DRN-5797561

The complaint

Mrs P has complained about the way Healthcare Finance Limited ("HFL") dealt with a claim for money back in relation to dental treatment which she paid for with credit it provided.

What happened

In April 2023 Mrs P entered into a two-year fixed sum loan agreement with HFL to fund the provision of dental aligners from a third-party supplier ("the supplier"). The cash price was around £1,600 and Mrs P was due to pay back the agreement with monthly payments of around £70. I understand the treatment was due to last a few months and it came with a guarantee.

The supplier went out of business in December 2023. Mrs P put in a claim and complaint with HFL around that time. She said the aligners hadn't worked for her and that she requested further treatment from the supplier. She said some of the aligners were painful and had caused blisters. She said she didn't want to continue paying when she couldn't receive the service. She requested a full refund.

HFL responded to the claim and said it acknowledged the supplier provided a guarantee, but it didn't think Mrs P met all the conditions for it, so it declined the claim when considering its liabilities under Section 75 of the Consumer Credit Act 1974 ("s.75"). It said Mrs P hadn't registered her aligners or completed virtual check ins, which were part of the qualifying conditions for the guarantee.

Mrs P decided to refer her complaint to the Financial Ombudsman. She said the treatment didn't work and was incomplete. Our investigator looked into things and didn't think HFL's answer was unfair. Mrs P didn't agree. She said had the supplier still been trading she'd have pursued further 'touch up' aligners or asked for a full or part refund. She said she'd need to look for alternative suppliers. She highlighted the service came with a lifetime guarantee that she could no longer use.

I issued a provisional decision that said:

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mrs P and HFL that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I also want to say I'm very sorry to hear that Mrs P is unhappy with the treatment. I can't imagine how she must feel, but I thank her for taking the time to bring the complaint.

What I need to consider is whether HFL – as a provider of financial services – has acted fairly and reasonably in the way it handled Mrs P's request for getting money back. But it's important to note HFL isn't the supplier.

S.75 is a statutory protection that enables Mrs P to make a 'like claim' against HFL for breach of contract or misrepresentation by a supplier paid using a fixed sum loan in respect of an agreement it had with her for the provision of goods or services. But there are certain conditions that need to be met for s.75 to apply. From what I've seen, those conditions have been met. I think the necessary relationships exist under a debtor-creditor-supplier agreement. And the cost of the treatment was within the relevant financial limits for a claim to be considered under s.75.

Mrs P has essentially said she wasn't able to complete her treatment. I've gone on to consider if there is persuasive evidence of a breach of contract by the supplier that means HFL should have offered to take any action.

I've focussed on Mrs P's breach of contract claim. Even if the supplier couldn't provide all the services it promised because it went out of business, it's not clear this would be a misrepresentation because I don't think it would have been aware it would go out of business when it sold Mrs P the treatment.

Implied terms

In cases such as this it is often complex to assess the quality of the service Mrs P paid for. Results from these sorts of treatments are subject to many variables and there are generally disclaimers by the providers of such services, and accepted risks that results cannot be guaranteed.

Mrs P has not provided supporting evidence such as an independent, expert opinion that sets out the treatment she paid for has not been carried out with reasonable care and skill as implied by the Consumer Rights Act 2015 ('CRA'). I'm mindful it is the manner in which the service was provided, rather than the results of the treatment, that is the crucial issue for me in considering whether there's been a breach of an implied term in relation to the service.

I'm not a dental expert, and neither is HFL. Without sufficient supporting evidence, I don't think HFL was unfair at the time to not uphold the claim on the basis of a breach of an implied term of the contract because I don't think it was supplied enough evidence that the service the supplier offered wasn't carried out with reasonable skill and care.

Express terms & guarantee

To decide whether there's likely been a breach of an express term of the contract I've looked at the supplier's documentation from around the time Mrs P bought the treatment which has been made available by HFL. And I've thought about Mrs P's testimony and her supporting evidence.

It's not in dispute Mrs P entered into a contract for aligner treatment and that she received and used those aligners. There's a lack of signed documentation, but I think the core contract was for a set of aligners Mrs P was due to use for a few months.

With regards to the results, I think it likely Mrs P signed an agreement with the supplier which included a consent form, as is common with these sorts of treatments. We don't have a signed copy, but I've seen an example copy. This sets out the various risks and uncertainties with such a dental treatment. And it indicates Mrs P would have understood the supplier couldn't guarantee specific results or outcomes. The consent form sets out that there could be risks such as discomfort, gum irritation and sensitivity. So even if Mrs P didn't quite get the results she wanted after the core treatment or experienced the sort of issues she highlighted, without sufficient evidence to show otherwise, I don't think that would be considered a breach of contract. That's not to say I don't understand why she's unhappy. Merely that I'm considering how HFL acted based on the evidence presented to it.

While I appreciate Mrs P is put in a difficult position because some of the evidence isn't available, I can only consider how HFL acted based on what was able to be supplied. In the absence of a specific signed contract, I've looked at the supplier's website from around the time Mrs P entered into the contract.

On the supplier's website from the time, the frequently asked questions ("FAQ") page has a section for further treatment under the guarantee. This suggests customers can request further aligner 'touch ups' after the core treatment at no cost on an ongoing once a year basis. It also says if the patient feels like something's not right or they weren't getting the results they expected the supplier could evaluate the plan to determine if an update or additional aligners were required. Mrs P said she received a set of 'touch up' aligners and would have pursued more.

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. The guarantee provided the possibility of having further aligners, provided that Mrs P registered the aligners; wore them as prescribed; completed virtual check ins; and stayed up to date on payments. It also said after the core treatment Mrs P was required to buy retainers every 6 months and wear them as prescribed. Moreover, a dentist was required to approve the further treatment. My understanding is that a dentist would only do so if they assessed that further progress to straighten the teeth would be possible.

On the one hand, HFL said Mrs P didn't register her aligners or complete the check ins. On the other hand, Mrs P said she did complete the check that was asked, and that she was provided 'touch up' treatment and would have requested further treatment.

Putting the lack of evidence to one side for the moment, I note the supplier's website from around the time had a section titled: "I missed a check-in (or forgot to register my aligners or order retainers), and I'm not sure my [guarantee] is still in effect. Is there anything I can do to become eligible again?" This says:

> *If you are currently in treatment, you will become eligible again as long as you:*
>
> 1. *Check in your aligners (check your email or the app to do this)*
> 2. *Complete your future Smile Check-ins (via email or our app)*
> 3. *Are current on your payments*
> 4. *Purchase retainers after treatment, replace them every 6 months, and wear them as prescribed*
>
> *If you just finished treatment, you can become eligible again as long as you:*
>
> 1. *Are current on your repayments*
> 2. *Replace retainers every 6 months and wear them as prescribed*

If you're unsure whether you're eligible, contact us to find out.

I think when the supplier went out of business, Mrs P was up to date on payments. While it's not definitive, and the FAQs could have been clearer in setting out the exact steps and timescales/deadlines, I think there's at least a good possibility Mrs P would have been able to requalify for the guarantee had the supplier not gone out of business (if she hadn't complied) whether she was in treatment or had just finished. Bearing in mind I need to resolve the complaint quickly and informally by deciding what I think is fair and reasonable, on balance, I think HFL should treat Mrs P as if she'd met the conditions for the guarantee.

Mrs P thinks she should be provided with a full refund of the treatment costs. There is a potential breach identifiable because she 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 cost. From what I've seen, a full refund was only available for the first 30 days after Mrs P began her treatment in April 2023 and only if she'd not opened or used the aligners. I don't think it would be fair or reasonable for me to tell HFL that it should now provide Mrs P with a full refund to recompense her for the potential breach that has happened. Overall, I don't think it was unreasonable for HFL to not offer to refund the value for what was provided under the core contract, but I've thought about what could be done to resolve the complaint.

As I've said, Mrs P may have been able to receive further 'touch up' treatment after the core treatment under the guarantee. But there are many ways in which the guarantee could have ceased to be of use to Mrs P. She may not have done what she needed to in terms of continuing to buy retainers. The retainers were not supplied under the original contract – Mrs P needed to buy them separately. The supplier may not have approved '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. Even if I accept there's a potential loss, it's not straight-forward to establish the value of the perceived loss.

HFL shared information from the supplier saying the financial value of a 'touch-up' treatment is £220. It's difficult to know for certain if that's accurate. But this represents a refund of over 10% of the cost of the treatment. Taking into account Mrs P received the core treatment, and she may have been eligible for further 'touch up' treatment, I think HFL should offer this price reduction to remedy any potential loss. It seems like a fair compromise given I think the total amount paid was substantially for the core treatment.

HFL agreed, but Mrs P didn't. In summary, she said:

- She'd complied with the requirements of the agreement.
- The lifetime guarantee was a key term, and she'd been deprived of its use.
- Services weren't provided with reasonable skill and care or within a reasonable time.
- HFL misrepresented that she'd have a lifetime guarantee.
- HFL is liable under s.75 for breach of contract or misrepresentation.
- £220 was inadequate as fair compensation. It only reflects a single 'touch up' cycle whereas the guarantee promised ongoing eligibility. Comparable treatment would be around £1,500 to £2,500.

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'd like to thank the parties for their responses. I've thought carefully about what Mrs P has said but, for the reasons given in my provisional decision, I'm not going to depart from the conclusions I've already reached.

I've already explained that even if Mrs P didn't comply with the qualifying requirements for the guarantee I think she likely could've requalified. I agreed that there was a potential breach of contract because Mrs P may have been able to use that guarantee that was no longer available. I've said I think the substantial cost paid was for the core treatment and that I didn't think HFL had sufficient evidence the core treatment wasn't carried out with reasonable skill and care (or within a reasonable time). And I didn't think there was a misrepresentation claim because I don't think the supplier would have known it was going to go out of business when it sold Mrs P the treatment, with the guarantee.

With regards to the remedy to put things right, I've explained that it wasn't straightforward to come up with a resolution. I need to resolve the complaint quickly and with minimum formality. The guarantee could have in theory been used for many years (once a year). But this would've been on the condition that Mrs P spent money on retainers every six months and that the dentist thought that further treatment would've been beneficial. I've got no way of knowing whether the supplier would've continued to offer further treatment for Mrs P. The guarantee only gave the possibility of further treatment, under certain conditions. And I'm conscious Mrs P said she'd already had a 'touch up' treatment.

While I'm sympathetic to the situation, I don't find I have the grounds to direct HFL to refund Mrs P for what she paid for the core treatment – the substantial amount of the cost. I still think a fair compromise is that it provides her with the value of what it says is a course of 'touch up' treatment. Mrs P doesn't have to accept this outcome. She's free to pursue the complaint by more formal means such as through the courts if she feels she could achieve a more generous outcome.

My final decision

My final decision is that I uphold this complaint and direct Healthcare Finance Limited to pay Mrs P £220.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 2 October 2025.

Simon Wingfield
Ombudsman