

The complaint

Mrs L complains about a fixed-sum loan agreement that was entered into with Omni Capital Retail Finance Limited. She says that she didn't sign any agreement and that she should be allowed to exit this.

What happened

In October 2019, Mrs L and some of her family members were in a shopping centre and noticed a stand that was offering people to sign up for a trial modelling photoshoot. Mrs L says she asked for some details of what was being offered and says she was told that the photoshoot wasn't happening until March 2020.

Mrs L's daughter paid a £300 deposit to secure a place for her and her family members on the photoshoot. Mrs L says she was told the deposit would be refunded at the studio and that she could choose whether to buy any of the images on the day although she wasn't under any obligation to do so.

In March 2020, Mrs L and her family went to the studio to attend the photoshoot. She says that when they arrived, she was given an initial form to fill in by the receptionist. Mrs L says this included a section to fill out her bank details, although she says at the time she thought this was for if she subsequently wanted to buy any of the photos after the shoot. Once the photoshoot had finished, Mrs L says she was asked to select complimentary photos and whether she'd like to buy any additional photos. Mrs L says she declined to do this.

Mrs L was contacted by Omni Capital Retail Finance Limited ("Omni") shortly afterwards where they explained that she had entered into a finance agreement with them. She contacted Omni saying that she'd never signed an agreement or agreed to do so. Omni said to Mrs L that she had signed the agreement for the photos, the money had been paid to the studio, and so the agreement was now in place and was payable.

Mrs L complained to Omni who in response said, in summary, that she had electronically signed the agreement at the studio and that the agreement hadn't been misrepresented to her. So, Omni said that Mrs L was liable for the payments due under this.

Our investigator upheld the complaint. He said that, although he was satisfied that Mrs L had signed the finance agreement and hadn't been misled about this, he felt that Mrs L had exercised her right to cancel the finance agreement. So, our investigator said that Omni should treat the agreement as cancelled and remove any negative markers from Mrs L's credit file about this agreement.

Omni didn't agree and said that Mrs L had received the goods and services subject to the finance agreement which meant that she was now liable to repay the agreement in full.

I issued my provisional decision on this complaint on 28 February 2022, in which I said the following:

Mrs L feels that she was misled into entering the finance agreement with Omni. She's said

that she wasn't informed about this at any point and didn't sign any agreement to that effect. Clearly, I can't be sure what happened at the studio on the day Omni says Mrs L electronically signed the finance agreement. I note though that Mrs L gave the studio her bank details and other personal details such as her e-mail address and postal address. Mrs L says that she did so thinking these were just details she had to provide as part of the introduction to the studio and that things like her bank details would only come into play if she decided to buy any photos.

I think it likely that these details were inputted on to an application for a finance agreement with Omni and I'm not currently persuaded that Mrs L was misled about this. It would seem a bit unusual for someone to disclose their bank details on the basis that these might be needed at some point. I think it more likely that the studio asked Mrs L for her details because it intended to apply for finance with Omni for the sale of all of the photos taken at the photoshoot and that Mrs L likely understood that to be the case.

I think also that it's likely that Mrs L did electronically sign the finance agreement because that's what then prompted Omni to contact her about this. I note Mrs L says that she suspects the studio signed the agreement without her knowing or agreeing to this. I can't though be satisfied that this was the case as I have no compelling evidence of that.

However, I currently think that Mrs L cancelled the finance agreement within the prescribed time. Mrs L contacted Omni about the finance agreement once Omni initially contacted her and at that point, I think it was reasonably clear that Mrs L didn't want to take out finance with them. I accept this was likely couched by Mrs L as her having no knowledge of the finance agreement. But I'm satisfied the agreement did have cancellation rights and that Omni should have allowed Mrs L to exercise those rights at that time.

The finance agreement states the following:

'CANCELLING THIS AGREEMENT

If this agreement was made exclusively using a means of distance communication (i.e. by post, telephone, email or online), you will have a right to cancel the agreement for a short time after the agreement is made.....The cancellation period starts on the date of this agreement and ends on the expiry of 14 days beginning with the later of, the day after this agreement was made or, the day after the day on which you receive this agreement and all the terms.

If you cancel this agreement during the cancellation period, we will refund any sum paid by you as soon as possible but in any event within 30 days of the date in which we receive notice that you wish to cancel this agreement. You will be required to return any goods delivered to you under this agreement to the Retailer within the same period. We may charge you for any service you have received under this agreement prior to you exercising your right to cancel. This will be an amount which is proportionate to the service actually provided'.

The above is a specific term in the agreement and as such I am satisfied that it relates to the finance agreement. It makes no reference to any linked contract, which in this case would have been the supply contract with the studio for the photos. And the finance agreement was made using a means of distance communication as Mrs L was not at the premises of Omni at the time it was signed.

So, Mrs L was afforded cancellation rights in respect of the finance agreement and I am

satisfied that Mrs L attempted to exercise those rights within the specified 14 days period. I also think that Mrs L doing so meant that Omni should have agreed to cancel the agreement.

I note that the above term mentions that Omni was entitled to charge Mrs L for 'any service you have received under this agreement prior to you exercising your right to cancel. This will be an amount which is proportionate to the service actually provided'.

It seems that Omni feels that they are entitled to seek the amount due irrespective of the agreement being cancelled because Mrs L received the goods and services under the supply contract with the studio, namely the photos from the photoshoot.

Mrs L has said that she left the USB stick containing the photos with the studio as she didn't want to purchase any of them. I have nothing persuasive to hand to dispute that currently. If that is indeed the case, then I don't agree that Mrs L has received 'the service actually provided' because that would surely mean the photos contained within that USB stick. I've not been given a copy of the supply contract between Mrs L and the studio so I can't say that the 'service' actually comprised anything else other than those photos.

As I've mentioned above, I am looking at what is fair and reasonable in this complaint. I don't think it would be either fair or reasonable for Mrs L to be held liable for the cost of something that she doesn't have in her possession and had no intention of buying. And, as I find that Mrs L did seek to cancel the agreement within the time period she was given, I provisionally intend to direct Omni to treat the agreement as cancelled with nothing further for Mrs L to pay. I also intend to direct Omni to refund the £300 deposit she paid with interest, and that they remove any negative markers from Mrs L's credit file in respect of this agreement.

I invited the parties to respond to my provisional decision.

Mrs L replied saying that she was satisfied with my provisional decision. Omni didn't agree. They provided a copy of the order form for the photoshoot which they said clearly showed that Mrs L had received the benefit of the goods and services as the form showed that a CD of the photos taken at the photoshoot had been taken away. Omni also said that the finance agreement wasn't cancellable, and Mrs L only had a right to withdraw from this.

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.

Essentially, Omni has submitted two points for further consideration. The first is the order form provided by the studio. I've looked at this and can see that it states that a CD was provided on the day. If Mrs L did take away the CD of the images of the photoshoot, then I would consider that this should be paid for, and this would be via the finance agreement with Omni.

Mrs L says she doesn't have the CD and has said previously she left the USB stick with the images on them at the studio. The order form somewhat contradicts this. This is complicated further by the order form being in Mrs L's daughter's name who isn't part of this complaint. It's entirely possible that Mrs L's daughter did take away the CD and the USB stick. And, if that were the case, it wouldn't be fair and reasonable for that not to be paid for via the finance agreement even if none of the images have been accessed since.

However, Mrs L is adamant that she hasn't derived any benefit from the photoshoot. And she clearly tried to cancel the finance agreement very shortly afterwards. I can't discount the possibility that both items were left at the studio as Mrs L says. I accept that the opposite is

also possible. But I haven't been sufficiently persuaded that this more likely than not happened and that my provisional conclusions should be changed in this regard.

Nor have I been persuaded by Omni's submissions that Mrs L wasn't permitted to cancel the finance agreement. I note that Omni has focused on this being an 'on-premises' transaction. Normally, in such instances, it would be common to see that customers weren't afforded any cancellation rights and would be given withdrawal rights from the finance agreement as Omni states.

However, the finance agreement clearly states that Mrs L was given cancellation rights. The clauses I've quoted above refer to 'this agreement' by which this can only mean the finance agreement. And the agreement was taken out at distance because Mrs L wasn't on Omni's premises when it was entered into. If Omni intended to exclude Mrs L from having any kind of cancellation right, this perhaps should have been stated on the agreement.

I am considering here what is fair and reasonable. For the reasons set out in my provisional decision, and in this decision, I do not find it fair or reasonable that Mrs L wasn't allowed to cancel the finance agreement. And as I can't be sure that Mrs L did derive any benefit from the goods and services from the studio, I don't find it fair or reasonable for her to have to pay for this. I will though be adjusting what I will be directing Omni to do to put things right. I provisionally said that Omni should refund Mrs L the £300 deposit. However, Mrs L has confirmed that her daughter paid this. As Mrs L's daughter is not part of this complaint, then I will not be instructing Omni to refund this amount.

Putting things right

I find it fair and reasonable for Omni to treat Mrs L's finance agreement as cancelled and that no payment is due under this. I also find it fair and reasonable for Omni to remove any adverse information about this agreement from Mrs L's credit file.

My final decision

I uphold this complaint and direct Omni Capital Retail Finance Limited to:

- Cancel Mrs L's finance agreement with nothing further for her to pay
- Remove any negative information from Mrs L's credit file in respect of this agreement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 27 April 2022.

Daniel Picken
Ombudsman