DRN-4952090

The complaint

Mr R 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 March 2023 Mr R 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 was expected that the treatment would last for between four and eight months, and indeed appears to have been completed in line with those expectations.

When he heard that the supplier had gone into administration in December 2023, Mr R was very concerned that he would no longer be able to benefit from the lifetime guarantee offered by it. He identified that he would need to continue wearing retainers to maintain the progress he made during treatment, and was concerned that he would encounter significant costs if he had to buy those elsewhere.

In December 2023, Mr R therefore contacted HFL to make a claim, requesting a full refund of all treatment costs and cancellation of the loan, which HFL considered as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ('Section 75'). Ultimately, HFL declined his claim as it said Mr R had not complied with the requirements to qualify for the particular guarantee scheme offered by the supplier, that may have offered further treatment. Unhappy with that response, Mr R brought a complaint to us.

Our investigator considered how HFL had acted in light of its responsibilities under Section 75. However, she did not uphold the complaint and did not think it unfair or unreasonable for HFL to reject Mr R's claim under that legislation.

Mr R doesn't accept that and asked an Ombudsman to look into things. He says that the supplier did not deliver the service he expected, that he does qualify for the guarantee scheme, and so should not be out of pocket as a result of the supplier going into administration.

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 R to make a claim against HFL for breach of contract by the supplier of the goods/service in question. 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. 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 acted differently in the way it handled Mr R's claim.

But I want to explain from the outset that I can only consider Mr R's complaint on that narrow

basis – i.e. whether it was fair and reasonable for HFL to reject his claim. I cannot hold it responsible for Mr R's overall experience with the supplier or his feelings about the treatment. 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.

Mr R's concerns are that the supplier didn't offer him all he was promised. However, he does not appear to be dissatisfied with the actual results of the treatment itself. He complains that he now cannot, as the supplier is no longer in business, get any further support from it, including by buying retainers at a cost of £80 each time. So he believes he should receive a full refund of the cost of the treatment. For completeness, I have thought carefully about all possible bases for a claim under Section 75 in this situation.

In cases such as this it is often complex to assess the quality of the service Mr R 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 R 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. And in any event, he does not appear to be unhappy with the results. He highlights, instead, issues including a lack of contact from the supplier during the treatment and not receiving additional benefits characterised as "goodies". But fundamentally, what he is concerned about is his inability to buy retainers from this supplier.

So to assess whether there is any basis on which Mr R might be entitled to a full refund, I need to consider what I think Mr R'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 R 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 R commenced his 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 Mr R 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 are no terms of that contract which confirm that any of the things Mr R is now unhappy about would form part of the contracted service. It doesn't mention the amount of contact during treatment; the provision of "goodies"; or in fact the lifetime guarantee. It also says that results cannot be guaranteed.

So I'm satisfied the supplier never said that any of Mr R's current concerns would be guaranteed as part of the service he paid for. That means I don't find a breach of any explicit terms of the contract between Mr R and the supplier.

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 R 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. And in fact that Mr R hasn't actually complained about the substantive treatment itself.

However, there is a further issue for me to consider in terms of the supplier's lifetime

guarantee scheme. This, in fact, is what both Mr R and HFL have been focused on in this dispute. HFL says that Mr R isn't eligible for this guarantee – Mr R says he is.

What the lifetime guarantee scheme offered was the *possibility* of having aligner touch-ups every year, provided that a customer carried on buying retainers, 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.

HFL says that Mr R didn't do everything he needed to in order to qualify for the guarantee. One of the supplier's requirements was that customers completed regular check ins during treatment, which HFL says the supplier confirmed he did not. Mr R disagrees and believes he did everything necessary. As mentioned earlier, where disputes or uncertainties exist, it is my role to decide, on the balance of probabilities, what I think happened.

Mr R responded to the investigator's view highlighting that he did do the check ins required, contrary to what HFL says. But he can offer no further evidence of that. I am fully aware that he can't do that because the online application in which his records were stored is no longer working. So I accept that he is in a difficult position here from that point of view. However, the actions that Mr R has described taking, such as registering aligners on the app, and confirming that they fit, definitely do not constitute the check-ins required. Those were far more involved, and quite memorable, and I'm satisfied from Mr R's testimony that he did not do them. He says that, if that is the case, then it's because he wasn't invited to do so. So it's not his fault. That may or may not be correct, but ultimately I don't think it really matters in this case.

I say so because, although I have found that Mr R isn't eligible for the lifetime guarantee scheme, I also don't think that is the pivotal issue here. *Even if he were*, that would not entitle Mr R to the outcome he wants. Mr R thinks he should be provided with a full refund of the treatment costs. Given the stage of treatment he was at, that guarantee would never have given him that option anyway. It's clear from the information I have that a refund was only available for the first 30 days after Mr R began his treatment in 2023, and only if Mr R had not opened or used the aligners.

And nor would that guarantee have played any role in what is ultimately Mr R's key concern – his ability to purchase retainers from the supplier, at a cost of £80 each time. He believes that it will cost him a lot of money to buy them elsewhere. So whether or not he is eligible for the lifetime guarantee scheme is irrelevant. As I have said, I am clearly not a dental expert, which includes the cost of retainers. However, having only cursorily looked into this, there appears to be a very wide range of costs for retainers, including some less than the £80 Mr R would have had to pay this supplier. So whether he has *actually* lost out as a result of the supplier going into administration is really not clear either.

Although I am sorry to hear of Mr R'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 costs involved or provide other compensation.

My final decision

For the reasons I've explained, I don't uphold this complaint and Healthcare Finance Limited doesn't need to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 20 December 2024.

Siobhan McBride
Ombudsman