

The complaint

Mr W complains that Omni Capital Retail Finance Limited (Omni) won't refund to him the money that he's paid under a fixed sum loan agreement for an HGV driving course which hasn't been provided to him in full.

What happened

In June 2015, Mr W entered into a finance agreement with Omni to finance a driving course with Specialist Training Services. The course included five modules costing a total of £2,497. Mr W completed modules one and two and then purchased an extension to the training period in October 2019 at a cost of £800. He then booked module three for 23 March 2020, but he received an email on 19 March 2020 explaining that all future modules would be cancelled because of Covid.

In July 2020, he received an email explaining Specialist Training Services had ceased trading. He contacted the centre where the module was due to take place but was told the modules had been booked but not paid for by Specialist Training Services. As a result, Mr W was unable to complete the course.

He contacted Omni and requested a refund.

Omni Capital rejected Mr Ws' claim on the basis he paid for an extension of the course with the retailer and didn't complete it in the initial time period of five years. It said this extension didn't form part of the finance agreement, so it wasn't liable to arrange for the training to continue or refund the cost of the course.

Dissatisfied as he hadn't received the services he paid for; Mr W brought his complaint to this service.

An investigator looked onto things for Mr W. He looked carefully at the terms and conditions of the fixed sum agreement and the Driving Course agreement. In his view, the terms indicate the contract does allow for extensions, at Mr W's cost, and that the contract wording suggests that if an extension is agreed the contract is amended. So, he felt Omni's position that the extension doesn't form part of the finance agreement wasn't fair and reasonable. Because he found that the extension did form part of the agreement, Omni remained responsible for the course and to continue to provide the course to Mr W.

Omni confirmed the course was cancelled due to Covid, and Specialist Training Services had entered into administration. Omni also confirmed that Mr W wouldn't be able to continue the course where he left off as the retailer hadn't forwarded the payment to the centre. Mr W had only been able to complete module one and two of the course. A breakdown of his training package shows the total cost of module one and two was £200.

The cost of module three, which Mr W had booked but was cancelled, cost £1,299 and module four cost £399. There was also a pass protection element of the training package which allowed Mr W two re-tests of the practical test costing £599. In total this amounted to £2,297.

The investigator upheld Mr W's complaint and asked Omni to reduce the finance by £2,297 and refund the £800 he paid to extend the course as a consequential loss of the course not going ahead.

Mr W accepted the investigators findings.

Omni did not. It said it couldn't locate the clause the investigator referenced in the training course terms and conditions. It says Mr W had 4 years and 4 months to complete his training before he applied for an extension. It points to the terms & conditions stating any additional fees, including the extension fee, had to be paid in full where there was a request to extend beyond the initial 6-month period. It asks for an ombudsman review.

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 have reached the same outcome as the investigator. I'll explain why.

I've considered the relevant law. Under section 75 of the Consumer Credit Act 1974, in certain circumstances, a consumer has an equal right to claim against the supplier of goods or the provider of credit if there's been a breach of contract or a misrepresentation. In order to uphold Mr W's complaint, I would need to be satisfied that there was a breach of contract 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 W's claim under section 75 as only a court would be able to do that.

I've looked carefully at the terms and conditions of the training course Mr W had paid for. I'm not sure why Omni couldn't locate this condition to extend the course at clause 4 (j) but it is there and says:

“Trainee Drivers can attend the course(s) they have purchased up to 6 months from their initial purchase date – any courses unattended within 6 months of purchase will become null and void with no refund applicable. However, if the Trainee Driver contacts The HGV Training Centre in writing before the end of their 6-month contractual period it may be possible to extend their booking – this is at the discretion of The HGV Training Centre and the prevailing cost of the training will apply if applicable. Any additional fees – along with an accompanying extension fee – must be paid in full in order to extend a Trainee Driver's contract period beyond the initial 6- month period”

I appreciate Omni points out it was 4 years on from taking out the fixed sum agreement when Mr W was granted an extension to complete the training course until 2 April 2020, there is limited information as to why that was the case, but the fact remains Mr W paid for and was granted that extension. He booked Module 3 for 23 March 2020.

Obviously, no-one could have foreseen what was going to happen and Module 3 could then not go ahead and following that the supplier went into administration having failed to pay for the courses, so Mr W was unable to continue them after the pandemic ended.

There doesn't seem to be any dispute that Mr W only completed module 1 & 2 and didn't start Modules 3 & 4 of 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. On balance, I consider both these points to be breaches of the contract he took out, and I find it fair and reasonable that Omni put things right.

I've looked at the training package and I can see the cost of module three, which Mr W had booked but was cancelled, cost £1,299 and module four cost £399. There was also a pass protection element of the training package which allowed Mr W two re-tests of the practical test costing £599. In total this amounted to £2,297.

The £800 Mr W paid to extend the term of the training course is in my view a consequential loss and should also be refunded by Omni.

My final decision

For the reasons I have given I uphold this complaint and direct Omni Capital Retail Finance Limited to:

- reduce Mr W's finance agreement by £2,297
- If this results in Mr W having overpaid the agreement, then it should refund the overpaid amount to him plus 8% interest simple per year from the date of payment until the date of settlement
- If this results in an outstanding balance, then it should come to a suitable payment arrangement with Mr W

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 December 2022.

Wendy Steele
Ombudsman