



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

District Court

[2023] NZDT 251

**APPLICANT**      **MX**

**RESPONDENT**    **X Ltd**

**The Tribunal orders:**

The claim is dismissed.

**Reasons:**

1. MX contracted X Ltd to provide dental treatment to straighten her teeth. Dr T recommended a treatment using [orthodontic product]. Treatment continued for three years, after which time, Dr T advised the treatment plan was complete, however the result was not as expected.
2. MX raised her concerns with Dr T and other parties. Initially MX was advised continued treatment would be at an additional cost, however Dr T then offered to continue treatment for free. MX however claims she had lost faith in the services of Dr T and has claimed in the Disputes Tribunal for a full refund of the price paid of \$8900.
3. In addition, MX claims she did not get the treatment plan she paid for. MX believes she paid for an [orthodontic product] full plan however only received [orthodontic product] moderate. On this basis, MX also believes she is entitled to a full refund.
4. The issues for the Tribunal to determine are as follows:
  - i. Did Dr T provide a service with reasonable care and skill that was fit for the purpose?
  - ii. If there was a failure to comply with the guarantees or to achieve the agreed outcome, did MX give Dr T an opportunity to provide a remedy? If Dr T offered a remedy, and MX refused to accept the offer, is MX entitled to a refund of the price paid?
  - iii. Did MX receive the service for which she paid? Does this entitle MX to a full refund?

***Did Dr T provide a service with reasonable care and skill that was fit for the purpose?***

5. The Consumer Guarantees Act 1993 provides a guarantee that services will be carried out with reasonable care and skill and that any service provided will be fit for the purpose for which it is offered.
6. It is agreed the result achieved is not as expected after the three year treatment plan, although Dr T states scans and reviews have revealed significant improvement over the years. It has also been confirmed by [orthodontic practice] that further work remains to be done. However

there is no evidence the failure to achieve the desired result was due to a failure of Dr T to provide a service with reasonable care and skill, or that the [orthodontic product] was not fit for the purpose. [Orthodontic practice] mention in their letter dated 23 February 2021 that continuing treatment with [orthodontic product] was not ideal and that fixed upper and lower braces were now more appropriate, however they do not state [orthodontic product] should not have been recommended for MX in the first instance.

7. Regardless of the above, it is apparent the three year treatment was insufficient for MX to achieve the desired and expected result. Although there is no evidence [orthodontic product] itself was not fit for the purpose, I find it likely a three year treatment plan was not suitable for MX's needs and therefore was not fit for the purpose.

***If there was a failure to comply with the guarantees or to achieve the agreed outcome, did MX give Dr T an opportunity to provide a remedy? If Dr T offered a remedy, and MX refused to accept the offer, is MX entitled to a refund of the price paid?***

8. The Consumer Guarantees Act provides remedies in the event of failures to comply with a guarantee. If services fail to comply with a guarantee, the consumer may require the supplier to provide a remedy. If the supplier fails to provide a remedy within a reasonable period of time, the consumer may have work completed elsewhere and recover reasonable costs from the supplier. Alternatively, if the failure is deemed to be substantial, the consumer may be entitled to a refund.
9. In this case, there is no evidence the failure is substantial. Dr T has stated there has been a significant improvement over time. There is no evidence this is incorrect or that any more than further treatment is required to complete the process of straightening the teeth.
10. As the failure is not substantial, I find MX is not entitled to a refund. MX could however recover costs from Dr T of having work completed by another dentist if Dr T failed to provide a remedy. However, Dr T made an offer to MX in June 2021, in writing and verbally, to continue work at no further cost. MX has not accepted this offer as she claims she has lost faith.
11. The Consumer Guarantees Act contains rights and obligations for both parties. MX's obligation was to give Dr T an opportunity to carry out remedial work. As MX has not permitted Dr T to do that work, I find she is not entitled to recover costs of alternative treatment or obtain a refund as requested.

***Did MX receive the service for which she paid? Does this entitle MX to a full refund?***

12. MX believes she paid for a five year treatment plan of [orthodontic product] Full, however she only received a three year plan of [orthodontic product] Moderate. The type of plan chosen was not put in writing. On that basis MX also believes she is entitled to a full refund.
13. Dr T states the different plan names are for the benefit of the dentist only, and are not chosen by the patient. The appropriate plan for each patient is assessed by the dentist after a clinical analysis of each patient's needs. In this case, Dr T states she assessed MX required a three year plan.
14. As the length of treatment was not put in writing, I find MX has not proven she received a lesser treatment time than agreed. The object of the treatment however is not disputed, and as that objective was not achieved, as stated above, Dr T has agreed to continue treatment free of charge.
15. As Dr T has complied with her obligations under the Consumer Guarantees Act, and as there is no evidence the failure was substantial in any way, I find the claim must be dismissed.

**Referee: K. Edwards**

**Date: 28 April 2023**



## Information for Parties

### Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

### Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact.

Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

### Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

### Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.