

The complaint

Mr A complains about a fixed sum loan agreement he took out with Omni Capital Retail Finance Limited trading as “Omni Capital”.

What happened

On 3 November 2022, Mr A entered into a contract for a training course with a merchant I’ll refer to as “K”. He paid a £120 deposit; and the rest of the course price, £1,080, was funded through a loan he took out with Omni Capital.

Mr A attended the induction for the course; but said that the course didn’t meet his requirements and wasn’t how the course was described to him. On 7 November 2022, Mr A emailed K to withdraw from the course. But on 19 November 2022, K refused stating that before Mr A registered for the course, he had a consultation which went through everything that would be covered in the course – if it didn’t cover what Mr A wanted, then he shouldn’t have signed up.

Also on 7 November 2022, Mr A called Omni Capital to withdraw from the loan agreement. Omni Capital explained that this would be subject to K’s terms and conditions.

Omni Capital issued Mr A with a number of responses in relation to the complaints he made – none were upheld by Omni Capital.

Unhappy, Mr A referred the matter to this service. Prior to the Investigator considering the case, Omni Capital told this service that it should have allowed Mr A to withdraw from the loan agreement. The Investigator looked into things and agreed – they explained that the agreement should be removed from credit file reporting; but explained to Mr A that he might still owe money to the retailer.

Following this, there was some back and forth between all of the parties involved. Ultimately, K wouldn’t refund Mr A for the course. Omni Capital continued to make attempts to collect the balance owed under the original loan agreement, it reported the missed payments on Mr A’s credit file and defaulted his account.

A new Investigator considered matters. They explained that Omni Capital hadn’t done anything wrong in reporting missed repayments and a default on his credit file. They also didn’t think Omni Capital had done anything wrong by continuing to attempt to collect repayment from Mr A – as by cancelling the loan agreement, it doesn’t mean that there isn’t still a debt due. The Investigator also considered consumer protection laws – such as Consumer Contract Regulations (CCRs) and Consumer Rights Act (CRA) and explained why they didn’t think that Omni Capital had done anything wrong in not providing Mr A with a refund for the cost of the course.

Mr A didn’t agree with the Investigator’s view; and because an agreement couldn’t be reached, the complaint was passed to me to decide on the matter.

I previously issued a provisional decision on this case. That's because it was my intention to come to a different outcome to the Investigator. I wanted to give both parties the opportunity to respond with anything else they wanted me to consider before I came to my final decision on the matter.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I think it's important to firstly explain I've read and taken into account all of the information provided by both parties, in reaching my provisional decision. I say this as I'm aware I've summarised matters in far less detail than the parties involved have. If I've not reflected something that's been said, it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless I think it's relevant to the crux of the complaint.

The issues in this case have been ongoing for some time. And it seems like the issues Mr A has raised, haven't been fully considered in the initial stages of his complaint. And so, I think it's fair that I do this in this provisional decision. Because of this, I'm providing both parties with the chance to respond to this provisional decision with any other information they want me to consider before I come to my final decision on the matter – which will then be the end of the process with this service.

It is my understanding that, in summary, Mr A's complaint points are:

- *He tried to cancel the finance with Omni Capital within the 14 days of the agreement starting; but it didn't do this.*
- *Omni Capital are still requiring repayment from him; and it has reported negative information to the Credit Reference Agencies about the way he has managed the loan.*
- *The course he paid for using the finance was misrepresented to him; and unsuitable. He also didn't have access to the course materials.*
- *K wouldn't cancel the course or give him a refund – even when he tried to cancel within 14 days of the contract.*

I have focused my investigation on these points.

Withdrawal of the loan agreement and credit file reporting

I'll start by addressing the withdrawal from the loan agreement and how Omni Capital should have treated the agreement. I think all parties agree that Mr A contacted Omni Capital within the 14-day withdrawal period to exercise his right to withdraw from the loan agreement. For completeness, I agree with this. The loan agreement was taken out on 3 November 2022 and the notes provided by Omni Capital suggest that Mr A had called it on 7 November 2022 to withdraw from the agreement.

Section 66a of the Consumer Credit Act 1974 ("Section 66a") states:

(7) Subject as follows, where the debtor withdraws from a regulated consumer credit agreement under this section—

(a) the agreement shall be treated as if it had never been entered into,

Therefore, Omni Capital should have treated the loan agreement as though it had never been entered into, from 7 November 2022.

The requirement on Mr A at this point (the debtor); under Section 66a is as follows:

- (9) Where the debtor withdraws from an agreement under this section—
- (a) the debtor must repay to the creditor any credit provided and the interest accrued on it (at the rate provided for under the agreement), but
 - (b) the debtor is not liable to pay to the creditor any compensation, fees or charges except any non-returnable charges paid by the creditor to a public administrative body.
- (10) An amount payable under subsection (9) must be paid without undue delay and no later than the end of the period of 30 days beginning with the day after the day on which the notice of withdrawal was given (and if not paid by the end of that period may be recovered by the creditor as a debt).

So, Mr A was required to repay Omni Capital the total of the credit provided to him, plus any interest accrued at the rate in the agreement. And he needed to have done this no later than 30 days from 7 November 2022.

Mr A didn't repay everything he owed to Omni Capital during the relevant 30-day period. And because of this, Section 66a states that Omni Capital could recover the sum owed by Mr A as a 'debt'.

What all of this means is that Omni Capital should have treated Mr A's agreement as though it never existed – which would mean that it should have been removed from reporting to the Credit Reference Agencies – even in the circumstances here where the debt hasn't been paid back. Because Mr A had withdrawn from the agreement, he no longer had a loan under a regulated credit agreement; but now owed Omni Capital a "debt".

As I understand it, Omni Capital have reported to the Credit Reference Agencies that Mr A has missed payments and it has defaulted his account; but this, in my view, shouldn't have happened. I say this because the agreement should be treated as though it was never in place. So in my view, it isn't accurate to report that repayments hadn't been made in line with the terms of the loan agreement; or that he had defaulted on that loan agreement, because that agreement no longer exists.

Instead, what should have happened here is that Omni Capital should have treated the money owed by Mr A as a debt, which is different and separate to a loan agreement; a loan agreement, amongst other things, has pre-agreed terms for repayment arrangements.

What I'm saying here doesn't mean that Mr A does not have to pay Omni Capital back – it is my view that he does. But Omni Capital can't report this debt, or how it has been managed to the Credit Reference Agencies. And instead, Omni Capital should and could have recovered the debt in a different way. I will explain what I require Omni to do to put things right at the end of this provisional decision.

Mr A's claim against Omni Capital under Section 75

There are sometimes ways that finance providers can get customers their money back where things have gone wrong with something they have purchased – in the case of a loan, this would be under Section 75 of the Consumer Credit Act ("Section 75").

Section 75 allows a claim to be made against the finance provider in respect of an item or service that was paid for using the loan funds. For Section 75 to apply, certain criteria need

to be satisfied relating to things like the parties to the transaction, the way the payment was made and the cost of the goods.

In addition to this, there would need to be evidence of a possible breach of contract, or a misrepresentation. A breach of contract can be a breach of an “express” term of a contract – meaning something which is written into it. Or it can be a breach of what is usually referred to as an “implied” term, which is a term treated as being included in the contract due to, for example, legislation which says that it must be; like the CCRs and the CRA which I mentioned previously.

But Section 75 can only apply, where a credit agreement exists. And in this case, Mr A had exercised his right to withdraw from the agreement on 7 November 2022. And as I’ve explained, what should have happened at this point, is that Omni Capital should have treated the loan agreement as being void. Therefore, Mr A has no rights to make a claim against Omni Capital for a breach in contract or misrepresentation by K – because no credit agreement exists. And because K has refused to provide Mr A with a refund, a debt is still owing to Omni Capital.

I accept Mr A will be disappointed by this, as I can see how strongly he feels about K, and the course not meeting his requirements. I make no finding in this provisional decision about whether or not there has been a breach in contract or misrepresentation. But for the reasons I’ve explained, Mr A doesn’t have a valid Section 75 claim against Omni Capital for these things. However, if he remains unhappy in relation to K’s actions, then he might be able to pursue the matter through other avenues.

Putting things right

Mr A says he has lost out in a number of ways – financially, distress, inconvenience and the credit file reporting.

I haven’t seen anything to suggest that Mr A has suffered a financial loss as a result of anything Omni Capital has done wrong – although if Mr A does have any evidence to support his comments, then I will consider this when coming to my final decision.

I have already explained why I think Omni Capital should remove the credit file reporting – so I won’t cover this off again here.

I agree that Mr A is likely to have suffered some distress and inconvenience in relation to the ongoing credit file reporting; however, I don’t intend to award compensation for this. I say this because ultimately, my view is that Mr A still owes a debt to Omni Capital that he hasn’t repaid. Omni Capital could have gone down a different route to recover the debt, for example by taking him to court, which in my view wouldn’t have been unreasonable; and would likely have also caused distress and inconvenience too. Ultimately, the distress and inconvenience Mr A has suffered is likely to have come about as a result of him having not repaid what he owes – and therefore I don’t think it would be reasonable for me to order Omni Capital to pay Mr A a compensation award in these circumstances.

Taking all of this into account then, it is my intention to order Omni Capital to put things right for Mr A by:

- *Buying back the debt, if it has been sold.*
- *Removing all credit file reporting in relation to this debt – this includes evidence of the debt itself (although any initial credit file searches for application can remain), missed payments and default reporting.*

- *Ensuring no interest, fees or charges have been applied to the debt – as the loan agreement stated that the rate of interest was 0%. If interest and charges have been applied, these should be refunded.*
- *Coming to an affordable repayment arrangement with Mr A to repay the remaining balance.*

I will add here that if Mr A doesn't make repayments towards the debt, then Omni Capital could still take action to recover the debt."

Omni Capital responded to the provisional decision and confirmed it would put things right for Mr A in the way I had set out, if Mr A accepted the final decision.

Mr A responded and reiterated the financial and personal harm the credit file reporting had caused him. I have summarised what he has said about the losses he incurred below:

- Financial losses. The adverse information being reported on his credit file has led to multiple rejections of credit, investment and financing applications – including his attempts to purchase a vehicle. These refusals have affected his financial position and opportunities.
- Reputation damage. The negative reporting has impacted his creditworthiness and financial reputation.
- Distress and harassment. The debt has been sold to two separate companies resulting in repeated calls, letters and collection activity for a debt he has consistently disputed. This has caused him significant distress, anxiety and inconvenience.
- Time and administrative costs. He says he has invested substantial time and effort in disputing the matter, gathering evidence and corresponding with various parties to correct the inaccurate reporting.
- He didn't receive the course training services as represented at the time of the agreement. He maintains that there was misleading information and a misrepresentation regarding the nature of the delivery of the training services.

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.

Having considered all of the information available to me again, it is my decision to uphold Mr A's complaint in part, for much of the same reasons as set out in my provisional decision.

While I have noted the losses Mr A says he incurred as a result of Omni Capital reporting to the CRA's; I won't be asking Omni Capital to award compensation for this; for the same reasons I've already explained in my provisional decision. However, I will respond to the points Mr A has made.

- Mr A has said that the negative reporting has caused him to lose out on being able to apply for finance elsewhere. I accept that negative reporting would likely have impacted a lender's decision to provide credit. That said, I haven't seen any evidence from any of these lenders to suggest that the only reason Mr A wasn't successful in applying for credit was as a result of the information Omni Capital were reporting about him. On the contrary, lenders take many different factors into consideration when deciding whether to lend to someone. – So I find it unlikely that the information Omni Capital was reporting, was the sole reason for Mr A having difficulty obtaining credit elsewhere.

- Mr A says the negative reporting has affected his creditworthiness and financial reputation. My provisional decision makes the finding that Mr A still owes a debt, and this hasn't been repaid. So, Omni Capital could have gone down other routes to collect the debt, for example by enforcing the debt through the courts, which could have also impacted his credit file. Therefore, I won't be asking Omni Capital to pay Mr A compensation for this reason.
- Mr A says that he has been contacted repeatedly by other firms collecting this debt – which he says has caused distress. But given that the debt is still owed, if it hadn't been debt servicers contacting him; it would likely have been Omni Capital, as repayment was still required. Therefore, I don't find that Omni Capital outsourcing collection activity or selling on the debt has caused more of an impact to Mr A, because he would have been contacted to repay the outstanding debt, even if it had remained with Omni Capital.
- It is expected that sorting out a problem will take some level of administration. In this case, I accept that Mr A has likely spent considerable time disputing matters. But his main dispute here is in relation to the course; and so, I'm persuaded that he would likely have still spent time trying to sort matters out, even if Omni Capital hadn't reported on his credit file. Therefore, I can't reasonably award compensation for the time taken for Mr A to correspond with the parties.
- In relation to Mr A's point about the course, and it having been misrepresented; I have already explained why I can't consider this point against Omni Capital. And that's because if Omni Capital had done what it should have and treated the agreement as having not existed, Mr A wouldn't have been able to make a claim under Section 75, because it isn't jointly liable for the actions of K, given no agreement should have existed.

So, for all the reasons I've explained here, and in my provisional decision, I uphold Mr A's complaint in part. But I won't be awarding compensation for the alleged effects of the reporting to the CRAs, the contact from debt servicers, nor the time Mr A has taken in sorting out the matter. I also won't be considering Mr A's complaint about the Section 75 claim.

Putting things right

Taking all of this into account then, I order Omni Capital to put things right for Mr A by:

- Buying back the debt, if it has been sold.
- Removing all credit file reporting in relation to this debt – this includes evidence of the debt itself (although any initial credit file searches for application can remain), missed payments and default reporting.
- Ensuring no interest, fees or charges have been applied to the debt – as the loan agreement stated that the rate of interest was 0%. If interest and charges have been applied, these should be refunded.
- Coming to an affordable repayment arrangement with Mr A to repay the remaining balance.

My final decision

For the reasons set out above, I uphold Mr A's complaint in part. I order Omni Capital Retail Finance Limited trading as Omni Capital to put things right for Mr A by doing what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 30 March 2026.

Sophie Wilkinson
Ombudsman