DRN-5919031

The complaint

Miss P complains that Healthcare Finance Limited ("HFL") failed to pay out on a claim she made to it about the failure of a supplier to deliver the dental treatment which she paid for with credit it provided.

What happened

In August 2023 Miss P 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 her teeth. Miss P says the treatment was expected to last for around six to eight months.

Miss P has confirmed that she finished using the core set of aligners. The supplier went into administration in early December 2023, at which time Miss P was only about halfway through the aligners, and she says she did not receive either the ongoing support she had expected, or retainers from the supplier.

Initially, in either December 2023 or January 2024, Miss P appears to have contacted HFL for guidance around how she could continue to source, *"…retainers and schedule further check-ups."* However, she clearly then complained that the treatment was incomplete and requested a full refund of all costs. HFL considered that as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ('Section 75').

In February 2024, HFL agreed to provide a refund to Miss P, in line with the number of aligners she had not used, which it asked Miss P to return to it in order for the refund to be processed. Miss P described that as "*unreasonable*", and has subsequently confirmed that she had, in fact, used all the aligners. So I would assume that there were no unused items she could return. Unhappy with HFL's response, Miss P brought a complaint to us.

Our investigator began looking into her concerns and considered how HFL had acted in light of its responsibilities under Section 75. Eventually, he concluded that HFL ought to offer Miss P the value of one set of aligners, estimated at £220. That was because he identified that she had potentially lost out on an aspect of the guarantee as the supplier was no longer trading. But he thought it was not unreasonable of HFL to decline to refund the full cost of treatment without the return of unused aligners. HFL agreed to make that offer.

But Miss P doesn't accept that, saying that the treatment was incomplete and ineffective, and she still seeks a full refund, 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 Miss P 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 Miss P'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 Miss P's claim.

But I want to explain from the outset that I can only consider Miss P's complaint on that narrow basis – i.e. whether it was fair and reasonable for HFL to respond to her claim by offering what it did, based on the evidence she provided to it. I cannot hold it responsible for Miss P's experience with the supplier or her feelings about the treatment. HFL simply has a legal duty to consider whether she has a valid claim under Section 75 and to respond fairly to that claim if so.

Miss P's concerns are that her teeth are not straight, despite her having used all the aligners provided under the core treatment. She has also highlighted the lack of ongoing oversight; support and an inability to buy retainers from the supplier.

In cases such as this it is often complex to assess the quality of the service Miss P 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 Miss P has not provided an independent, expert opinion that sets out that the treatment she paid for has not been done with reasonable 'care and skill', as implied by the Consumer Rights Act 2015 ('CRA'). She highlights that, *"…the treatment was abruptly discontinued and has clearly not been carried out to completion."* However, that is not evidence of a lack of reasonable 'care and skill'. And 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 her claim as it did.

But I need to consider what I think Miss P'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 Miss P 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 Miss P commenced her treatment in 2023. 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 Miss P 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 Miss P's satisfaction with the results of the treatment, the core aspect of which (namely the set of aligners) I have already found was provided and used. That means I don't find a breach of any explicit terms of the contract between Miss P 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 Miss P 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.

I turn now to the question of the supplier's lifetime guarantee scheme, which is highly relevant. Essentially, our investigator concluded that HFL should treat Miss H as having qualified for that scheme, despite the fact that she 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 given that Miss P was still using the core aligners at the point that the supplier went into administration, I think it's reasonable for her not to have ordered retainers. Essentially, she wasn't ready for them.

Crucially, what that lifetime guarantee offered was the *possibility* of having aligner touch-ups every year, provided that Miss P 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. So, effectively, had the supplier not gone into administration, it is possible that it might have provided touch-up aligners to Miss P if she wasn't happy with the position of her teeth. That is what our investigator identified.

But Miss P thinks she should receive a full refund as it is not fair for her to continue paying for a service that wasn't delivered.

I have set out why I don't find that there has been a breach of an explicit contract term in respect of treatment results, or indeed those terms implied in the contract. And that Miss P received and completed the core treatment she paid for using the loan from HFL. Whilst I accept that she isn't happy with the results, I don't agree that the service wasn't substantially delivered.

Moreover, given the stage she was at, the lifetime guarantee would never have given her the option of a 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 Miss P began her treatment in August 2023, and only if Miss P had not opened or used any aligners. So, the fact that the supplier has gone into administration is all but irrelevant – had it not, she would never have received a refund anyway.

Finally, I have thought in some detail about the monetary amount HFL has agreed to offer Miss P 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 her for the loss of one year's 'use' of the lifetime guarantee. Hypothetically, it is possible that Miss P could have requested and received a set of aligners every year for the rest of her 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 Miss P. Firstly, she may not have done what she 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 her 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 Miss P has not had to pay for a set of retainers, estimated to be £160, in order to benefit from the lifetime guarantee on this occasion. Technically, she was required to do so, but as I've already said, it is reasonable that she didn't. However, the fact still remains that she 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 agree to offer Miss P what it has. Identifying exactly how many annual touch-up aligners Miss P *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 Miss P'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 her the costs of this treatment. What it has already agreed to do is fair.

Putting things right

HFL should pay Miss P £220.

My final decision

For the reasons I've explained, I uphold this complaint in part and direct Healthcare Finance Limited to pay Miss P £220.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 2 January 2026.
Siobhan McBride
Ombudsman