

complaint

Mr M's complaint is that Open University Student Budget Accounts Limited ("OUSBA") is responsible for a breach of contract by the university in failing to provide him with online access to his course.

background

In 2009, Mr M registered for a course with the university funded by a loan from OUSBA. Mr M was unable to access the course pages with the log on details provided to him until he received help from the university's technical helpdesk, over one month after registration. Whilst Mr M was able to access the pages during that assisted session, he says he was subsequently unable to access them again on his own.

Mr M fell into arrears as he did not make repayments towards the loan. He claims the university is in breach of contract and he is not liable to pay the course fees. The university does not agree because Mr M was able to access the course website when assisted by the helpdesk and he did not contact the university thereafter to report further difficulties.

The OUSBA also argues that Mr M's complaint has already been considered and rejected by the Office of the Independent Adjudicator ("the OIA"). Therefore, the Financial Ombudsman Service should dismiss the complaint.

our initial conclusions

The adjudicator explained that the ombudsman had the power to dismiss a complaint if the subject matter of the complaint had already been dealt with by a comparable independent complaints scheme or dispute resolution process. He thought it unlikely that the ombudsman would consider Mr M's complaint, which had already been looked at by the OIA.

He also explained that even if the ombudsman went on to consider the merits, he did not think Mr M's complaint would succeed because he was able to access the course website once he was shown how. The adjudicator was also satisfied that IT support was available if he continued to experience problems.

Mr M disagreed. He said the university's technical helpdesk told him that its systems were not 'set up' for Windows 7. He maintains the university is in breach of contract and has cited various pieces of consumer legislation, including section 75 of the Consumer Credit Act 1974 in support of his complaint.

my findings

It might be helpful if I set out the basis on which this service is able to look at Mr M's complaint against OUSBA. OUSBA has provided a loan to Mr M to pay for his course fees. The loan agreement is regulated by the Consumer Credit Act 1974. Where a loan entered into under arrangements between the lender and the supplier, as in the case of the university and OUSBA, the lender may be responsible, under section 75 of the Act, if there has been a misrepresentation or breach of contract by the supplier.

The Financial Ombudsman Service deals with complaints against lenders licensed under the Consumer Credit Act, such as OUSBA. The OIA looks at student complaints against higher education institutions. This service can look at whether OUSBA is liable under section 75 of

the 1974 Act for the actions of the university. As the university is subject to the jurisdiction of the OIA, there will invariably be some overlap between the matters considered by the OIA against the university and those the ombudsman is being asked to investigate against OUSBA. However, as the respondent is different in each case, I do not consider that DISP 3.3, which was set out in the adjudicator's assessment, is applicable here and I do not dismiss this complaint without consideration of the merits.

Therefore, I have taken into account everything that has been said and provided by the parties to decide the merits of Mr M's complaint according to what is fair and reasonable in all the circumstances. Having done so, I do not feel able to uphold Mr M's complaint for reasons which I give below.

Mr M registered for his course in October 2009. His course began in November 2009. Mr M was initially contacted by his course tutor when he had neither signed on to begin his studies nor responded to the tutor's emails. Mr M explained that he had been unable to access the website with the log on details provided. He was advised to contact the technical helpdesk. He did so in early December 2009.

During the first call with the helpdesk Mr M was advised how to change his password and given a direct number to ring if he needed further assistance. Mr M contacted the helpdesk again the following day as he had still been unable to access the website. During this call Mr M succeeded in accessing the course website.

Mr M claims the advisor experienced great difficulty in accessing the website, which he believes is due to incompatibility with Windows 7 software. Mr M says various members of his family who are more proficient computer operators also failed to access the course website. The university does not agree. It says the advisor experienced some difficulty in conveying his instructions to Mr M and could only do so by setting up a simulation machine to replicate what Mr M was seeing.

I have listened to the call recordings between Mr M and the university's helpdesk, which Mr M recently sent to this service. It is clear that it took some time for the helpdesk adviser first to explain to Mr M how to get to the appropriate 'student home' page on the university's website. It then took some time to explain to Mr M how to add the page to his 'favourites' folder so that he could later access the page more easily. It became easier for the adviser to explain to Mr M what he needed to do once he had set up the simulation machine, so that he could see what Mr M was seeing using Windows 7. The adviser then succeeded in helping Mr M to add the student home page to his favourites folder. Mr M was then also able to access the page from his favourites 'tab' and log onto his course.

I have taken into account Mr M's representations, but I do not find any evidence to support his claim of incompatibility. It remains unclear why Mr M could not successfully log on by himself after the assistance he received from the helpdesk. Mr M has not explained why he did not contact the helpdesk again if he was still experiencing problems. However, it remains the case that Mr M was able to access his course pages using Windows 7 on his own computer during the assisted session. Therefore, I am not persuaded that there was a compatibility problem. In addition, although Mr M has suggested that the adviser conceded that there were issues of compatibility with Windows 7, having listened to the call I do not agree with Mr M's recollection of the conversation.

In the circumstances, I do not feel able to uphold Mr M's complaint that the university did not provide him with the information or support necessary to enable him to access his course.

Therefore, I do not find that the university has breached its contract with Mr M.
Consequently, I do not find that OUSBA has any liability under section 75 of the 1974 Act.

my final decision

My final decision is that I do not uphold Mr M's complaint against Open University Student Budget Accounts Limited.

Athena Pavlou
ombudsman