

The complaint

Ms T feels that Tandem Bank Limited has treated her unfairly about transactions on her credit card to purchase training courses.

What happened

In July 2019 Ms T enrolled in a course (which I'll call 'Course V') and in October 2019 she enrolled in a separate course (which I'll call 'Course D') both supplied by the same provider, using her Tandem credit card to pay for both courses. Ms T says the courses were sold to her as being available to her for "lifetime". She paid just over £730 in total for the two courses.

Due to personal reasons and events of the time (the spread of the Pandemic being a factor) Ms T didn't try to use the courses until well into 2020. She's pointed to emails she sent from June 2020 onwards regarding her inability to access all the courses and the course materials. So she complained to the Provider of the courses who pointed to a number of issues as to why the course materials weren't available in the previous format. Ms T was unsuccessful in getting her money back from the Provider or being able to complete the courses as advertised. So she took her dispute to Tandem.

Tandem considered the dispute and decided that there had been a breach of contract by the Provider and that Tandem was liable. It considered what had happened and offered Ms T £400 to settle the matter. But Ms T wanted a full refund, so she brought her complaint to this service.

Our Investigator considered the matter and concluded that Tandem's offer was fair. But Ms T doesn't agree. So this complaint comes 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.

I should start by saying that the facts of the matter between the parties are broadly agreed. Specifically Tandem has accepted a breach of contract by the Provider, and it has made an offer to settle the matter. Ms T has said she's looking for a full refund, but Tandem feels its offer of £400 is fair in the circumstances.

Ms T says she has a cognitive disability which impacts her significantly. I've considered this throughout in my decision making.

I note the timeline of events that Ms T points to and note that as the Investigator explained the other avenue for Tandem to consider the matter, namely under the chargeback process, isn't available to it due to the strict time limits in place for raising chargebacks. Having considered the timings of what happened here I'm satisfied that Chargeback wasn't available to Tandem when Ms T took her dispute to it. Accordingly the only viable way of considering what happened here is under S75.

As Tandem has accepted that it can be held liable I don't need to decide on the finer points of S75 of the Consumer Credit Act. I just need to decide whether the offer is fair.

The usual remedy for such breaches is performing the contract, but this, as the evidence from the Provider shows, isn't now available. And I note Ms T wishes a full refund. So an appropriate settlement is a fair remedy in this case.

I note that Ms T enrolled for these courses in July and October 2019 but also accepts she chose not to actively participate in these courses for some months. She describes not being able to access the courses from June 2020. Ms T hasn't shown the courses were unavailable before that point as she wasn't trying to participate in the courses any earlier than that. So we simply do not know when exactly the courses became unavailable other than that it was in June 2020 or earlier. So it would seem Ms T accepts she had apparently had access for between six and eleven months respectively for the courses.

From the evidence I've seen it appears that neither course provided recognised qualifications. And as Ms T didn't participate in the courses it is hard to quantify how much work or benefit they entailed. I've seen evidence regarding the course structure which indicates numerous modules. However I also have to consider the costs of the courses and note that they weren't expensive. Ms T points to the number of modules of one of the courses as evidence it was a substantial course. But I've also considered that one of the courses included a significant medical element and for the amount charged I can only conclude that it wouldn't have been a detailed course because had that been the case I'd have expected the cost to be many multiples of what was charged. And for these reasons I'm not persuaded by Ms T's arguments about these courses enabling her to work with "paying clients" and not completing the courses meant she'd not be able to get "Liability insurance". Considering the costs of these courses and what we know of them I'm not persuaded that completion of either course would enable her to be go straight into paid work whether employed or self-employed without further training, qualifications, or insurance. I'm also not persuaded she would have been able to do this due to the nature of such work in this country is different to that from where the course provider was based particularly in relation to Course D.

Tandem has offered Ms T £400 which equates to over half of what she paid in total for the courses. It is of note that Ms T could have participated in these courses for a significant period and it appears at least possible she could have completed one of them in the time between enrolling and when we know it wasn't available any longer. And as we know Ms T's reasons for not starting straightaway sit with her and are not the fault of the Providers/Tandem.

Ms T points to evidence that one course was listed as available for her "lifetime" and she accepts that she doesn't have evidence saying the same for the other course. However there is no persuasive evidence that the Provider at the time of agreeing the contract with Ms T knew that it wouldn't be able to provide the course. So as there's no persuasive evidence of a material misrepresentation which induced Ms T to enter the contract I find that a settlement such as Tandem has put forward is fair and reasonable.

I should also add that Ms T has repeatedly pointed to her losing out due to what happened with the provider. But she's made very little argument as to why Tandem's offer is unfair, particularly noting that neither the provider nor Tandem are responsible for Ms T not starting the course when she purchased it. And her doing this is illustrative of there being no pressing need for her to complete these courses. It is also of note that some of the issues suffered here by the Provider have at least to some degree been either a direct or indirect

link to issues stemming from the pandemic. And clearly none of the parties concerned could have anticipated this fully at the time Ms T made these purchases.

Ms T says *"I am struggling to understand the explanation about how I should receive a percentage of the money because of having access to "some" of the knowledge."* The reason for this is simply that the usual remedy for such a breach is performance of the contract. But here that isn't possible. So Tandem looked at what was provided and that was many months of the courses being available to Ms T. And the reason she didn't participate with her isn't the fault of the provider or Tandem. Accordingly a proportionate settlement is fair. It should also be remembered that Tandem only has liability here due to the legislation I've referred to. It wasn't a partner with the provider and received no profits or income from the provider. So it is entitled to provide what it sees as a fair settlement to the matter and Ms T is entitled to challenge the fairness of that settlement here.

And considering that the courses were available for some time to Ms T and that Ms T had opportunity to use it for some months I am not persuaded that the settlement offered is unfair. It has offered over half the amount paid. Accordingly I see no persuasive reason to direct Tandem to settle at any other amount as I think this is a fair and reasonable settlement in the round.

I appreciate that this isn't a decision Ms T wishes to read. However I'm not persuaded Tandem has treated her unfairly here. I think its settlement offer is fair.

My final decision

For the reasons set out above, it is my decision the settlement offered by Tandem Bank Limited is fair. It should pay Ms T this amount within 28 days of receiving notification of her acceptance of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 14 February 2023.

Rod Glyn-Thomas
Ombudsman