DRN-4138918

The complaint

Miss R complains about how Healthcare Finance Limited ('HFL') handled a claim she made about a treatment she financed with it.

What happened

Miss R financed dental alignment treatment from a provider ('the supplier') using a fixed sum loan from HFL.

In summary, Miss R says:

- the aligners did not fit properly and were defective (causing damage to her teeth) and the supplier provided her with a replacement when she wanted a refund;
- she got her money back via a chargeback process but HFL is still chasing her for payment – she wants it to stop doing so and award her compensation for harassment.

HFL says that Miss R was given a second set of aligners by the supplier to resolve the issue with the fit. And that the supplier's expert team confirmed that the aligners could not have caused the damage to Miss R's teeth she has claimed. It says that Miss R's account is in arrears and it is therefore entitled to send her correspondence about this.

Our investigator looked at the complaint Miss R made to HFL about how it handled things. The investigator considered HFL's liability for the product she paid for in light of Section 75 of the Consumer Credit Act 1974 ('Section 75') and the relevant law including the Consumer Rights Act 2015 ('CRA'). She didn't consider there to be persuasive evidence that there was a misrepresentation or breach of contract which HFL needed to remedy in respect of the treatment. She also didn't think that HFL had acted unreasonably in the way it pursued Miss R for payment.

Miss R disagrees. In response to the view she says, in summary:

- she was legally entitled to a refund not a replacement and the supplier should not have told her she could only have a replacement – she felt pressured into accepting this;
- the second set of aligners were also faulty so this should void her finance agreement – she won her chargeback so HFL do not have the right to chase her for payment; and
- HFL has harassed her and acted unreasonably in the way it pursued the debt – misleading her into thinking they had sent matters to a debt collector when they had not.

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 won't be commenting on everything the parties have submitted – this isn't intended as a discourtesy but reflects the informal nature of this service in resolving disputes. I have focused on the key matters which I consider to be relevant here.

I know Miss R has highlighted information she found online – while some wider information can be relevant it is important to note that I consider each case on the individual circumstances.

In order to determine what is fair and reasonable I have considered the relevant law and good practice. In this case Section 75 is relevant as in certain circumstances it allows Miss R to hold HFL responsible for a breach of contract or misrepresentation in respect of an agreement for goods or services she has financed with it.

Section 75 has certain technical requirements in order for there to be a valid claim. I am satisfied those are in place here. So, in considering how HFL responded to Miss R's claim I have gone on to consider if there is a likely breach of contract or misrepresentation by the supplier which HFL is fairly responsible for putting right.

I consider the focus of Miss R's claim to HFL is not misrepresentation – but breach of contract in respect of an alleged substandard product and/or substandard care. So I do not consider it necessary to consider misrepresentation in any depth here – for completeness, I don't see evidence of a misrepresentation in any event.

In considering breach of contract I consider the express terms of the contract along with any implied terms by law. In the case of implied terms the CRA is relevant in that it says goods should be of '*satisfactory quality'* and a service should be provided with reasonable '*care and skill'*.

Essentially, it appears Miss R is unhappy that when she had issues with the fit of her aligners the supplier offered her a replacement rather than a refund.

We don't appear to have the contract Miss R agreed with the supplier for the aligners here – but we have managed to locate an archived version of the terms. In the absence of other information it seems reasonable to rely on these as a likely reflection of the suppliers policies in respect of the agreement it had with Miss R. However, after considering these I don't see any terms which would explicitly allow her to obtain a refund in the circumstances. In the event of a faulty product (once 30 days from sale has elapsed) the terms say that a customer would only be entitled to a refund if the product couldn't be repaired or replaced. In this case (and assuming the product was faulty) the product was replaced so the supplier appears to have complied with the express terms of its contract.

I consider it unlikely that any other express terms – should they exist – would give Miss R an unequivocal right to a refund in the circumstances she has described. I also note that there are unanswered questions about the issues with the product or service (which I go into later in this decision) that would make it difficult to conclude that the supplier had breached an express term of its contract in respect of faulty products/substandard service in any event.

I have considered the implied terms under the CRA. However, with a complex treatment such as this it is not straightforward to determine if the dental services were not provided with reasonable care and skill or if the products supplied were not of satisfactory quality. This

would likely be judged with reference to the particular expectations within the dental industry – something I am not an expert on.

Furthermore, there doesn't appear to be an admission by the supplier that either of these were the case – and it isn't clear if its offer to replace the aligners was because it accepted these were faulty or from a customer service point of view. I also note that Miss R has claimed that the product caused damage to her teeth – but the supplier has come back to state that this is part of normal anatomy and could never be caused by the aligner.

In the absence of persuasive evidence of a faulty product or a service that was provided without reasonable care and skill (such as from an expert report by an independent body) I am unable to fairly conclude that there has been a breach of contract by the supplier here leading to a loss of value in the service received and damage to Miss R's teeth as she has claimed.

However, even if I were to accept that the supplier agreed the issues with the fit of the aligner were because it was faulty or the service was provided without reasonable care and skill (which I do not) the remedy for this (considering the relevant provisions of the CRA and putting aside the contested allegation of personal injury) would likely be repeat performance or replacement. So in providing a replacement the supplier here has likely remedied any potential breach of contract in any event.

I know Miss R has suggested that for a bespoke item she would have been entitled to a refund under consumer law. But after considering the relevant law I don't think that is the case here. The right to reject goods or services for a refund occurs in specific circumstances (such as where the short term right to reject has been exercised or where a replacement/repeat performance fails). However, I don't consider those circumstances to apply here.

I note Miss R has indicated the replacement aligner also didn't fit properly. However, this doesn't appear to have been raised by her initially. In any event, for similar reasons to those stated above I consider it difficult for me to determine that the replacement aligner was not of satisfactory quality here. I am not an expert – and based on the evidence I have here I don't think I am in a position to fairly say that the replacement product was faulty or provided (as part of the overall dental service) without reasonable care and skill.

In conclusion, I don't think there is persuasive evidence to show a breach of contract which the supplier failed to remedy. As a result I don't think that HFL in considering the Section 75 claim should have refunded Miss R or stopped pursuing her under the credit agreement.

Miss R has noted that she won a chargeback. I don't have the all the details about why this was the case – but the chargeback rules operate differently to Section 75 and there are various reasons a dispute might succeed. So I don't think this in itself means that HFL should have upheld her Section 75 claim or prevents it from recovering money owed under the finance agreement.

Because I don't think HFL acted unfairly in not upholding the Section 75 claim it follows that I don't think it unreasonable to have pursued Miss R for the money she owes under the agreement to date. From what I have seen there is not persuasive evidence that HFL has harassed Miss R as she has indicated. I know that she has mentioned that HFL initially mentioned involving a debt collector and then dropped this (or apparently did not instruct it) – but I don't think this alone is enough to conclude an award of compensation is reasonable in the circumstances here.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 25 August 2023.

Mark Lancod
Ombudsman