

complaint

Mr I complains about a business programme he purchased which he funded with a fixed sum loan from Omni Capital Retail Finance Limited ('Omni').

background

Mr I attended a three day business and marketing seminar with a supplier (who I shall call 'IM') in April 2018. At the end of the seminar Mr I signed up to a business programme with IM at a cost of around £10,000. The cost of the programme was funded by a fixed sum loan from Omni repayable over 48 months at £250.11 per month.

In November 2018 Mr I called Omni to express his dissatisfaction with the programme. He said IM promised to give his money back at the original seminar if he did not see results for his business and he hadn't seen any results. Mr I also contacted IM between November 2018 and February 2019 raising a number of concerns including:

- Despite following everything he'd been told on the programme he did not achieve the kind of results he was led to believe were attainable.
- The coaches that were working with him lacked the necessary experience and expertise.
- The training that was available could have been found for free online.
- The seminars and one to one sessions included with the programme were just more attempts at upselling further material.
- He was pressured into signing up to the programme at the three day seminar having been told it would not be available once he left.
- He wasn't made aware he was signing up to a fixed sum loan with Omni and thought he could just cancel at any time.
- He wasn't offered any kind of cooling off period as the supply agreement was non-cancellable.

Mr I asked IM to cancel the course and free him from his obligations.

IM offered to change the coach that Mr I was working with and suggested he engage better with the other material on offer. But it said Mr I's contract for repayments was with Omni so he should take matters up with it if he wanted to be released from his repayment obligations.

Omni looked into a complaint for Mr I but didn't uphold it. Omni said Mr I would have been given an opportunity to read the terms and conditions of the programme before signing up to it so he should reasonably have known what he was getting into. It said IM had also offered to change coaches for Mr I.

I issued a provisional decision in June 2021 explaining why I didn't plan to uphold Mr I's complaint. I said:

The programme

In deciding what is fair and reasonable in all the circumstances of the complaint I am required to take into account relevant legislation. I think Section 75 of the Consumer Credit Act 1974 ('section 75') is relevant here.

The general effect of section 75 is that if Mr I has a claim for breach of contract or misrepresentation against IM, he can bring a like claim against the credit provider – in this case, Omni. Provided certain conditions are met. For completeness, I'm satisfied those conditions are met here and there has been no suggestion they are not.

Taking into account what section 75 says, I've thought about whether Omni acted fairly in declining Mr I's claim and complaint.

Mr I complains that he hasn't achieved the desired results from the programme despite following everything he's been told to do. I've assumed 'results' here to mean an increase in consumer demand, ergo increased revenue, for the business Mr I was looking to start up. I've not been provided with anything that persuades me IM specifically guaranteed Mr I these kind of results from the programme, especially within six months of what looks to be at least a five year commitment to the programme. There is nothing in the marketing material provided by both Mr I and Omni that provides such a guarantee. And although the signed sales contract has not been provided here, I have seen versions of this used in other cases from around the time Mr I purchased the programme that make no such guarantee either. I think it's most likely the other sales contracts I've seen are the kind of thing Mr I would have signed as they appear to be the same as the blank front sheet of the contract he has provided us with.

I've also considered what Mr I has said about there being a money back guarantee. From what Mr I has said during the course of our investigation however I think it's most likely he assumed that because the three day seminar he attended came with such a guarantee, that the programme would too. Again, I've not seen anything in any of the available paperwork that includes such a guarantee.

That being said, oral representations made by a supplier about a service can also become contractual terms so I've considered what Mr I has said about what he was told on the three day seminar about the programme. I wasn't of course present at the seminar so I have to decide what Mr I was most likely told based on all of the available evidence.

I've reviewed a recording of a seminar like the one Mr I attended around a similar time. I know this wasn't the seminar Mr I attended but I think it gives an idea of the kind of things that may have been spoken about. During the many hours of footage provided it's fair to say that IM does use clever sales techniques to sell its product. I've not however seen any specific statements made about guarantees relating to the first few months of the programme that I think would likely become contractual terms.

The paperwork and marketing material I've seen explain the programme was to run for five years with lifetime access to some of the elements of the course. I've explained already that Mr I was six months into the programme when he asked to cancel it. It seems unlikely IM would have offered a moneyback guarantee after such a short period of time given the programme looks to have been a long term commitment. And the contracts I've seen from IM explain that it is not cancellable.

Mr I has said it's unfair that the programme was not cancellable. The Consumer Contracts (Information, Cancellation And Additional Charges) Regulations 2013, which is the relevant legislation on this, says that products or services purchased 'off-

premises' should come with a 14 day period within which they can be cancelled (or an extended period of up to a year if cancellation rights are not provided by the supplier). It was an implied term in Mr I's contract if it was concluded off premises, that he could receive a refund if he cancelled within that time limit. And the effect of a valid cancellation meant an ancillary contract – such as a finance agreement like Mr I's – could be automatically terminated. I've not however seen evidence that IM sold the course to Mr I off-premises and from what I've been provided by Omni its owners look to have been leasing the premises it traded from. So, I don't think the cancellation provisions of The Consumer Contracts (Information, Cancellation And Additional Charges) Regulations 2013 would apply here. This means Mr I was not able to cancel the course within 14 days of taking it out. Mr I could have withdrawn from the finance agreement in this period but he would have had to repay it in full in order to do this.

Mr I is also unhappy with the coaches on the course and the other different elements of it. He said the coaches were not qualified, and their services were not up to scratch. He also said the training material could have been sourced elsewhere for free and some of the other one to one sessions were just exercises in further upselling.

The Consumer Rights Act 2015 implied a term into Mr I's contract with IM that any service provided would be done so with reasonable care and skill. I believe reasonable care and skill to include what a reasonably competent provider of the same kind of service would provide. It appears from the emails I have seen that Mr I was being given the material and coaching he was promised (along with alternatives when he made IM aware he wasn't happy with his coach). How someone perceives something like coaching can be rather subjective and just because Mr I felt the coaching was not up to his expectations doesn't mean it wasn't provided with reasonable care and skill. I note his concerns about the qualifications of the coaches but the programme was not affiliated or regulated by an academic body and I'm not aware of any requirement for any specific qualifications to teach it. I've not seen evidence in this case that persuades me the service provided by IM fell below that of a reasonably competent provider.

I'm sure it's possible there was material that Mr I could have obtained elsewhere. IM acknowledges this in some of its marketing material. But I don't think this means the course wasn't provided with reasonable care and skill given this made up just one part of the overall programme.

Overall I've not seen sufficient evidence to make me think IM breached its contract with Mr I or misrepresented anything about the service that was being provided. It follows that I don't find Omni was wrong to turn down Mr I's claim under section 75 of the CCA in respect of these matters.

The finance agreement

Mr I said the finance agreement was mis-sold to him because he was not made aware he was entering into a four year fixed sum loan with Omni. As I've explained already, I can look at claims about misrepresentation against Omni because of the way section 75 of the Consumer Credit Act works. Also, under section 56 of the Consumer Credit Act I can consider things said or done by IM about the programme and the finance before Mr I entered into the finance agreement as if they had been

said or done by Omni (including things such as being pressured into entering into the agreement).

I've considered the likelihood in this case that Mr I was not aware he had taken out a finance agreement with Omni. Mr I has said that his recollection of being told about finance was that on the second day of the course he was told he would be credit checked to see if he would be suitable for it – which he said he passed. He said the next thing he knew he opened an email confirming he'd signed up to a credit agreement with Omni. Mr I has said he does not recall agreeing to sign up to the finance agreement and he only signed an agreement for the programme at the very end of the final day of the seminar. So, he said he doesn't see how he could already have been signed up to finance before this.

Omni has provided an account of the application process it said Mr I would have been taken through for the loan and has provided screen grabs of certain points in this process. It's clear from this Mr I provided details about his occupation and income – which is consistent with Mr I's account that he was going to be credit checked and was asked for information about his circumstances.

Omni has said Mr I successfully passed the credit check which again is consistent with Mr I's recollections. It has said however that because of the size of the loan, Mr I's application was referred to one of its underwriters who determined it was necessary to speak to Mr I directly before deciding if the application was approved. Omni has explained how this process works and has provided us with screen grabs which it said confirms Mr I would have been taken through additional underwriting questions at some point between 9:30am and 12:30 pm on the third day of the seminar. I'm persuaded by Omni's explanation and the records it has provided that these additional underwriting steps were taken. So, it seems likely that Mr I must have had some idea that he was further along the application process than only being credit checked.

Mr I said he received an email from Omni confirming he had signed up to a finance agreement while he was still on the seminar. If this was not Mr I's understanding of what had happened, I think it's likely he would have got in touch with Omni or questioned with IM why he'd been signed up to finance he never agreed to. Furthermore, the screen grabs Omni has provided show that Mr I would have had to electronically confirm over email that he'd read the loan agreement and that he agreed to its terms before the agreement would have gone live. I find it unlikely that the first contact Mr I received from Omni was to say he'd signed up to a loan agreement given the process that Omni has described and the evidence it has provided in support of this. It seems most likely the email Mr I received was to confirm his application had been accepted but I think he would still have had to review and sign the documents within that email in order to enter into the loan agreement.

It's possible Mr I did sign the agreement to take out the programme after he signed up with Omni. But I don't think this makes it any less likely he didn't agree to enter into a finance agreement with Omni.

I've also considered Mr I's actions after the finance agreement commenced. Mr I made enquiries of Omni in July 2018 about the method of payment being used. So, he must have known of his relationship with Omni at that point. And when he first

complained to Omni, it was about the sale of the course and not the fact he didn't know he'd entered into a finance agreement. I think If Mr I had not been aware that he'd committed to a £10,000 five year finance agreement, he would in all likelihood have complained about this earlier than he did.

All things considered, I don't think the available evidence supports what Mr I has said about not being told he was entering into a loan agreement with Omni.

I've thought finally about what Mr I said about being pressured into the loan. Mr I said he was told that the offer to sign up to the course would not be available to him after the end of the third day of the seminar. He said this put him under pressure to sign up to it. Mr I has also said however that the buzz of the room, with lots of people signing up and bells ringing whenever this happened also encouraged him to sign up. IM said to Mr I that it would not have operated a now or never policy and it would have been possible to sign up to the programme again at another seminar.

From what I have seen it does look like most people that sign up to programme are encouraged to do so during the three day seminar. However from the seminar videos I've seen and the way the sale of the programme has been described by Mr I, it looks like the programme (and the option of financing it with a loan) is introduced at some point on the second day with time given to think about it overnight between days two and three. Also, as I set out earlier, Mr I's application for the loan took place over the course of two days so it doesn't look like he was rushed into it.

With everything considered I've not seen enough to make me think Mr I entered into the loan agreement as a result of undue pressure placed upon him.

I've noted that Mr I has said he is experiencing financial difficulties and the matter has caused him considerable distress to the point it has affected his health. I would expect Omni to keep its obligations under CONC 7.3.4 in mind and ensure it treats Mr I with forbearance and due consideration in its future dealings with him, both in respect of his arrears and a suitable way forward.

Omni agreed with my provisional decision and had nothing further to add.

Mr I did not agree with my provisional decision. He said, in summary:

- He accepts he signed up for the programme with IM but disputes ever signing the finance agreement with Omni. He said there is no evidence he signed the agreement electronically.
- It's not fair that he was being asked to sign up for and understand contracts while also trying to learn on the course. He found this to be overwhelming.
- The people that signed him up were not accredited financial sales people.
- It's not right that he was pressured into signing up for something that had no cooling off period and falsely guaranteed results.

The complaint therefore returns to me for a final decision.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also thought very carefully about all of

the additional points and evidence that Mr I has sent me since I issued my provisional decision.

Mr I has provided us with a more detailed recollection of events from the time Omni has said he signed up to the loan agreement with it. These recollections are largely consistent in both timing and substance with the evidence Omni provided. Mr I's recollections differ however between around 9:30 and 13:30 on 22 April 2018. Mr I said he received a request for documents for a loan application at around 9:38 but said he ignored this as the course for that day had just started. Omni on the other hand said it spoke with Mr I sometime between 9:30 and 12:30 where anything it required would have been provided. Mr I said at 12:26 he received confirmation from Omni he had been accepted for a loan and needed to click and login to Omni's platform for managing loan application documents to complete the signing of the contracts. Omni has said the loan agreement was electronically signed by Mr I at 13:21. At 13:27 Mr I said he received confirmation all contracts had been signed.

I accept there are some gaps in the story here and Omni has not been able to evidence the call it had with Mr I, nor what exact information it actually requested from him. I've weighed up the evidence that has been provided however and any circumstantial evidence to decide what I think most likely happened.

If, as Mr I has suggested, he did not sign the agreement, then either another party must have signed it electronically using his login details on Omni's platform, or Omni simply started the agreement without obtaining any consent. If that were the case, and Mr I received confirmation from Omni that he had signed a loan agreement for around £10,000 which he was unaware of, I think its most likely he would have got straight in touch with Omni to question why he'd received such confirmation. Omni's contact records however show Mr I didn't contact it until July 2018 asking for details about its payment processing provider – which itself suggests Mr I must have had some idea of his relationship with Omni. Also, Mr I did not complain that he wasn't aware he'd signed up to a finance agreement with Omni until much later into his complaint with it.

On the balance of probabilities, I think Mr I did sign the finance agreement electronically when Omni said he did.

I recognise that Mr I signed up for both the programme and the finance agreement while he was learning on the three day course. He has said he found this all to be overwhelming. Omni's records show that Mr I's application for finance was submitted around 18:00 on 21 April which is around the same time he said he signed the contract for the programme with IM. At this point in time Mr I would have already provided details to IM about his income, occupation and other personal details and he's said he was told he was being credit checked at this point too. The contract Mr I signed with IM set out he could either pay £9,650 (plus VAT) in full or pay monthly. So, even if there was a lot to take in for Mr I, I think he would likely have known that if he wasn't paying for the course upfront himself, it was going to have to be paid for by some other means, whether that was a monthly commitment to either IM or a third party. And it seems Mr I was happy to make such a commitment.

Mr I has said this was because he assumed he would have a cooling off period within which he could cancel. Mr I has not said he was told by IM that he'd have such a period. And as I explained in my provisional decision, the law didn't afford him such protection either in this particular case. So, I don't find Mr I's assumptions to be the result of anything IM told him that was wrong. The terms and conditions of the contract Mr I signed with IM also made

clear there were no cancellation rights. They were all contained on one page so I don't think it would have been unduly onerous on Mr I to read them before he signed the contract.

Mr I has said the representatives that sold the finance to him were not accredited financial sales people. IM was regulated by the Financial Conduct Authority and had permission to carry out credit broking at the time of the sale. So, it was authorised to make introductions to lenders, present or offer regulated credit agreements and assist an individual with the preparatory work for a regulated credit agreement.

I explained in my provisional decision why I didn't think IM would have guaranteed results in the short term. I've not seen anything that changes my mind on this point.

From what Mr I has said I fully accept that IM probably whips up quite the atmosphere at its seminars to sell its product to its customers. And I can see why this might make the product look attractive to a prospective buyer. Having considered however what Omni is responsible for I've not seen enough to make me think the finance agreement or the programme were mis-sold to Mr I or that the service provided was done so without reasonable care and skill and my decision remains that I do not uphold his complaint.

my final decision

For the reasons I've explained above, my final decision is that I do not uphold Mr I's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 1 August 2021.

Michael Ball
Ombudsman