

The complaint

Mrs B complains that Omni Capital Retail Finance Limited will not let her out of an arrangement to pay for an educational course for her child.

What happened

In November 2017 Mrs B says she was sold a 'cancel whenever' arrangement for an online education course for her child with a view to using it for the final year before exams. Omni says she took out a Fixed Sum Loan Agreement over five years with it to pay for this online educational course supplied by the Course Provider (another company).

In June 2018 Mrs B who no longer wanted to use the course emailed in to cancel the course. She also described that she'd been completely misled. She says it was only then she discovered that there was a five-year loan paying for the course. And she was told she couldn't cancel or get out of the agreement. Mrs B stopped paying. Omni have since handed over the outstanding amount to a debt collection firm who have been asking Mrs B to pay.

Mrs B complained but Omni say it's done nothing wrong. So Mrs B brought her complaint here.

Our Investigator upheld Mrs B's complaint, but Omni didn't agree and pointed to the paperwork from the sale. So the complaint has been passed to me to decide.

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.

Mrs B says that having learned about the educational course she expressed an interest in learning more about it, and she met with a representative in November 2017. By the end of this meeting Mrs B had purchased an educational course for children. It appears the representative was acting for both the course provider and Omni during the sales process. The total price of the course was £350 of which £3540 was paid for with a loan from Omni which was arranged by the representative.

Mrs B has been very clear and consistent in her representations that during the meeting with the representative she understood the situation was that this was a service which could be cancelled. She also makes clear that she only needed the course for the academic year as her child approached exams.

Repeatedly Mrs B has said that she didn't understand that she was entering a five-year loan agreement. Mrs B does agree she entered an arrangement but believed she was paying towards it on a monthly basis and she could cancel when she wanted to. She makes the point that her child (who this course was for) would be twenty-two years old at the end of the term of the loan arrangement. So clearly didn't need something that was to last that long.

It is not exactly clear the situation of the representative who sold this course other than it seems they were representing the Course Provider and possibly Omni also. It may be that Omni didn't sell Mrs B the course or the loan directly but that doesn't mean that it hasn't responsibilities to Mrs B. This is due to certain protections afforded to consumers by the Consumer Credit Act 1974. The loan Mrs B entered with Omni is regulated by this Act, and there are two sections of the Act which provide her with some protection namely section 56 and section 75.

In summary section 56 has the effect of making the representative who sold the loan here, the agent of Omni during the "*antecedent negotiations*" leading up to Mrs B entering into the loan agreement, beginning with the first contact she had with the Course Provider. In essence this means Omni can be held responsible for the things that were done or said during the sales process. Section 75 has the effect of allowing Mrs B to hold Omni liable for breaches of contract by the course provider, or misrepresentations made during the sales process by the representative in this case. As Mrs B makes clear she believes to be the case in her representations.

Omni has pointed to a number of documents which were signed (electronically and by hand) by Mrs B on the day in question. Omni's position essentially is that the documentary evidence from the point of sale is very strong and is, in short, the end of the matter as Mrs B agreed to everything in those documents. But I don't agree that position is a complete or fair appreciation of what happened here. What was said by the representative is also important as the discussion will have started before the paperwork was signed. And Mrs B would have considered what the representative said in her decision making during the sale and during the completion of any documents.

Mrs B has been consistent in what she says about believing she could cancel when she wanted to. She says she believed this because this is what the representative told her. And events do support this as it is clear that she emailed in saying she was cancelling the arrangement. And I note in response the Omni representative says;

"Please refer any cancellation requests to retailer (the Course Provider), as we are unable to action these without notification from the retailer (the Course Provider) that a cancellation has been agreed to."

This wording that the Omni representative does to some degree suggest such cancellations weren't uncommon or at least had happened before. I say this because what I've quoted at least implies there is a process for such cancellations and there wouldn't need to be a process for something that didn't happen.

As for the broader context of this sale I'm also aware that the Financial Conduct Authority (FCA) wrote to credit brokers outlining some key risks for them to consider and act upon. The FCA said it had found firms brokering credit agreements with third party finance providers had poor oversight of staff, leaving sales practices unchecked and potentially increasing the risk of mis-selling, fraud or other poor consumer outcomes. It highlighted in particular brokers which sell products in consumers' homes as presenting a higher risk of consumer harm, especially where sales took place without appropriate oversight and on a commission-basis. The FCA did not name individual firms, but I'm mindful of the fact that the sale here does, at least, fit some of the criteria the FCA identified as presenting a high risk of mis-selling.

Importantly I also need to consider that this service has seen a significant number of cases about the Course Provider involved here and it using credit providers such as Omni. These include the common theme of people understanding that they could cancel at any time or outside the stated terms. I haven't seen anything that connects these complainants other

than they were sold courses such as this by this particular course provider and often took finance to pay for it. That doesn't mean that the representatives always provided misleading or untrue information. But it does show that there was a significant risk that such representatives either were unclear on the arrangement being entered into or that unscrupulous or incompetent representatives may have presented the situation differently to that articulated in the documentation.

This service has also received information that the Course Provider sometimes operated informally a longer cancellation period than the fourteen days set out in its contracts. I can see the existence of official and unofficial cancellation periods of different lengths being a potential source of confusion during the sales process, and this again leads me towards a conclusion that misunderstandings were not uncommon. And as such I'm not unsurprised that the Omni representative seems to be suggesting to Mrs B that cancellation outside of the usual terms was available.

I've considered what Mrs B has said very carefully. And taking everything into account I'm persuaded on balance that Mrs B was told a different story by the representative regarding the operation of the agreement to that set out in the documentation provided by Omni. I think it likely she was told that she could cancel at any time. And it was on this basis she entered into the agreement. And similarly I think it is on this basis things should be put right. And as I've described due to the operation of sections 56 and 75 of the Consumer Credit Act 1974, Mrs B can hold Omni liable for the incorrect information provided by the representative in this case. So Omni Finance needs to do something to put things right.

In response to the views of the Investigator Omni has said in essence that reliance on one party's recollections when compared to its documentary evidence isn't fair. I disagree. Firstly Mrs B doesn't dispute she agreed to take the course but that she didn't understand that she'd entered into a five-year loan agreement to pay for it. Importantly the key issue here is what was said to Mrs B before and whilst she entered the agreement and what she relied on in deciding to sign. Secondly and more importantly Omni has only described what it considers what "would" have been said and done by its representative not what was actually said. In essence it is relying on the representative describing the matters accurately as per its guidance/training. It hasn't provided commentary from the representative in this case in support of its position. However Mrs B was there in person and heard what was said and I find her comments persuasive in light of what we already know. And along with what I've already said with regards to sales such as this more broadly and considering what this service knows of sales such as this, means I consider it fair on balance that Omni put things right in this particular case.

I can see that Omni has pointed to another decision issued by a colleague which didn't uphold the complainant's complaint. I have issued similar decisions in relation to credit providers who provided credit for consumers purchasing courses from this Course Provider. However I've considered this complaint on its individual merits and what this service knows about such matters. And this service has seen a significant number of cases as I've described which correspond with the issues the FCA has set out (and indeed a smaller number which do not). I note that Omni hasn't persuasively engaged here on why these complaints about such sales with common themes keep arising and coming to our service. Nor has it provided persuasive evidence in relation to what happened in this particular sale and importantly what Mrs B was told by the representative. Mrs B was present and has been clear and consistent in what she says happened. And her attempt to cancel by email supports her position.

I've considered all the arguments and evidence put forward in this case. And all in all I'm persuaded by what Mrs B says did happen here rather than what Omni said would or should have happened in her case. I think that had everything been explained to Mrs B accurately

then on balance I don't think she'd have taken up the offer to purchase this course. That being said it is clear that Mrs B has had use of the course and that should be fairly reflected in the remedy to take into account that it was used during the period Mrs B said it was needed for.

So Mrs B's complaint is successful. And as a consequence of this all that followed should be fairly unwound.

Mrs B should note that from what I understand of the situation there maybe an amount she has to pay because she stopped paying before she tried to cancel. So such sums she must pay otherwise Omni will be entitled to pursue her for those sums and act against her if she doesn't pay them. So she should carefully consider the remedy I've decided as described below.

Our Investigator put Omni on notice in her assessment that it would have to take actions regarding the debt here which had been sold to a debt collection firm. Omni responded that Mrs B would have to sort out the issues with the debt collection firm herself as it had been sold to them. This is clearly unfair. Because if the arrangement had been properly sold in the first place I think it likely that there wouldn't have been any such sale to the debt collection agency because there wouldn't have been any such debt. So I think it fair Omni take back the debt from the debt collection firm and remedy the situation its responsible for.

Putting things right

I direct Omni to take the following actions:

- Omni must take back the debt and tell the debt collection firm to remove any adverse information on Mrs B's credit file it has logged in relation to this debt.
- Cap Mrs B's liability for the loan at the sum of the repayments which were due as of the date she first contacted either the Course Provider or Omni to cancel. Anything above this amount must be written off and no longer pursued.
- If Mrs B has paid more than this capped liability, then any overpayments must be refunded to her, along with 8% simple interest per year* calculated from the date she made each overpayment, to the date she receives a refund.
- If Mrs B has paid less than this capped liability then payment up to the cap should be arranged with Mrs B or if Mrs B cannot pay promptly then an affordable repayment plan must be arranged for the outstanding balance up to the cap.
- Omni must remove any negative information relating to the loan from Mrs B's credit file that it has logged and mark it as "settled" once Mrs B has paid up to this capped liability as I've described above.
- Arrange with Mrs B for the return of any course materials, DVDs, and anything else she received under the contract, and the ending of any other services supplied under the contract.
- Omni must write to Mrs B to explain what the situation is with regard to the above bullet points.

*HM Revenue & Customs requires Omni to take tax off any interest it has to pay her. Omni must give Mrs B a certificate showing how much tax it's taken off if there is interest to be paid to her if Mrs B asks for one.

My final decision

For the reasons set out above, I uphold the complaint against Omni Capital Retail Finance Limited and direct it to put things right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 5 April 2022.

Rod Glyn-Thomas
Ombudsman