DRN-5006638

The complaint

Miss R 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 March 2023 Miss R entered into a two-year fixed sum loan agreement with HFL to fund the provision of dental aligners from a third-party supplier that I'll call "S". The cash price was around £1,500 and Miss R was due to pay back the agreement with monthly payments of around £60. She said she was initially provided 16 aligners and her next set of treatment was for 12 'touch up' aligners which was approved in August 2023. She said she was allowed two 'touch ups' per year and was due to have a scan in January 2024 for the next set.

S went out of business in December 2023, so Miss R contacted HFL to make a claim, requesting a full refund. HFL considered the claim as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ("s.75"). HFL initially said Miss R received the full set of aligners under the contract. It acknowledged S provided a 'lifetime' guarantee, but it didn't think Miss R met the conditions for it, so it declined the claim.

Following on from that, HFL looked into things further and accepted that Miss R may have met the conditions for the guarantee because she was approved 'touch up' treatment in August 2023. It therefore offered to refund Miss R what it said was the value of one set of 'touch up' aligners – £220. Miss R had already referred her complaint to the Financial Ombudsman by this point.

Our investigator looked into things and thought HFL's offer was fair, and it was not unreasonable of it to decline to refund the full cost of treatment.

Miss R didn't agree. She said she was going through a modified plan and not a new treatment plan. She highlighted various documents weren't available. She acknowledged the results wouldn't be guaranteed but said S had breached the contract by not completing her treatment. As things weren't resolved the complaint has been passed to me to decide.

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 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 Miss R 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 Miss R is unhappy with her treatment. I can't imagine how she must feel, but I thank her for taking the time to bring her 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 Miss R's request for getting her money back. But it's important to note HFL isn't the supplier.

S.75 is a statutory protection that enables Miss R 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.

HFL has broadly accepted Miss R's claim in one sense because it's offered her £220. So I've gone on to consider if there is persuasive evidence of a breach of contract or misrepresentation by S that means HFL should have offered more than it has when handling Miss R's claim. But I want to explain from the outset that I can only consider Miss R's complaint on that narrow basis – that is, whether it was fair and reasonable for HFL to respond to her claim by offering what it did.

Miss R entered into the agreement in March 2023, and it was expected to last a few months. She was not happy with the results of the treatment. Therefore, S provided her with some further 'touch up' aligners to try and improve the results for her in August 2023. Miss R said she was going to arrange further 'touch up' aligners in January 2024. She says she hasn't finished her treatment, and now cannot, as S is no longer in business. So she believes she should receive a full refund, or at least a significant portion back so she can pay for treatment elsewhere.

I've focussed on Miss R's breach of contract claim. Even if S 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 Miss R the treatment.

Implied terms

In cases such as this it is often complex to assess the quality of the service Miss R 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. Miss R has acknowledged she realised S couldn't guarantee those results.

Miss R has not provided supporting evidence such as an independent, expert opinion that sets out the treatment she paid for has not been done 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 to not uphold the claim on the basis of a breach of an implied term of the contract because I've not seen enough to determine the service S offered wasn't carried out with reasonable skill and care. I don't think the fact that S provided further treatment for refinement or 'touch up' in itself shows the original core treatment wasn't carried out with reasonable care and skill in line with the implied terms of the contract.

Express terms

I also need to consider what I think Miss R's contract with S agreed to provide in terms of treatment so I can determine whether there has been a breach of an express term of it. I don't have a contract signed by Miss R as I understand they were kept in an online application that's no longer available. So there's a lack of evidence. But it's not in dispute Miss R was due to receive a set of aligners when she entered into the contract in March 2023 and that she received and used them. I think the core contract was for those set of aligners that she was due to use for a few months.

As I've said above, Miss R was unhappy with the results of the core treatment and S agreed to supply another set of 'touch up' aligners in August 2023 – at no cost. Miss R said she received four months' worth of extra treatment with 12 aligners – due to finish in January 2024. She proceeded with that treatment and has shown us a screenshot when she was using aligner 10 out of 12 and had 26 days left on the treatment. This was around the time S went out of business.

While I appreciate Miss R 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 S's website from around the time Miss R entered into the contract. This says most treatment lasts between 4 to 6 months. It says if the customer hasn't achieved the results they want, and providing they've met certain conditions, they *might* be eligible for additional 'touch up' aligners. S gave Miss R a set of 'touch up' aligners. Miss R said this was essentially an extension of the original treatment. But I haven't seen evidence S would extend the original treatment.

I don't think the fact S gave Miss R further 'touch up' aligners shows there was a breach of any express terms of the contract. Further aligners seem to be part of S's aftercare offering for further refinement (subject to dentist approval). It's not clear whether S gave Miss R further aligners because it thought the results could be improved upon or whether it was for some sort of failing on its side. We don't have sufficient evidence to conclude.

While I'm sympathetic Miss R wasn't happy with the results, I don't think HFL had persuasive enough evidence to show S breached express terms of the contract in respect of the results she achieved.

Guarantee

On S'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.

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 Miss R registered her aligners; wore them as prescribed; completed virtual check ins; and stayed up to date on payments. It also said after the core treatment Miss R was required to buy retainers every 6 months at her own cost 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.

Miss R thinks she should be provided with a full refund of the treatment costs. There is a potential breach identifiable because Miss R 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 Miss R began her treatment in March 2023, and only if Miss R had 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 Miss R with a full refund to recompense her for the potential breach that has happened. 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 it has offered.

There are many ways in which the guarantee could have ceased to be of use to Miss R. Firstly, she may not have done what she needed to in terms of buying retainers. The retainers were not supplied under the original contract – Miss R needed to buy them separately. S 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.

I accept there's a potential loss, but it's not straight-forward to establish the value of the perceived loss. And I'm required to resolve the complaint quickly and with minimum formality. As I've explained, I don't think HFL is required to remedy a failure in relation to the core treatment or results Miss R received. But I think there's a possible loss because Miss R may have been able to utilise the guarantee.

HFL shared information from S 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. Considering we'll never know if Miss R would have continued to receive any benefits under the guarantee, and taking into account she's received the core treatment, I think HFL is acting fairly by offering 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.

While I am sorry to hear Miss R is unhappy, with s.75 in mind, I don't find there are grounds to direct HFL to refund her the full cost of the treatment. I think its offer is broadly fair in the circumstances. I should, however, point out Miss R doesn't have to accept this decision. She's also free to pursue the complaint by more formal means such as through the courts.

My final decision

For the reasons given above, my final decision is that Healthcare Finance Limited should, to the extent not done so already, pay Miss R £220.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 25 December 2024.

Simon Wingfield
Ombudsman