

The complaint

Mr S complains that Omni Capital Retail Finance Limited won't refund to him the money that he's paid under a fixed sum loan agreement for an HGV driving course.

What happened

Mr S entered into a fixed sum loan agreement with Omni Capital, that he electronically signed in September 2016, to pay for an HGV driving course. The course was described in the loan agreement as: *"Full Cat C and Cat C+E training with initial CPC and Pass Protection Retest"* and cost £4,597 which Mr S agreed to repay by a repayment of £128.78 and then 47 monthly repayments of £128.83. He also paid a deposit of £230.

Mr S says that he failed the medical that was required for the course so couldn't take the course and stopped paying for it. His debt was transferred to a debt recovery agent and a default was recorded on his credit file. Mr S complained to Omni Capital in December 2019 but it said that he hadn't contact the course provider within 180 days of the course commencement with evidence of his failed medical so no refund was possible and the default on his credit file was a true reflection of his account status.

Mr S wasn't satisfied with its response so complained to this service. Our investigator recommended that his complaint should be upheld. He said that he hadn't seen any literature or the terms and conditions of the course that advised that Mr S had to contact the course provider within 180 days. He also said that the course provider couldn't say for certain that Mr S had passed his medical. He said that it was clear that Mr S had not had the benefit of the course and he wasn't persuaded that he was liable for the course fees. He recommended that Omni Capital should: waive the outstanding balance on the finance agreement; refund any monthly payments made (with interest); and remove any record of the finance agreement from Mr S's credit file.

Omni Capital has asked for this complaint to be considered by an ombudsman. It says, in summary, that:

- Mr S has advised that he received his provisional licence from the DVLA but he wouldn't have been able to obtain a licence if he did not pass his medical;
- the course provider's terms and conditions state that if a customer does not pass the medical they need to send the DVLA letter to the course provider within 180 days and it will cancel the course but Mr S never produced a letter; and
- Mr S took three years after the loan went live to contact it.

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 agree with the conclusions reached by the investigator for these reasons:

- Mr S used credit in the form of a fixed sum loan agreement with Omni Capital to pay for the training course;
- in certain circumstances, section 75 of the Consumer Credit Act 1974 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier;
- to be able to uphold Mr S's complaint about Omni Capital, I must be satisfied that there's been a breach of contract or misrepresentation by the course provider and that Omni Capital's response to his claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of Mr S's claim under section 75 as only a court would be able to do that;
- this is a finely balanced complaint as there's little evidence to show what happened and the course provider has stopped trading;
- Mr S says that the medical was arranged by the course provider so it would have received the result of it and I'm not persuaded that it's likely that he would have agreed to pay £4,597 for the course, taken the medical and then not started the course unless he'd failed the medical;
- Mr S hasn't been able to provide any documentary evidence to show that he failed the medical but Omni Capital hasn't provided any documentary evidence to show that he passed the medical;
- there doesn't seem to be any dispute that Mr S didn't start the course or that he's received no benefit from it – and the course provider has stopped trading so is no longer able to provide the course to him;
- Mr S cancelled his direct debit for the loan repayments in about March 2017 and stopped making payments to Omni Capital – it transferred his debt to a debt collection agency in January 2018 – and a default has been recorded on Mr S's credit file;
- our investigator recommended that Omni Capital should waive the outstanding balance on the finance agreement, refund any monthly payments made (with interest), and remove any record of the finance agreement from Mr S's credit file – and Mr S has said that he's happy with that outcome;
- I consider that the investigator's recommendations are fair and reasonable in these circumstances, and I find that Mr S's complaint should be upheld and that Omni Capital should take the actions described below.

Putting things right

I find that Omni Capital should refund to Mr S the monthly repayments that he's made to it under the fixed sum loan agreement (with interest) - but not the deposit of £230 that he paid to the course provider for the course. I find that it should then waive the outstanding balance of Mr S's account and end the fixed sum loan agreement at no cost to Mr S.

I find that it should also remove any information about the fixed sum loan agreement from Mr S's credit file.

My final decision

My decision is that I uphold Mr S's complaint and I order Omni Capital Retail Finance Limited to:

1. Refund to Mr S the monthly repayments that he's made to it under the fixed sum loan agreement.
2. Pay interest on that refund at an annual rate of 8% simple from the date of each payment by Mr S to the date of settlement.
3. Waive the outstanding balance of Mr S's account and end the fixed sum loan agreement at no cost to Mr S.
4. Remove any information about the fixed sum loan agreement that it's recorded on Mr S's credit file.

HM Revenue & Customs requires Omni Capital to deduct tax from the interest payment referred to at 2 above. Omni Capital must give Mr S a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 July 2021.

Jarrold Hastings

Ombudsman