DRN-5663395

The complaint

Mr T 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.

What happened

In October 2022 Mr T 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 hasn't been confirmed how long the treatment was expected to take, but it is typically several months.

Mr T says that he wore all the core aligners provided, but that he wasn't satisfied with the results. As a result, in November 2023, the supplier provided him with a set of 'touch up aligners', to try and improve the results for hm. The supplier then went into administration in early December 2023.

In early 2024, Mr T contacted HFL to let it know that he wasn't happy with the fact that he could no longer use the lifetime guarantee that came with the aligners, so he wanted a refund of his costs and the loan to be cancelled. It considered that request as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ('Section 75').

In April 2024 HFL responded to Mr T rejecting his complaint on the basis that he did not qualify for the supplier's lifetime guarantee. He then brought his complaint to our service, following which HFL reviewed the situation. It accepted that Mr T had potentially would have qualified for the guarantee and so had potentially suffered a loss. As a result, it offered him what it said was the value of one set of touch up aligners, which it considered would have been provided by the supplier, and to which it believed Mr T may have had a contractual right. This was in the amount of £220. Unhappy with that offer, Mr T pursued his complaint with us.

Our investigator looked into his concerns and considered how HFL had acted in light of its responsibilities under Section 75. But he did not uphold the complaint and concluded that HFL's offer was fair and it was not unreasonable of it to decline to refund the full cost of treatment.

Mr T doesn't accept that, saying that the treatment cannot considered to be complete until he is happy with the results and the treatment aims have been reached, and asked an Ombudsman to look into things.

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.

Section 75 enables Mr T to make a claim against HFL for breach of contract by the supplier of the goods/service in question, or a misrepresentation. 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 T'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 more than it has when handling Mr T's claim.

But I want to explain from the outset that I can only consider Mr T's complaint on that narrow basis – i.e. whether it was fair and reasonable for HFL to respond to his claim by offering what it did, based on the evidence he provided to it. I cannot hold it responsible for Mr T's experience with the supplier or his clearly very strong feelings about the treatment outcome. 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.

Similarly, I acknowledge that Mr T has provided a lot of testimony in this case in an attempt to demonstrate that there is an identifiable breach of contract here which HFL must remedy. However, I will focus on what I consider to be the key, pivotal, issues in this decision. I mean no discourtesy to Mr T in doing that. It is my role to provide informal answers as quickly as possible, and that necessitates me having such a focus when resolving disputes.

Mr T's primary concerns are that his teeth are not straight, and so the treatment is not complete. And as the supplier is no longer in business, he cannot receive any further treatment via its guarantee scheme. As a result, he believes HFL ought to have offered him a full refund in response to his claim, and that is the complaint I have to consider.

In cases such as this it is often complex to assess the quality of the service Mr T 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 T 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 respond to his claim as it did.

To be clear, I do not accept that Mr T's assertion that, *"…a treatment plan that did not achieve any visible progress, together with…[*the supplier authorising]…*a corrective touch-up without charge…",* evidences in and of itself that reasonable care and skill were not used in the provision of the core set of aligners.

In saying that, I need to consider what I think Mr T'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 T as I understand they were housed in an online application which no longer holds that content since the supplier went into administration. 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 T 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 T 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. So I have considered the content of it carefully.

There is a key final section of the document before the customer was required to sign that sets out:

"I understand that [the supplier] *cannot guarantee any specific results or outcomes."*

So I'm satisfied the supplier never said that it could guarantee Mr T's satisfaction with the results of the treatment, the core aspect of which was provided to him through the initial set of aligners. That means I don't find a breach of any explicit terms of the contract between Mr T and the supplier. But this is only the first question I have had to consider when reviewing this complaint.

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 T 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, HFL accepts that Mr T was eligible to be covered by the supplier's lifetime guarantee scheme. I think that is fair, despite the fact that he never bought retainers from the supplier. Ordinarily, those would need to be paid for, as an additional cost to the treatment, before a customer could benefit from the lifetime guarantee scheme. But HFL accepts that the supplier seems to have been willing to make, *"…an exception…",* for Mr T, and so has chosen to honour that itself.

Crucially, what that lifetime guarantee offered was the *possibility* of having aligner touch-ups every year, provided that Mr T carried on buying retainers from the supplier, and that a dentist approved the provision of the touch-up aligners. My understanding is that a dentist would only do so if s/he assessed that further progress to straighten the teeth would be possible through a touch-up aligner.

However, HFL accepted that Mr T was eligible for that guarantee, and identified that he had lost out as the supplier was no longer trading and could not therefore provide that. And so it offered the cost of a set of aligners, estimated at £220.

Given the stage he was at, the lifetime guarantee would never have given him the option of a full refund of the treatment costs in any event. It's clear from the information I have that a full refund was only available for the first 30 days after Mr T began his treatment in 2022, and only if Mr T had not opened or used any of the aligners. There was no term of the contract, explicit or implied, which set out that the treatment was ongoing until Mr T was satisfied with the results, or that he would have been entitled to any form of refund if he remained unsatisfied with them.

Again, Mr T says the fact that the supplier didn't require him to buy retainers before providing the touch up aligner also shows that his treatment was incomplete. I don't agree. Ultimately, the supplier would have been able to simply refuse to provide anything further to him until he purchased those retainers. I don't think it would be reasonable for me to take the fact that it *didn't* as clear evidence of acceptance that either the treatment was incomplete, or that the service had been delivered without reasonable care and skill. There is a significant evidential gap between those two facts.

I have also thought in some detail about the monetary amount HFL has offered Mr T so far. 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. So essentially it has compensated him for the loss of one year's 'use' of the lifetime guarantee. Hypothetically, it is possible that Mr T could have requested and received a set of aligners every year for the rest of his life. Which we all hope will be many years. But that hypothetical possibility doesn't lead me to conclude that HFL has been unfair in what it has offered.

There are many ways in which the lifetime guarantee could have ceased to be of use to Mr T, even if he had been able to initially rely on it. Firstly, he may not have done what he needed to in terms of continuing to buy retainers from the supplier. Perhaps more importantly, and as I've already discussed, 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.

Finally, I would highlight that Mr T has not had to pay for a set of retainers, estimated to be £160, in order to have the benefit of the lifetime guarantee on this occasion. Technically, he was required to do so, but as I've already said, it is reasonable that he didn't. However, the fact still remains that he hasn't been put to that expense.

So taking that into account, and noting the informal remit of this service to resolve disputes, I don't find that it was unfair or unreasonable of HFL to offer Mr T what it has. Identifying exactly how many annual touch-up aligners Mr T *may* have asked for; *may* have qualified for; and *may* have been approved for, is pretty much impossible.

Although I am sorry to hear of Mr T'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 full costs of this treatment. What it has already offered is fair and it need not do anything else to put things right.

I expect HFL to honour that offer now, should Mr T wish to accept it.

My final decision

For the reasons I've explained, I don't uphold Mr T's complaint and Healthcare Finance Limited need only honour what it has already offered to Mr T

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 18 August 2025.

Siobhan McBride
Ombudsman