DRN-5369528

The complaint and what happened

Miss W 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.

I've included relevant sections of my provisional decision from February 2025, which form part of this final decision. In my provisional decision I set out the reasons why I was planning to uphold this complaint in part. In brief that was because I thought that Miss W had suffered a loss as a result of a breach of the contract between her and the supplier.

I asked both parties to let me have any more information they wanted me to consider. HFL accepted my provisional findings and Miss W didn't respond.

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 upholding it in part, and I'll reiterate why, but first I've included here the relevant sections of my provisional decision:

> ***"What happened***
>
> *In February 2023 Miss W 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 around three months. However, it does seem that there were some problems with the aligners and Miss W got further sets from the supplier.*
>
> *Miss W was not happy with the fit of some of the aligners or the results of the treatment and told the supplier that she wanted a refund. It would seem that in response to that, the supplier agreed to provide her with a further set of aligners when it went into administration in December 2023.*
>
> *In December 2023, Miss W therefore contacted HFL to make a claim, requesting a full refund of all treatment costs, which it considered as a potential breach of contract under Section 75 of the Consumer Credit Act 1974 ('Section 75'). HFL rejected her claim and said that Miss W had not done all she needed in order to qualify for the lifetime guarantee scheme offered by the supplier. So there had been no breach of contract. Unhappy with that response, Miss W brought a complaint to us. She told us that she was paying for a service she had not received from the supplier, and her teeth were in fact less straight than they had been at the start.*
>
> *Our investigator considered how HFL had acted in light of its responsibilities under Section 75. Ultimately, she thought it was not unreasonable of it to have declined to refund the cost of treatment.*
>
> *Miss W did not accept that, and so the case has been passed to me to make a final decision.*

What I've provisionally decided – and why

I've considered all the available evidence and arguments to provisionally decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I'm currently planning to uphold the complaint in part.

Section 75 enables Miss W 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 W'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 her something when handling Miss W's claim. And if so, what that should be.

But I want to explain from the outset that I can only consider Miss W's complaint on that narrow basis – i.e. whether it was fair and reasonable for HFL to respond to her claim as it did. I cannot hold it responsible for Miss W's experience with the supplier or her understandable feelings about the treatment. I understand how strong those feelings are, but HFL is not the supplier. It is not responsible for everything the supplier did, or failed to do. 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 W's concerns are that she was still undergoing treatment, and did not receive the service that was agreed upon. So she believes she should receive a full refund as what she paid for has not been provided.

To be clear, I don't accept that Miss W hadn't completed her treatment when the supplier went into administration, despite the fact that it does seem there were problems with the core set of aligners which led to further sets being provided. It's important to remember that the treatment itself is not something that is ongoing until the customer is satisfied with the results. It's also important to bear in mind that, if I conclude that the supplier would most likely have provided Miss W with some further treatment or intervention, that doesn't necessarily mean that equates to a breach of contract which HFL must now respond to by providing a full refund. I will explain.

In cases such as this it is often complex to assess the quality of the service Miss W 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 W 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'). 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 refuse to refund the cost of treatment.

I need to consider what I think Miss W'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 W 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 W 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 W 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 think it forms the basis of the written contract between her and the supplier, and have considered the content of it carefully.

Importantly, the final section before the customer was required to sign set out that:

> *"I understand that [the supplier] cannot guarantee any specific results or outcomes."*

I'm satisfied the supplier never said that it could guarantee her satisfaction with the results of the treatment. That means I don't find a breach of any explicit terms of the contract between Miss W and the supplier. But that is only the first question I have considered.

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 W 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.

However, whether Miss W may have been able to access some further support via the supplier's lifetime guarantee scheme is a more complex one. What that offered was the possibility of having aligner touch-ups every year, provided that Miss W met certain criteria, and that a dentist approved the provision of the touch-up aligners. So it was far from guaranteed. My understanding is that a dentist would only approve the provision of more aligners if s/he assessed that further progress to straighten the teeth would be possible through a touch-up aligner.

On paper, it seems clear that Miss W did not meet all of the eligibility requirements for the supplier's lifetime guarantee. But I can also see from the terms and conditions that it was possible for customers to re-qualify for the guarantee scheme in certain circumstances. Based on photographic evidence provided by Miss W, I find that she did complete at least one 'smile check in' with the supplier. I acknowledge that she hadn't ordered and paid for retainers, but as the evidence suggests she was still being provided with sets of aligners in December 2023, that isn't surprising. Overall, in this case, I am persuaded that it is more likely than not that the supplier would have supported Miss W in re-qualifying for the guarantee scheme. In saying that, I am particularly mindful of the email from the supplier dated 6 December 2023 saying that a further set of aligners were being sent to her.

But, given the stage of treatment she was at, that guarantee would never have given her the option of a refund of the treatment costs. It's clear from the information I have that a refund was only available for the first 30 days after Miss W began her treatment at the start of 2023, and only if Miss W had not opened or used any of the aligners. So it would not be fair or reasonable for me to tell HFL that it should now provide Miss W with a full refund to recompense her for the supplier going into administration. The supplier itself would never have been contractually obliged to do that.

Based on the evidence available to me, I am currently minded to direct HFL to compensate Miss W with the value of a set of aligners, which is essentially the loss of one year's 'use' of the lifetime guarantee . I am satisfied that £220 is a fair estimate of that cost, as I have seen evidence provided by the supplier to HFL to confirm that.

Hypothetically, it is possible that Miss W could have requested and received a set of aligners every year for the rest of her life – if the supplier had chosen to include her in the guarantee scheme. But that hypothetical possibility doesn't lead me to conclude that it would be fair for me to direct HFL to provide more than the value of one year's benefit from the guarantee scheme.

There are many ways in which the lifetime guarantee could have ceased to be of use to Miss W. Firstly, she may not have done what she needed to in terms of continuing to buy retainers from the supplier in future years. And crucially, 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.

So taking that into account, and noting the informal remit of this service to resolve disputes, I currently think the fair and reasonable outcome in this case is for HFL to recompense Miss W

in the way I've described above. Identifying exactly how many annual touch-up aligners Miss W may have asked for; may have qualified for; and may have been approved for, is pretty much impossible.

Although I am very sorry to hear of Miss W'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. However, I am currently minded to uphold the complaint in part and direct HFL to treat her as if she were eligible for the lifetime guarantee. At this point, I plan to direct it to refund her in the amount of £220."

As mentioned above, HFL accepted my provisional decision and Miss W has not responded. Therefore I have seen nothing which alters my findings as set out therein. And so it follows that I uphold this complaint in part.

Putting things right

In all the circumstances I consider that fair compensation should lead HFL to refund Miss W the amount of £220, the estimated value of one set of touch-up aligners.

It can deduct that amount from any sums owed to it by Miss W.

My final decision

For the reasons I've explained, I uphold this complaint in part and Healthcare Finance Limited must put things right as set out above.

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

Siobhan McBride
Ombudsman