

## **The complaint**

Miss O complains that Omni Capital Retail Finance Limited (Omni) did not meet her claim brought under section 75 Consumer Credit Act 1974 (s.75) in respect of a training course she funded with a fixed sum loan from it.

## **What happened**

In March 2019 Miss O bought a training course from a supplier I'll call R at a cost of £3,594. She paid a deposit of £35.94 and funded the remainder of the cost with a fixed sum loan from Omni.

In November 2019 Miss O emailed a request to R to cancel the course stating she was not in the right mind when she signed the contract. After requesting medical evidence R said it was not convinced the evidence was legitimate. It said the hospital the letter had allegedly come from could not verify its authenticity. So, it declined Miss O's request.

In March 2021 Miss O emailed R and asked for an extension to the course deadline stating she'd got behind due to the Covid 19 pandemic. She said R responded to say the course had no fixed deadline. R has disputed the contents of this email and said they have been changed. It said it actually told Miss O she would need to contact its compliance department to explain her circumstances.

Miss O made Omni aware of her claim under s.75 in September 2022 and expanded upon it in April 2023. She said she didn't receive any initial paperwork to outline the details of the course so she was never told how long she had to complete it and she thought she could complete it in her own time or put it on hold.

In response to Miss O's claim Omni said it had contacted R who had explained:

- A set up email was sent to Miss O containing all of the log-in details and she accessed the course using this information. If she hadn't received these documents, she wouldn't have been able to access the course. This email would have explained the time in which she had to complete the course.
- None of its courses can be placed on hold as they are time sensitive

Omni therefore declined to meet Miss O's s.75 claim.

Miss O complained to Omni about this. Omni responded re-iterating its position and reminding Miss O she had tried to cancel the course outside of the 14 days within which she was permitted to do this. Omni also drew Miss O's attention to R's terms and conditions which said that all courses had a 12-month licence unless otherwise agreed. So, it said R had not unreasonably declined to extend the course for Miss O after this time or provide a refund.

Dissatisfied, Miss O referred her complaint to this service.

I issued a provisional decision in December 2024. I said (in summary):

- I'd considered relevant law including s.75 and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ("The regulations").
- I identified that the regulations say that in the case of a distance contract, the trader must give the consumer confirmation of the contract on a "durable medium". The confirmation must also include certain information about the right to cancel where it exists, including the conditions, time limit and procedures for exercising that right.
- The right to cancel did apply to Miss O's purchase because it appeared she bought the goods online and over the phone and so it was a distance contract.
- Omni had said that R couldn't provide any evidence of what was given to Miss O at the time of the sale. And Miss O said she never received any paperwork outlining the details of the course. So, I couldn't see that R complied with the information requirements of the regulations relating to the right to cancel in the confirmation of contract.
- Under the regulations the consequences of this were that the period of time within which Miss O could cancel was extended up to the point R did provide that information (up to a maximum of one year and 14 days from when the service began). I referred to this as the "extended time period".
- Miss O was still within the extended time period when she exercised her right to cancel in November 2019.
- When a consumer validly exercises their right to cancel (as Miss O had here), the regulations gave rise to a number of contractual responsibilities on the part of the trader, including regarding the reimbursement of payments the consumer had made. These were treated as implied terms in the contract.
- R breached these implied terms by not reimbursing Miss O the amounts she had paid when she attempted to cancel and ask for her money back within the extended time period in November 2019.
- On this basis I said it appeared Miss O had a valid claim for breach of contract.
- I'd given careful thought to what Omni said about the credibility of Miss O's testimony given the issues it had pointed out with the validity of the hospital letter and the alleged tampered email from March 2021. However, my conclusion was not that R breached its contract because it declined Miss O's request to delay the course on medical grounds, or on the basis it told her the course had no fixed deadline. So, I didn't find the disputed validity of these documents affected the overall outcome I had reached.
- I didn't find that Miss O requesting an extension to the course deadline was persuasive evidence she received the information about cancellation required by the regulations. The course terms said courses lasted 1 year and Miss O's request came after two, so if anything, I thought her request supported her assertion she was never given the key information about the course.
- Omni had not shown how much of the course Miss O had accessed and she didn't have a qualification to show. So, I didn't think she'd received any benefit from the course that she ought reasonably to have been required to pay for.

I said I planned to tell Omni to cancel Miss O's loan with nothing further to pay, refund everything she'd paid with interest and instruct the credit reference agencies to remove any adverse information about the loan from her credit file.

Omni did not agree with my provisional decision. It said that in asking for an extension to the course this showed Miss O had accessed it and therefore must have received the enrolment information. It also reiterated its position that Miss O's conduct had called into question the reliability of any testimony she had given. Omni provided some documents from R that it said showed she accessed the course and received the enrolment documents.

The complaint was therefore referred to me for a final decision.

### **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've noted Omni's responses to my provisional decision and considered them very carefully. Omni has not sought to challenge my understanding of the regulations nor their application to the facts of this case. So, my findings in that respect remain as they were in my provisional decision.

Omni has however challenged the validity of Miss O's testimony which I've taken (in the context of why I upheld the complaint) to mean her assertion that she did not receive any of the key information about the course, such as her right to cancel. Again, it appears to have based this on what it says were questionable submissions of evidence in support of other grounds she gave for wanting to delay the course.

I note however that Omni hasn't provided the actual confirmation from the hospital that it did not provide the letter Miss O submitted to R. And what it has provided in respect of the alleged email R said was changed appears only to be a copy and paste of the wording it said was in the original email. I can't verify from this however that it is the original or that the email Miss O said she received was not sent by R.

In any event, these alleged incidents happened after Miss O validly exercised her right to cancel in November 2019, so she should have been allowed to cancel the course and receive a refund before they took place. Overall, I'm not persuaded the arguments R/Omni have made in respect of these incidents mean I should give no weight to Miss O's testimony that she did not receive any paperwork about the key details of the course at the time she entered into the contract with R.

Omni said that as Miss O requested an extension to the course and said she was 'behind' she must have accessed it. And it said if she accessed it, this could only have been done if she'd received the enrolment information from R. So, I think its saying that she must have been given the information about the right to cancel. It provided two documents from R also which it said supported a case that Miss O accessed the course.

I don't find it necessarily follows however that just because Miss O accessed the course materials, she must have been given information about her right to cancel in accordance with the regulations. No evidence has been presented showing what the enrolment email would have looked like or the kind of information it would have included. So, Omni has not in my view demonstrated on the balance of probabilities that Miss O would have been given the information about cancellation required by the regulations.

I've considered the information Omni has provided in support of Miss O accessing the course. This doesn't show me the extent of the material she accessed and so I'm still not persuaded she received a benefit from the course that she ought to pay for.

Everything considered, I've not seen anything that makes me think my provisional decision results in an unfair or unreasonable outcome. It still appears most likely to me based on the available evidence that R was in breach of contract by refusing to provide a refund to Miss O when she exercised her right to cancel the course in November 2019. Additionally, the regulations make provision for the automatic cancellation of any ancillary contracts upon cancellation by the consumer, this includes Miss O's finance agreement with Omni. So, I still

think it's fair that Omni cancels the loan as well reimbursing Miss O what she has paid.

### **My final decision**

My final decision is that I uphold Miss O's complaint. To put things right Omni Capital Retail Finance Limited must:

- End the loan agreement with nothing further to pay.
- Refund Miss O's deposit of £35.94.
- Refund all other loan repayments that have been made by Miss O plus interest of 8% simple per year from the date of each payment until the date of settlement\*.
- Instruct the credit reference agencies to remove any adverse information that has been recorded in respect of the loan.

\*If Omni Capital Retail Finance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss O how much it's taken off. It should also give Miss O a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 6 February 2025.

Michael Ball  
**Ombudsman**