

The complaint

Mrs K complains that Omni Capital Retail Finance Limited (“Omni”) has treated her unfairly when she asked it to help her obtain a refund for a training course she paid for using a loan she took out with it.

What happened

In May 2021 Mrs K entered into a training contract with a third party I will call “N”. This purchase was financed by the loan Mrs K took out with Omni.

Under the terms of the training contract Mrs K was meant to be able to do the course in her own time over a period of three years. However, Mrs K had already paid off the loan in full by the time the first year was up.

In October 2022 N went into administration. Mrs K was part way through the course. The course was made up of three distinct modules. Mrs K had passed the first module. But had not had an opportunity yet to complete the remaining two modules.

Mrs K added that she had not needed to do the first module in any event because she already had an equivalent qualification. But N would not let her go straight to the second module. So she was obliged by N to take the first module which she did not need, merely to be able to do the modules she did need. This is another reason why Mrs K wants all of her money back.

Mrs K considered that N had breached its contract with her. N was no longer in a position to remedy this breach itself. Moreover, its administrator confirmed that N’s students would not be transferred by it to another provider to complete their course. Therefore Mrs K had to look for another route to obtain a remedy.

As I’ve already mentioned Mrs K used a loan provided by Omni to pay N for the course. Due to the type of finance that Mrs K used she has the protection of the Consumer Credit Act 1974 (the “CCA”) in particular she has the protection of Section 75 (“Section 75”) of the CCA.

The general effect of Section 75 is that if Mrs K has a claim for misrepresentation or breach of contract against the supplier she can also bring a like claim against Omni provided certain conditions are met.

Omni accepted that Section 75 did apply in this instance. But it does not share her view about what it needs to do to put things right. Its stance is that because Mrs K already completed the first module, which is a standalone qualification the contract has been part performed. Therefore she is only eligible for a partial refund. On this basis, Omni cancelled the loan and refunded the part of the loan that represented what Mrs K paid for the two modules she’d not received. It also agreed to refund the deposit Mrs K had paid (but it later turned out this was a mistake and it had not intended to say it would return the deposit).

Mrs K disagreed with Omni. She wanted a full refund because in her opinion the first module has no value to her as a standalone module. She asks that Omni refund her for what she paid for the first module.

Dissatisfied, Mrs K complained to our service.

Once Mrs K's complaint was with us, Omni sent in new information from an independent expert third party organisation that indicated that the first module was a standalone qualification. Mrs K continued to dispute this and indicated that in her profession the opinion of the expert that Omni referred to does not count.

One of our investigators looked into Mrs K's complaint. She did not recommend that Mrs K's complaint be upheld.

Omni accepted our investigator's recommendation, Mrs K did not. Mrs K gave us the following reasons for rejecting the recommendation:

- She'll get no benefit from the first module as a standalone module. It is a standalone qualification and is recognised by her professional body, but she will not be able to use it to get the very specific qualification she was aiming for, she needed all three modules for that.
- Mrs K repeated the point she'd made before about not needing the first module in the first place, she only agreed to take it to be eligible to do the other two modules.
- Mrs K pointed out that she had not paid for each module individually rather she paid for the qualification as a whole. Therefore, since this had not been provided in its entirety, she'd not got what she paid for and as a result she should get all of her money back.
- Omni promised her in writing it would refund her deposit then did not.
- Other people have used Section 75 to get a full refund and Mrs K indicated this must have set a precedent, which must be followed in this case too.

Mrs K asked that an ombudsman review her complaint.

What I've decided – and why

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

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. Rather, 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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

Section 75 is relevant to this complaint. Both parties agree that N breached its contract with Mrs K. Both agree that Mrs K can hold Omni responsible therefore to put things right. The only disagreement is about what's a fair remedy. So that is the point I'll look at.

It seems both parties now agree that the first module is a standalone qualification which can be used for some purposes. Mrs K indicates that the problem is that the first module cannot be used as a credit towards the gaining of a very specific type of membership she wants to a particular professional body. However, whilst this may be the case, I think it is not fair or

reasonable to say, that because the first module does not allow Mrs K to attain her very particular career aspirations it has no value and therefore Omni must refund her for it.

I don't think it is relevant that Mrs K tells us that she went ahead with the first module only because it was the only way to get N to teach her the second and third module. Mrs K might indeed have already had an equivalent qualification to the first module. However that's not the point. I say this because the fact that N required her to take the first module in these circumstances is neither a misrepresentation nor a breach of contract and those are the only things Omni must fairly or reasonably take responsibility for.

I'm not persuaded that there has been no part performance of the contract. There has been, the course was made up of three separate modules each of which is a standalone qualification as far as I am aware. N partly performed the contract by delivering the first module and Mrs K now has this qualification. It follows that it would not be fair or reasonable to refund the entire amount as that would wrongly suggest no services had been delivered at all.

It appears Omni made a mistake, in writing, about promising Mrs K a refund of the deposit. Just because a party makes a mistake and creates a permanent record of that mistake by putting it in writing does not mean it is then bound to follow through on that mistake. I see no proper grounds either in law or on a fair or reasonable basis for taking that approach.

I don't know the circumstances under which other people have received refunds for this course and from whom. Even if I did know about the circumstances of those refunds, that would not create a binding precedent that I had to follow in this decision. Rather, I'm not bound to follow precedents in the manner Mrs K suggests, instead I am meant to decide what is fair or reasonable in the very individual circumstances of her complaint. I'm not persuaded by what Mrs K says about this point.

It follows that for all of these reasons, I've no proper basis for telling Omni that it must take any further action.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 24 October 2023.

Joyce Gordon
Ombudsman