DRN-5595079

The complaint

Miss E 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 E purchased orthodontic dental treatment from a remote supplier ('the supplier') for £1,639 using a fixed sum loan from HFL in February 2023.

Miss E says the supplier has now gone out of business, and she complained to HFL in December 2023 that:

- Some of the aligners were ill fitting and her treatment was extended and it is still incomplete which has caused her severe distress and she is worried about the future dental issues this might cause.

Miss E approached HFL for a full refund. It considered the claim under Section 75 of the Consumer Credit Act 1974 ('Section 75'). It would not offer her a refund and said 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 E 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 E has asked for the matter to be looked at again by an ombudsman.

I issued a provisional finding which said:

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 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 E 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 E in its position as a provider of financial services. In looking at how it handled the claim Miss E brought to it I consider the information reasonably available to it at the time, along with the relevant protections available to Miss E. I consider Section 75 to be particularly relevant here.

I note that Miss E 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 E 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 E 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 Miss E or misrepresented it.

Limited information

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

Misrepresentation

Miss E'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 Miss E 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 that the supplier was aware it would be going out of business when it sold Miss E 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.

The way the treatment was provided

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.

The difficulty here is Miss E 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. I know that Miss E has indicated she is unhappy with the results achieved to date and refers to the aligners as being (at least at times) ill fitting. However,

without an expert report it does not persuasively show that the treatment received from the supplier was carried out without reasonable care and skill.

It is also important to note that even if I agreed Miss E 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 Miss E had received follow on treatment in the form of being approved for a 'touch-up' after her initial treatment because she was not satisfied with the progress of her treatment. However, I am not persuaded this in itself shows that there was a lack of reasonable care and skill in the way the treatment was carried out. I say this noting that the availability of 'touch-ups' to refine results appears to be part of the supplier's regular aftercare offering.

In summary, based on the evidence available to it (and noting the lack of expert evidence to support Miss E'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.

I note that Miss E did refer to some of her aligners being 'ill fitting'. However, there is no 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). Or, if they were not of satisfactory quality, that this was not remedied sufficiently by replacement aligners (which Miss E says she received) in any event.

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

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

Miss E does not dispute that she received the initial set of aligners and that she used these. However, when Miss E approached HFL with her claim she argued her treatment was incomplete.

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 E took out her plan in February 2023– so should have been finished by about August 2023 at the latest. I note that HFL's records show her treatment as having been marked as 'complete' by the supplier – so this would make sense. I know that Miss E says she had problems with her initial set of aligners. There isn't a lot of information to show the extent of the problems she had and her contact with the supplier about these, but from what she says the supplier replaced these in any event. I also note Miss E was approved for a 2 month 'touch-up' treatment in September 2023 – but I don't think this persuasively shows the original

treatment was incomplete or not provided as it should have been. Noting that ‘touch-up’ treatment is part of the supplier’s aftercare offering.

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 E and there is no breach of contract in that sense.

A more accurate assessment of Miss E’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 E’s projected outcome was - unfortunately neither Miss E 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 E actually achieved following the initial treatment.

However, while this situation is not ideal I am not persuaded the lack of information disadvantages Miss E 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 E 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 Miss E 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 Miss E would have signed. Furthermore, Miss E 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 E and the supplier that the outcome is uncertain and not guaranteed.

In summary, while I am sorry to hear Miss E 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 E achieved. So, despite Miss E’s dissatisfaction, I don’t think HFL would be expected to agree to a refund.

It is also worth noting that although Miss E says she never got a retainer– this was not financed by HFL so does not form part of the claim she has against it. I also note the cost of it would likely put this outside the financial limits for a valid Section 75 claim in any event.

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 E 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 E has said that she did complete these requests. I also note she makes the point that she was approved for a further ‘touch-up’ to show she was eligible for the guarantee. And while I accept this may have been provided via goodwill – it can also suggest that Miss E was doing everything she needed to qualify for aftercare.
- While HFL says the supplier provided data to show Miss E did not complete check-ins - we don’t have access to Miss E’s account (including the supplier’s app) to validate for certain what Miss E did in respect of these.
- 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 E was not in arrears when the supplier was trading. I appreciate that she would have been expected to order retainers from around late August 2023 onwards – but as she had been approved for a ‘touch-up’ in September 2023 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.

I don’t know what decision the supplier would have made here. But in the circumstances, and based on the information Miss E 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 E 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 E 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 E would have to continue to spend money on retainers twice a year; and
- there is no certainty Miss E 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 E'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 E, as she would have had to continue purchasing retainers twice a year too.

I recognise that Miss E appears to have been approved for and received at least one 'touch-up' treatment before the supplier went out of business. However, I also have to factor in that it isn't certain to what extent Miss E would be approved for treatment beyond this.

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 E's treatment. And considering the uncertainties about the extent of Miss E's ongoing receipt of future benefits, and the fact Miss E 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 E 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 E 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 E 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 E 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 E £220 including yearly simple interest at 8% calculated from the date it gave her its claim outcome to the date of settlement.

If Miss E 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 E with a certificate of tax deduction.

I asked the parties for their comments on my provisional decision. Miss E did not respond. HFL said that it respectfully disagreed that Miss E was eligible for the Lifetime Guarantee but it was willing to accept the 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.

Neither party has given me reason to depart from my provisional findings. So my final decision is the same for the reasons as given above.

Putting things right

See below.

My final decision

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

If Miss E 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 E with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 27 June 2025.

Mark Lancod
Ombudsman