

complaint

Ms N complains about Omni Capital Retail Finance Limited's refusal to agree to a full refund in relation to a point of sale loan she took out with it.

background

In March 2018 Ms N agreed to buy 24 treatments that she says she was told would completely transform her body. Ms N paid for these treatments using a point of sale loan provided by Omni. The treatments were meant to be provided by the retailer, a limited company that I will call "N".

Ms N said she only received 14 of the 24 treatments. And as far as she is concerned they didn't work instead they had the opposite impact. She told us that she was depressed at the time she agreed to purchase the treatments and she had hoped the improvement in her body that she expected, would improve her self-esteem. Instead she has been left feeling as if she was misled as the treatments have not worked.

Further, she felt she was pressurised into signing up for the treatments. She suggested the therapist and her manager were relentless in making offers to her until she agreed to buy the treatments. She explained she'd only gone to N's salon in the first place for a free facial. And had come out having agreed to pay for 24 treatments. Moreover, she told us during the 14 treatments she got different advice from different therapists making inconsistent claims about what treatments were the best.

To make matters worse N ceased trading before she was able to receive all 24 treatments. Feeling upset and like she had not got what she was promised and what she paid for Ms N complained to Omni.

Omni looked into Ms N's complaint. But it was unable to come to a conclusion within 8 weeks. On that basis, it let her know it would continue looking into her complaint, but it also told her she could come to us, which she did. Ms N relies on the rights she says she has under Section 75 of the Consumer Credit Act 1974.

Once Ms N came to us, Omni sent her a substantive response. It agreed that it had a responsibility to her under Section 75. It accepted that N had ceased trading before the contract was completed. It also accepted this was a breach of contract. It indicated it had looked for and found an alternative supplier who could complete the contract and offered this to Ms N as a solution.

Alternatively, it agreed to write off the cost of the 10 treatments Ms N had not had. It suggested it would only chase for payment for the treatments she had received.

Moreover, it offered her £150 in recognition of taking too long to come back to her with a detailed response. It agreed to ask the credit reference agencies to remove any adverse information it had asked to be registered on her credit file after N had stopped trading.

Our investigator took a look at Ms N's complaint. Our investigator recommended that Ms N's complaint be upheld in part. He was satisfied that Section 75 was relevant law in the circumstances. He thought that the contract had 27 separate elements. Not the 24 that Ms N and Omni had mentioned. He also thought the contract had been breached because N wasn't able to provide all of the individual treatments.

Next our investigator looked at redress. He said that the Consumer Rights Act 2015 was also relevant law in this complaint. He didn't agree that Omni had offered an equivalent service. Neither did our investigator think the alternative treatments had been provided in a reasonable time. For all of these reasons he concluded the alternative put forward by Omni was not a like for like replacement. So, he thought it was fair and reasonable to say Ms N could decline that offer

Our investigator noted what Ms N had said about being given inaccurate information about the treatments, but he wasn't persuaded by this in the circumstances. Neither did he think he could fairly and reasonably say the treatments hadn't worked and would never have been able to work.

When he took all the information available to him into account, he thought a price reduction was a fair and reasonable way forward. In short, he suggested Ms N need only pay for the parts of the contract that she had already received. He added that any adverse information recorded on her credit file, after N ceased trading, should also be removed.

Omni accepted our investigator's recommendation, Ms N did not. In summary, she repeated her earlier stance, she told us she now had no means of repaying the loan and told us why she is vulnerable and that she is also caring for someone who is vulnerable too.

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 have finished my review of Ms N's complaint I intend to uphold it in part. I realise that this is most likely going to disappoint Ms N who was looking for a full refund. Please let me explain why I have come to this conclusion.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Ms N and Omni both agree that the contract has been breached. They also both agree that Section 75 is relevant law here.

I think it's important to set out my role. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under Section 75. Rather, in deciding what's a fair way to resolve Ms N's complaint, I have to take account of relevant law, amongst other things. Section 75 is relevant law. Therefore, I've taken it into

account. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Ms N pursued a claim for misrepresentation or breach of contract. Our service is an informal alternative to the courts.

Section 75 says, amongst other things, that in certain circumstances if the debtor has, in relation to a transaction financed by a credit agreement, any claim against the supplier in respect of a misrepresentation or a breach of contract, then he has a like claim against the credit provider. So, if Ms N can show that she entered into the contract with N because of misrepresentation or that there has been a breach of contract I'd say it was fair and reasonable that she should be able to ask Omni to put things right.

was Ms N given incorrect information about the contract that caused her to make a loss?

Misrepresentation is a false statement of fact that induced the consumer to enter into the contract to their detriment. Ms N suggests N made very clear promises about the treatments. She tells us she was guaranteed she would lose weight. Which she did, although she tells us this was due to her own actions. She also says she was told that the weight loss would be targeted to give her weight loss in her stomach area. None of these promises were made in writing rather this is what she was told in conversation according to her.

By their very nature such alleged verbal representations are hard to substantiate, and I therefore have to assess this aspect on the basis of the balance of probabilities. Ms N was buying cosmetic treatments. I find it likely she was told she would get a benefit from the treatments otherwise why would she buy them. But as to whether she was given a cast-iron guarantee that she would lose weight in a specific area I find that unlikely. And indeed, she did lose weight whether that was because of her own actions or the impact of the treatments I just can't tell.

Ms N also suggests that she was put under undue pressure to enter into the contract. I don't doubt that N was persuasive. Nor do I doubt that it gave her a free facial with the intention of using this an opportunity to cross sell to her. But if Ms N really hadn't wanted to enter into the contract and felt pressurised to do so, I might have expected her to have cancelled the contract at the earliest opportunity, but she didn't do that. And using marketing methods such as giving her a free facial are not in themselves a misrepresentation.

She also suggests that N was running a scam in so far as the treatments could never have had the impact she says she was promised. I accept that she did not get the results that she was hoping for. But as I mention above, it isn't clear what benefit she was promised. And just because she is disappointed with the results does not mean that she didn't get what she was promised.

For these reasons, in the circumstances, I can't safely conclude that the contract was misrepresented to Ms N.

Ms N and Omni both agree that Ms N didn't get all of the treatments that she had paid for

That said, there is no doubt that the contract was breached. The question now is what's a fair and reasonable way for Omni to put this right? Ms N is clear she thinks a full refund is in order. I don't agree. I say this because a full refund would suggest that no services at all had been received and that isn't the case here.

Omni has offered an alternative supplier to carry out the treatments. But it's not clear that this is a like for like replacement. I also think any such alternative treatment should have been provided in a reasonable time particularly given the treatments were originally meant to be given with a matter of months not years as is the case now. It follows, I don't find that the offer of an alternative supplier to deliver the remaining treatments is a fair and reasonable solution here.

Omni has offered a price reduction, as an alternative solution. I think this is fair and reasonable. Ms N should only have to pay for what she received. I think the methodology for working out the redress suggested by Omni and endorsed by our investigator is fair and reasonable.

I agree that based on the information I have available to me, the contract is broken into 27 equal parts. That is 24 treatments and 3 products. The total price of the contract was £3,750. This divided by the 27 equal parts of the contract means the value of each individual item is £1,38.89.

Ms N and Omni both agree that she had received 14 treatments before N ceased trading. The information I have seen suggests that the 3 products were supplied to Ms N. This means that in total Ms N received 17 elements out of the 27. In other words, she has not had the benefit of the remaining 10 items that N contracted to provide her with.

what Omni needs to do to put things right

Based on this reasoning I find Ms N should receive a price reduction of £1,388.89 (10 x £138.89). The total price was £3,750.00 and this therefore means the total amount she should be liable for is £2,361.13.

If she's already repaid more than £2361.13 (including the £510 deposit), then the overpayment should be refunded to her, plus 8% simple interest. This interest should run from the date the payment was made until the date of settlement.

If she has not repaid £2,361.13 including the deposit of £510 then Omni can ask her to pay the remaining balance.

Omni has offered Ms N £150 for taking too long to give Ms N its take on her complaint. I can well understand if that delay caused Ms N distress and inconvenience. That said, I can see it had to get information from a third party that is N, and it also had to source an alternative supplier. Both of which would've taken some time.

I regret to hear about Ms N's circumstances. In particular, it is clear she has a lot of responsibilities in her day-to-day life. It seems it has been her custom to put the needs of others before her own. These treatments were one of the rare things she did for herself. Her sense of injustice that things went so wrong for her from her perspective jumps off the page. She has told us about why she is a vulnerable consumer and the impact this matter has had on her. But she hasn't said that her vulnerability prevented her understanding what she was entering into. Further I think the resolution she has been offered is fair and reasonable taking account of her individual circumstances.

For all of these reasons I think that £150 for distress and inconvenience is appropriate.

Ms N tells us about her money troubles and suggests she will struggle now to repay the money she owes. Since she has said this I expect Omni to look carefully at what she says about this and to treat her in line with its obligations. To be clear Ms N is saying she is facing financial difficulties. This may mean that Omni will be in touch with Ms N separately and without our involvement to assess her financial situation. Hopefully Ms N and Omni will be able to come to a mutually acceptable solution about this. But if they cannot reach an agreement about this point, then Ms N could raise a fresh complaint about this one limited new point.

my final decision

My final decision is that Omni Capital Retail Finance Limited must, as it has already agreed to do.

1. Only ask Ms N to repay it no more than £2,361.13 it must take the £510 deposit off this amount it must also take off any repayments she has made towards the loan.
2. If this results in a balance, it must refund the balance to her. It must also pay interest on the balance at the rate of 8% simple per year. The interest to run from the date of payment to the date of settlement.
3. Pay Ms N £150 for distress and inconvenience.
4. Contact the credit reference agencies and ask them to remove any negative information it asked them to register on Ms N's credit file from the point at which N stopped trading.

Omni must pay the compensation within 28 days of the date on which we tell it Ms N accepts my final decision. If it pays later than this it must also pay interest on the £150 from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 31 August 2020.

Joyce Gordon
ombudsman