

complaint

Mr E says he was misled about, and not allowed to cancel, a personal trainer course financed through a fixed sum loan agreement with TTR PT Limited.

background

Mr E entered into a fixed sum loan agreement to finance a personal trainer course in October 2013. He was due to start the course on 11 November 2013, however, he emailed the course provider on 06 November 2013 to state that he was unable to start on the agreed date due to medical reasons. He asked if it was possible to defer his start date. TTR PT provided Mr E with a new start date of 13 January 2014.

In December 2013 Mr E attended a careers workshop with one of the course partner fitness centres. After Mr E received feedback from the fitness centre he wrote to TTR PT and said that it had misrepresented the course. In summary, he said that he was not made aware that placements with corporate partners would be subject to interview and he was led to believe he was guaranteed a placement with an associated fitness centre. He has also said that he had not been initially told about careers workshops and was not given enough time to prepare for the one he attended.

TTR PT has not cancelled his course. It does not agree that the course had been misrepresented and explained that Mr E is liable for the course fees as his cancellation request was made outside the contractual cancellation period. It says that the offer for Mr E to participate in the course is still open.

Our adjudicator did not uphold this complaint. She was satisfied that TTR PT had made Mr E aware that interviews form a part of the placement process and noted that as Mr E has not completed the course it is too early to say if he will obtain a placement. She did not find that Mr E was not given enough time to prepare for the workshop. She considered that the cancellation policy of the contract relates to the initial start date of 11 November 2013, which means that Mr E's cancellation request was too late.

Mr E disagrees with the adjudicator's assessment. In summary, he says that TTR PT had prepared a new contract when the start date of his course was changed, and he was entitled to cancel and receive a refund within the terms of that new contract. He also maintains that the course was misrepresented from the outset.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I thank the parties for their submissions. Where matters are in dispute or unclear I make my findings on the balance of probabilities – which is to say, what I consider most likely to be the case based on the evidence available and the wider surrounding circumstances.

misrepresentation

To make a finding of misrepresentation I would need to be satisfied that Mr E was told a false statement of fact which caused him to enter a contract he would not have entered otherwise.

I have looked at the contract for the personal trainer course which Mr E signed. I note that it clearly states that the positions available are subject to interview with the corporate partner.

I am satisfied that correspondence between Mr E and TTR PT also indicates that interviews are a part of the placement process. Overall, I am unable to conclude that Mr E has been given false information in this respect. Furthermore, I consider it reasonable for Mr E to have expected that placements would be subject to interview.

I accept that the course information makes reference to guaranteed placement. However, it does not promise which corporate partner that placement will be with. Furthermore, as Mr E has not completed the course yet it is difficult to say that he will not obtain a placement. The feedback he received from one of the corporate partners after he attended the workshop did not say he would definitely not get a place with them, only that once he had completed the course he should get back in touch for an interview.

Mr E mentions that he was not told about the requirement to attend career workshops or given appropriate notice of the workshop he attended. However, I consider that he was given reasonable notice. In any event it appears that the workshop was a chance to get feedback on areas for development. After reading the course contract and literature I do not consider it unreasonable or unexpected that it would involve something like a career workshop of this kind. Nor do I consider that the workshop is a final decision on Mr E's potential for placement with a corporate partner.

Furthermore, even if I was satisfied that Mr E had been falsely told that the course did not involve things like career workshops, I am not persuaded that this would have changed his decision to take the course. It appears that Mr E was not initially against the idea of the workshop - as he attended it in the first instance and only expressed his dissatisfaction after receiving the personal feedback from the corporate partner.

Overall and on balance, I am not sufficiently persuaded that the course has been misrepresented to Mr E.

cancellation

The finance agreement which Mr E signed on 14 October 2013 has a 14 day withdrawal period and the contract for the course (signed on the same date) allows cancellation before the start of the course with the level of refund/course fee liability depending on the amount of notice given before the start date of the course. If cancellation is made 2 weeks or less before the start date then Mr E is liable for payment of the full course fee and the registration fee is non-refundable.

The original start date agreed between the parties was 11 November 2013 but Mr E made his cancellation request to TTR PT in December 2013. This is clearly too late to receive any sort of refund or excusal from the course fee under the terms of the contract.

Mr E has said that when he deferred his start date to January 2014, TTR PT prepared a new contract which renewed his cancellation rights. I can see that TTR PT did at one stage refer to updating Mr E's contract. However, there is insufficient evidence that a new contract was actually produced. Furthermore, I consider there is a lack of persuasive evidence to show that TTR PT explicitly agreed to renew Mr E's original cancellation rights.

Noting the uncertainty over cancellation rights in this case, I have ultimately considered what is fair and reasonable in the particular circumstances. In doing so I find it of particular note that when Mr E originally contacted TTR PT to say that he could not participate on 11 November it was less than 2 weeks before the course start date. At this stage, under the terms of the contract, Mr E had no right to cancel and remained liable for the full course fee whether or not he attended the course.

TTR PT agreed to defer the original start date for Mr E as an offer of goodwill, even though at this stage he had lost all right to cancel for a refund. In the absence of a specific agreement to the contrary I cannot fairly conclude that it should be implied that by offering this goodwill deferment TTR PT had also renewed Mr E's (previously lost) cancellation rights. I consider that Mr E had already had reasonable opportunity to make use of those cancellation rights when he originally agreed to take part in the course.

Overall and on balance, I am not satisfied that Mr E has been unfairly denied a right to cancel in this instance. I also note that TTR PT is willing to give him a further opportunity to start the course, should he wish to do so. Mr E should contract TTR PT if he wishes to take it up on this offer.

I appreciate that Mr E feels strongly about this matter and this is not the outcome he wanted. However, he does not have to accept my decision and may pursue this matter by alternative means, such as court, should he wish to do so.

my final decision

My final decision is that I do not uphold this complaint.

Mark Lancod
ombudsman