

complaint

Miss M complains that Omni Capital Retail Finance Limited won't refund to her the money that she's paid it for a make-up course with a company that's gone into liquidation and that it won't cancel her loan agreement.

background

Miss M signed a fixed sum loan agreement with Omni Finance in August 2018 to pay for a four week theatre make-up course that was to take place in March 2019. The course provider went into liquidation in November 2018 and Miss M was told that a new company had been set-up and that it would provide the course. Miss M didn't want to take the replacement course so asked Omni Finance to refund to her the money that she'd paid to it and to cancel her loan agreement. She wasn't satisfied with its response so complained to this service.

The investigator didn't recommend that this complaint should be upheld. She said that there had been a breach of contract as Miss M didn't get the course from the provider she signed up with but that Omni Finance had remedied that as it had provided a suitable alternative from a course provider of a similar standing. So she didn't think that there were grounds for the agreement to be cancelled.

Miss M has asked for her complaint to be considered by an ombudsman. She has responded to the investigator's recommendation in detail and has provided additional evidence to explain why she doesn't consider the replacement course to be a suitable alternative course with a provider of a similar standing. She has provided corporate information about the original course provider and the replacement course provider and about the background to the original course provider's liquidation. She says that it's likely that the original course provider was involved in fraudulent or wrongful trading, that there's been a deception and she refers to the involvement of a whistle-blower. And she says:

"I have purchased the course not just because of industry knowledge and makeup knowledge, I have also selected this provider for all other aftercare support in how to set up the business, direction of the business, marketing and other points that unlimited aftercare promised as part of the course purchased".

my findings

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

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. To be able to uphold Miss M's complaint about Omni Finance, I must be satisfied that there's been a breach of contract or misrepresentation by the original course provider and that Omni Finance's response to her claim under section 75 wasn't fair or reasonable. I'm not determining the outcome of Miss M's claim under section 75 as only a court would be able to do that.

The original course provider stopped trading before Miss M took the course that she was paying for using the loan agreement with Omni Finance. I consider that to be a clear breach of contract by the original course provider for which Omni Finance is jointly liable under

section 75. So I must consider whether its response to her complaint has been fair and reasonable.

Omni Finance says that it contacted the original course provider which said that although the company that was to provide the course had gone into liquidation, another company had taken over the business and was honouring the original course provider's previous book of business and the course that Miss M was booked on would go ahead.

I have considered in detail what Miss M has said about the replacement course not being a suitable alternative course with a provider of a similar standing. But the replacement course provider's website shows that the course content and tutors are the same as for the original course, the director is the same for both companies and the celebrity make-up artist with whom the course is associated seems to be as involved with the replacement course as she was with the original course.

So I'm not persuaded that there's enough evidence to show that the replacement course isn't a suitable replacement for the original course. The replacement course provider has taken over the original course provider's business and is honouring the original course provider's book of business. And I'm not persuaded that Miss M's concerns about potentially fraudulent and wrongful trading and deception by the original course provider are enough to show that the replacement course isn't a suitable replacement.

I sympathise with Miss M that she's been caused these difficulties and I can understand her frustration about the change in the course provider. But I consider that Omni Finance's response to her claim has been fair and reasonable. So I find that it wouldn't be fair or reasonable in these circumstances for me to require it to refund to her any of the money that she's paid to it, to cancel the loan agreement or to take any other action in response to her complaint.

I've seen no evidence to show that Miss M attended the replacement course even though it was available to her. So I suggest that she contacts the replacement course provider to see if she can take the course at another time.

my final decision

For these reasons, my decision is that I don't uphold Miss M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 6 October 2019.

Jarrold Hastings
ombudsman