DRN-5274130

The complaint

Miss S 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

At the end of October 2023 Miss S 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. It was expected that the treatment would last for a few months, but the supplier went into administration in early December 2023 when Miss S had used about half the aligners she'd been sent.

A few days after the supplier had gone into administration, Miss S contacted HFL to raise concerns about how she was supposed to conclude her treatment without the customer service or possibility of the lifetime guarantee scheme. HFL ultimately considered her concerns as a claim for a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ('Section 75').

Miss S later said that it was around this same time when the aligners began to be ill-fitting and ultimately she was unable to continue using them a short time thereafter. She also couldn't get any support from the supplier, which had gone out of business. And so she was unable to conclude the treatment she had paid for with the loan from HFL.

HFL accepted that Miss S would be due a partial refund, provided she returned the unused aligners to it. Unhappy with that response, and querying why that would be necessary, Miss S brought a complaint to us.

Our investigator considered how HFL had acted in light of its responsibilities under Section 75. She thought that, as Miss S had been unable to conclude the treatment she had paid for, HFL ought to refund the costs of the treatment in full.

HFL did not accept that, and so the case has been passed to me to make a final decision.

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.

Having done so, I'm going to uphold the complaint and will explain why.

Section 75 enables Miss S 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, and indeed HFL has accepted Miss S'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

a full refund of the treatment costs when handling Miss S's claim.

Firstly, I think it is clear that Miss S did not finish her treatment, and was unable to. She has sent this service photographs of the unused aligners, and I don't think she is attempting to both secure a refund and continue using the aligners.

HFL has handled this claim with very clear reference to the supplier's refund policy, which, after the first 30 days of treatment, allowed only for a partial refund, calculated on the basis of the number of aligners unused.

However, it is important to acknowledge here that Miss S could not conclude the core treatment as a result of the supplier going out of business and therefore being able to provide the services promised as part of the contract. In this instance, I think it highly likely that the supplier would have assessed the situation, and Miss S's teeth, again and then provided alternative aligners. Without that, she was unable to continue and conclude the treatment she had paid for, through no fault of her own. I note that she was only halfway through her aligner course at the point that the supplier went into administration and had to stop using the aligners shortly thereafter.

Whilst I recognise that this particular treatment is remote and to a reasonable extent self-directed, the supplier's marketing information confirmed that it would provide some ongoing guidance and support during the core treatment. And, in my experience, would have addressed the issue of the set of core aligners not fitting. So HFL's reliance on the supplier's refund policy isn't quite right, as that isn't what I think Miss S would have asked for, or received, in these circumstances, had the supplier still been in business.

HFL also queries whether Miss S choosing to continue to use the aligners "unsupervised" could have led to the problems with them fitting. And so, therefore, Miss S somehow not wearing the aligners as prescribed was at the heart of that failing. However, I don't think it was at all unreasonable of her to attempt to carry on with the course of treatment after the supplier went into administration. The core aligners had been prescribed for her by the supplier, and so continuing to wear them until problems arose seems a reasonable course of action to me. Miss S could not conclude her treatment as the supplier went out of business. Whether that was due to a lack of "supervision" or as a result of what HFL describes as "manufacturing issues" is largely immaterial.

In the round, because Miss S wasn't able to complete the treatment she paid for, I do think there is a breach of contract identifiable here. What is more nuanced is what fair compensation for that breach of contract should look like in this instance.

I have thought carefully about what, if any, benefit Miss S might have derived from using three quarters of the aligners provided. Overall, and given that more than six weeks elapsed between her raising her concerns with HFL and it responding to her, I don't think it likely that there would have been any significant progress. And by this point I think it is likely any that had happened would have regressed in any event. As she was only halfway through her treatment at the point that the supplier went out of business, it wasn't possible for her to buy retainers at that stage. And would likely have been inadvisable given the point in treatment she was at.

In fairness to HFL, I've also considered whether Miss S could reasonably have transferred her treatment to a different provider at the point that this supplier went into administration and so found a way to finish it. But I think it is highly unlikely that an alternative provider would have taken on her treatment plan halfway through. Whether in December 2023 or at the time of writing, I think she is highly like to have to start afresh with a new treatment plan if she wishes to do so.

And so, I conclude that there is a breach of contract here and that the fairest way to redress that breach is with a full refund. In saying that, I underline my remit of resolving disputes quickly and with the minimum formality.

Putting things right

In order to provide fair compensation to Miss S for the breach of contract, I direct HFL to:

1) End the credit agreement with nothing further for Miss S to pay

2) Refund Miss S all sums she has paid under the agreement

3) Interest should be added to the amounts identified in 2) at a rate of 8% a year simple from the date each payment was made to the date of settlement*

* If Healthcare Finance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss S how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I uphold this complaint direct that Healthcare Finance Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 1 April 2025.

Siobhan McBride
Ombudsman