't think HFL would be expected to agree to a refund.

However, I am aware the supplier did provide a contractual 'guarantee' of sorts in relation to aftercare. Which I will turn to now.

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 receipt of initial treatment (if a customer is not satisfied with results and at the discretion of the treating dentist) 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.

HFL had said Miss W is not eligible for further aftercare because she had not completed the required 'check-ins' during treatment or ordered retainers when required. However, I note:

- *Miss W has said that she did not receive check in requests. And while HFL says the supplier provided data to show Miss W did not complete check-ins - we don't have access to Miss W's account (including the supplier's app) to validate for certain if Miss W got these requests. Miss W has also provided a credible video of her email inbox showing messages from the supplier but none of which appear to be check-in requests.*
- *Importantly, according to the supplier's paperwork, not checking in is not necessarily fatal to qualification for the 'Lifetime Guarantee' as long as other criteria is met such as continuing to order retainers and being up to date on payments. As far as I know Miss W was not in arrears when the supplier was trading. I appreciate that she would have been expected to order retainers from around October to November 2023 – but as evidence shows she approached the supplier in October 2023 to say she was not happy with her results I can fairly see why she didn't at the time. And I note the supplier's documentation suggests that in some circumstances failing to order a retainer also won't exclude a customer from eligibility for aftercare. Here I don't think it would have clearly excluded Miss W noting that the evidence from the time suggests she had not ordered retainers as she had started the process of applying for a 'touch-up' under the guarantee. Miss W says she sent in the photos and information as requested by the supplier's acknowledgement email but didn't hear back. As the supplier was going out of business around this time I can see why she didn't – but this isn't fairly Miss W's fault. Nor is it compelling evidence that she would not have been approved for further treatment had it continued to trade.*

I don't know what decision the supplier would have made here. But in the circumstances, and based on the information Miss W has provided along with the supplier's documentation about its aftercare provision (and the discretion afforded in certain cases) I consider it was unfair of HFL to disqualify Miss W from eligibility for the aftercare provision here. Which means there is a prima facie breach of contract in it no longer being available to her.

However, in order 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 Miss W 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' Miss W would have to continue to spend money on retainers twice a year; and*
- *there is no certainty Miss W 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 Miss W'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 future aftercare under the 'Lifetime Guarantee'. Something, that is uncertain and difficult to quantify.

Furthermore, despite the 'lifetime' nature of the guarantee this would not have come at no further cost to Miss W, as she would have had to continue purchasing retainers twice a year too.

I note HFL has provided information from the supplier to indicate that 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 Miss W's treatment. And considering the uncertainties about the extent of Miss W's ongoing receipt of future benefits, and the fact Miss W has received the aligners so that she 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. So in the particular circumstances here I think it should pay Miss W this.

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 Miss W paid via finance was substantially for the initial core treatment she had received already and not any refinements via aftercare. So a significant refund would seem disproportionate here.

Following my decision, it is up to Miss W if she 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 her credit file as a result of an agreement it reaches. My decision here is not about this matter – but if Miss W considers HFL has not been positive and sympathetic in respect of this she may decide to complain about it separately.

My provisional decision

I partially uphold this complaint and direct Healthcare Finance Limited to refund Miss W £220 including yearly simple interest at 8% calculated from the date it gave her its claim outcome to the date of settlement.

If Miss W is currently in arrears HFL can apply the amount to the balance of her account – but if she is up to date with payments she can elect to have it paid directly to her.

If HFL considers it should deduct tax from the interest element of my award it should provide Miss W with a certificate of tax deduction.

I asked the parties to respond.

HFL asked for evidence to show that the supplier agreed to provide Miss W with additional aligners.

Miss W disagreed with my proposal, and said in summary:

- £220 does not fairly address the breach of statutory rights arising from the supply of defective goods.
- The decision under-represents the nature of the transaction which includes clinical oversight but the primary supply of physical dental aligners.
- The aligners themselves were not of satisfactory quality and she has provided photographic evidence to show they were not reasonably durable.
- She invoked her right to repair or replacement in October 2023 but no remedy was provided by the supplier – and a fair remedy here would be the cancellation of the outstanding arrears.

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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below:

I note HFL has asked for evidence Miss W was approved for further treatment – however, my decision did not claim she was approved. I simply explained that she appeared to have contacted the supplier unhappy with her results and with a view to seeking a resolution (which can include further treatment via 'touch ups'). Which would explain why she had not sought to purchase a retainer at the time.

I have read and considered Miss W's further detailed representations. However, I consider I have dealt with the relevant key points sufficiently in my provisional findings. I have already recognised the contract includes goods and that these need to be of satisfactory quality under the relevant consumer law. However, I have already explained there was not persuasive evidence presented to HFL that the goods were not of satisfactory quality at the time the claim was made. Nor do I consider the photos to be conclusive in any event noting:

- The complex nature of this treatment and the lack of expert evidence showing the goods were not reasonably durable (as Miss W has claimed).

- The question marks raised by Miss W's lack of evidence showing she raised specific concerns about the quality of the aligners well before the supplier went out of business (as I would have expected her to if defects occurred during normal use and within weeks of receipt as she claims). I also note that when she contacted the supplier in December 2023 she explained '*I have finished treatment but my teeth aren't straight, I am not happy to continue paying for something that has not worked. Please advise'*. Had the support ticket raised in October 2023 been specifically concerning the quality of the aligners rather than the results achieved by the treatment I would have expected Miss W to have mentioned this in her email.

Putting things right

As set out below.

My final decision

I partially uphold this complaint and direct Healthcare Finance Limited to refund Miss W £220 including yearly simple interest at 8% calculated from the date it gave her its claim outcome to the date of settlement.

If Miss W is currently in arrears HFL can apply the amount to the balance of her account – but if she is up to date with payments she can elect to have it paid directly to her.

If HFL considers it should deduct tax from the interest element of my award it should provide Miss W with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 16 July 2025.

Mark Lancod
Ombudsman