

## **complaint**

Mr R complains that Omni Capital Retail Finance Limited (“Omni”) have refused to allow him to cancel a finance agreement for his daughters training, despite the request being made within the relevant cooling off period.

He also complains that:

- they failed to make reasonable adjustments for her condition
- the quality of the course was unsatisfactory
- he wasn't told the course would only be available for 12 months

## **background**

On 17 January 2018 Mr R took out a fixed sum loan agreement to pay for his daughter's web development course with a company I'll call “T”.

His daughter initially registered for an information technology course on 11 January and she was sent a registration email for that. But two days later she withdrew from the programme and enrolled on the web development course instead. She notified T that she wished to cancel this course on 26 January but T wouldn't allow her to do so as they said she'd already accessed the material and also because they said she was out of time as she'd received the registration email on 11 January and only had 14 days in which to withdraw. And, as T wouldn't allow her to cancel, Mr R wasn't allowed to cancel the finance agreement that funded the training either.

Mr R also complained on behalf of his daughter that T had breached it's contract. He said they hadn't taken into account his daughter's condition and that the course was not satisfactory. He also said it was never mentioned to him that the course would only be available for 12 months even though he was paying for it over three years: so he thought the deal had also been misrepresented to him. He complained to Omni about all of these issues. He said that, as the provider of credit, they were jointly responsible.

Omni rejected Mr R's complaint. They said T hadn't been made aware of his daughter's condition and couldn't have been expected to do anything about it. They couldn't accept his cancellation of the agreement as it had been made after his daughter had accessed the course and completed several units. They went on to explain that the terms and conditions stipulated that once a course had been accessed it couldn't be cancelled. And they disagreed that the course had been misrepresented as they said the terms and conditions stated the course would be available for 12 months.

But Mr R was dissatisfied with Omni's response so he referred his complaint to this service. Our adjudicator explained that for there to be a valid claim, that the agreement with the supplier had been breached or misrepresented, there would need to be a relationship between the debtor (Mr R's daughter who remained liable for the course), the creditor (Omni) and the supplier (T). But as Mr R had formed the finance arrangement with Omni, there was no agreement between it and Mr R's daughter. So she didn't think Mr R could raise a claim under section 75 Consumer Credit Act (1974) (“section 75”) for any complaint the course was not of satisfactory quality or claim that T hadn't accommodated his daughter's condition. Similarly, she thought any claim that the length of the course had been misrepresented to Mr R could not be made under section 75.

But she did think it was reasonable to consider whether Mr R could cancel his own finance arrangement. So she thought about this. She agreed that his daughter had tried to cancel within 14 days as she noted she registered her interest on 13 January and cancelled on 26 January. But she explained that the terms of the contract said that the course couldn't be cancelled once it'd been accessed and, as it was clear Mr R's daughter had accessed the course and completed at least one module, she wouldn't be able to cancel.

She considered whether T had told her she'd lose her right to terminate if she accessed the course and thought they hadn't. But she went on to explain that, if this were the case, she needed to consider what Mr R's daughter was likely to have done if she was told she'd lose her rights to cancel if she accessed the course. And, as she thought it was most likely she would've accessed it anyway, she didn't think there was any reason to suggest Mr R should be allowed to cancel the credit agreement that related to his daughter's course.

But Mr R disagreed and he asked for a final decision by an ombudsman.

### **my findings**

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

I agree with the investigator's opinion and I know that will disappoint Mr R. So please let me explain.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made, in part or whole, with credit as is the case here, it might be possible to recover the money paid through a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, a finance provider can be responsible for a breach of contract or a misrepresentation made by the supplier.

#### *section 75 Consumer Credit Act (1974)*

Section 75 is a little technical. It was established as it was understood that the legal right a consumer has against a merchant may not be enough protection for them. So section 75 established a liability on the provider of credit as it was believed they would have more leverage over the merchant to resolve the issue and would, in any case, be less inhibited by the expense of suing the merchant.

But for the creditor, Omni in this case, to have that liability it needs to have a relationship with the supplier of the goods through the debtor. And here that relationship doesn't exist as it's Mr R's daughter who is responsible for paying for the course, not Mr R.

So, Mr R can't succeed in a section 75 claim to Omni about the unsatisfactory nature of the course; the accommodations made for his daughter's condition or not being informed about how long the course was available for.

### *cancellation*

The investigator provided a comprehensive response to this in the view that was issued in January. I agree entirely with what she said and I don't wish to repeat it in detail but I will summarise my view of the findings:

- I think Mr R's daughter was within the 14 day time limit in which she could cancel the agreement. She registered an interest in the web development course on 13 January and cancelled on 26 January
- But the terms explain that if the course was accessed it couldn't be cancelled and I've seen that Mr R's daughter did access the course and complete some units.
- T had an obligation to explain to Mr R's daughter that if she accessed the course she'd no longer have rights to cancel. But they didn't
- In that case we need to consider what impact that mistake had on Mr R's daughter. But I'm also satisfied that she would most likely have accessed the course anyway as her reason for cancelling was that she felt the course wasn't rigorous enough and that would only have come to light when she'd started it. She appeared not to have expressed any doubts about the course before this point

So overall, whilst I understand that this has been a frustrating and lengthy process for Mr R, I don't think it would be fair to suggest Omni need to take any further action.

### **my final decision**

For the reasons I've given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 8 June 2019.

Phil McMahon  
**ombudsman**