DRN-5353148

The complaint

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

What happened

In July 2023 Mrs C 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 £1,750 and Mrs C was due to pay back the agreement with monthly payments of around £75.

S went out of business in December 2023, so Mrs C contacted HFL to ask for help. She indicated she was near the end of her plan and her teeth looked like they needed further alignment. She said she'd no longer be able to utilise the guarantee and asked if she'd still receive a teeth whitening service for free. HFL considered the claim as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ("s.75"). HFL said in accordance with S's terms and conditions Mrs C could return unopened aligners for a pro-rata refund. It also told her where she could buy retainers from.

Mrs C decided to refer her complaint to the Financial Ombudsman. She said the results were unsatisfactory and she'd need to go elsewhere. She said another dentist had informed her she had gum disease and bone issues from wearing the aligners. She said she sourced retainers elsewhere and requested the debt was written off.

Our investigator looked into things and thought HFL's offer was broadly fair.

Mrs C didn't agree. She reiterated she should have had a lifetime guarantee to achieve results. She said she was out of pocket and left with teeth that could end up worse than when she started. She said she used all the aligners and explained again about the pain, stress and anxiety caused. She queried why S wasn't regulated like a proper dentist.

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 C 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 C 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 Mrs C's request for getting her money back. But it's important to note HFL isn't the supplier.

I should point out I'm unable to make an award for loss of amenity so if Mrs C is looking to pursue this aspect of the complaint, she may wish to seek legal advice because I can't cover it in a decision.

S.75 is a statutory protection that enables Mrs C 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 Mrs C's claim in one sense because it offered her a pro-rata refund. 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 Mrs C's claim. But I want to explain from the outset that I can only consider Mrs C'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.

Mrs C entered into the agreement in July 2023, and it was expected to last a few months. She said she was not happy with the results of the treatment and that she didn't receive all the services she'd paid for. So she believes she should be able to end the agreement. I've therefore focussed on her complaint about how HFL dealt with her breach of contract claim.

HFL's pro-rata offer

Mrs C was in a difficult position because she was partway through treatment when S went out of business. Mrs C, understandably, would have been usure what to do, but I have to bear in mind she decided to continue the treatment. And it's mainly a self-directed treatment so this was possible. When HFL responded it offered her a pro-rata refund based on what it thought was fair for someone partway through treatment. I don't think that was necessarily unreasonable. I suspect that would have been acceptable for certain customers. But I appreciate it became unacceptable because by the time the offer was made she'd used all the aligners.

Implied terms

In cases such as this it is often complex to assess the quality of the service Mrs C 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 C 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 S offered wasn't carried out with reasonable skill and care.

While I'm sympathetic, for the reasons given above, I don't find there are the grounds to say HFL acted unreasonably by declining the claim in relation to a breach of an implied term

based on what it had at the time.

Express terms

I need to consider what I think Mrs C'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 Mrs C 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 Mrs C was due to receive a set of aligners when she entered into the contract in July 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.

With regards to the results, I think it likely Mrs C signed an agreement with S 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 C would have understood S couldn't guarantee specific results or outcomes. The consent form sets out that there could be gum irritation or acceleration of gum disease during treatment. And it also sets out that there could be risks such as discomfort and sensitivity. So even if Mrs C 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 C 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 Mrs C entered into the contract. This says most treatment lasts a few 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, which I'll come on to.

While I'm sympathetic Mrs C 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.

Mrs C also said she wouldn't be able to receive retainers from S because it went out of business. But HFL let Mrs C know where she could buy retainers, which weren't included within the original contract. This seems reasonable because Mrs C would have always needed to pay for them herself. She's mentioned a teeth whitening product, but I couldn't see that was present on the loan agreement. So it's not clear HFL had sufficient evidence teeth whitening was provided as part of the contract.

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. As I said above, Mrs C has indicated she may have sought this further support.

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 C 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 Mrs C 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.

Mrs C thinks she should be able to end the agreement. There is a potential breach identifiable because Mrs C can no longer use the guarantee. However, given the stage of treatment she reached, 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 C began her treatment around July 2023, and only if Mrs C had not opened or used the aligners. Outside of the 30 days S said it would offer a pro-rata refund for unopened and unused aligners – which is what HFL agreed to offer in its final response. I don't think it would be fair or reasonable for me to tell HFL that it should now provide Mrs C with a full refund, or for it to end the agreement to recompense her for the potential breach that has happened given she went on to complete her core treatment. 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 if it should offer something else.

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

Even if I accept there's a potential loss, 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, based on the evidence, I don't think HFL is required to remedy a failure in relation to the core treatment or results Mrs C received. But I think there's a possible loss because Mrs C 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. Taking into account she's received the core treatment, and it looks like she would have met the conditions for the guarantee, I think HFL should offer this price reduction to remedy any potential loss. I think it would save Mrs C having to raise a separate complaint now the core treatment is finished, and it seems like a fair compromise given I think the total amount paid was substantially for the core treatment.

Finally, I note Mrs C may have stopped making payments towards the agreement. I primarily need to consider what happened up to the point HFL issued its final response letter because those events relate to what it has had the chance to consider. Given the circumstances, HFL may wish to consider removing any adverse information if Mrs C clears any arrears (if there are any). But, for the avoidance of doubt, given I don't know exactly what's happened, and that these events, if relevant, likely mostly happened after HFL issued its final response, I'm not intending to decide that aspect within the decision. If Mrs C is unhappy with how HFL treats her going forward, it may be something our service is able to consider separately.

Mrs C responded to say other than still having gum disease and wishing she never signed up she had nothing to add. HFL responded to say it accepted the provisional 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.

Seeing as though neither party has submitted anything materially new for me to consider, while I'm sorry to hear why Mrs C is still unhappy, I don't find I have the grounds to depart from the conclusions I reached in my provisional decision.

My final decision

For the reasons given above, my final decision is that I uphold this complaint and direct Healthcare Finance Limited to pay Mrs C £220.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 25 March 2025.

Simon Wingfield
Ombudsman