

## **The complaint**

Mr L complains that Omni Capital Retail Finance Limited (“Omni”) will not let him cancel a fixed sum loan he took out with it to fund a training course he said was mis-sold to him.

## **What happened**

In December 2021 Mr L bought a training course from a supplier I’ll call T at a cost of around £3,800. He paid for the course using a fixed sum loan agreement with Omni repayable over three years.

In September 2022 Mr L contacted Omni as he was unhappy with the course. He asked Omni to consider its liability to him under section 75 Consumer Credit Act 1974 (“s.75”) for a breach of contract by T. He gave the following (summarised) reasons:

- The website used to access the course material was often down on a Sunday evening between 5pm and 7pm. This meant he couldn’t access the course when he needed it and wasn’t able to complete the necessary study time.
- He was told when the course was sold to him that he’d be able to access the study material via an app which would have all of the same content as the website. However, he said that not all of the information was available on the app – such as practice exams. He said this was very inconvenient for him as he worked long hours and intended to use the app to complete practice exams when on breaks.
- One of the methods of assessment changed during the course which required additional learning and he didn’t have the time to complete this.
- The course was not very accessible as lots of the terminology used was not geared towards beginners. He said this was not made clear when the course was sold.

Mr L asked Omni to cancel his loan with it.

Omni declined to meet Mr L’s request to terminate his loan. In response to Mr L’s four main complaint points it said:

- T’s terms and conditions set out that course materials might sometimes be unavailable due to the course provider’s scheduled maintenance of the online learning system. In any event, Mr L did not make it clear during the sales process that a large part of his studying would be undertaken on Sunday evenings. It also said Mr L’s record of access showed he completed most of his study on days other than Sundays.
- It is common for an app to not contain all of the features of a fully fledged website but in any event, T’s records showed Mr L had spent more time in test preparation than study time so he must have been able to access the content he wanted when he needed it.

- T's terms reserved the right to change the mode of assessment applicable to a course at any time. T had also provided additional time to allow Mr L to complete any new material for the new exam. And if Mr L had studied in accordance with the time commitment he made in discussions before the sale he'd have completed the exam long before it changed.
- T offered a number of live online classroom sessions as part of the course which would have helped Mr L get to grips with the terminology. But it said T's records showed Mr L did not attend these, despite having received and opened the messages containing the invites.

Dissatisfied Mr L referred his complaint to this service.

An investigator didn't think Mr L's complaint should be upheld. He accepted many of the reasons put forward by Omni for not meeting Mr L's claim and didn't think the available evidence showed there had been a breach of contract or misrepresentation.

Mr L disagreed with the investigator. He said in summary:

- T's failure to make clear the course material would not be available on Sunday evenings was a misrepresentation by omission.
- T was specifically advised the app replicated what was available on the desktop and he may have declined the product if he'd known it didn't.

Following this the investigator put Mr L's submissions to Omni for further comment which it in turn put to T. Omni provided call recordings between Mr L and T from when he signed up to the course. It said Mr L had confirmed in these call recordings that he would be studying in the week and would "give himself the weekends off". It also provided a copy of a study planner it said Mr L completed with T which showed he didn't plan to study at weekends. It said it was reasonable to conclude from this that there wouldn't have been good reason to explain the course material would be unavailable on Sunday evenings as Mr L had told it he wouldn't be studying then. It said that in any event because downtime is managed by a third party it is subject to change without notice. So, it said it wouldn't be possible to specify in its pre-sale documentation when material would be unavailable.

The investigator wrote to Mr L again and explained that in light of the information provided by Omni and T about his intended study days, he didn't think T had omitted to disclose key information about when the course would be unavailable to Mr L. He also didn't think T had made misleading statements about the app and said this hadn't been discussed in the call recordings he'd been provided with. And in any event, he didn't think Mr L would have declined to buy the course if he'd been made aware the app didn't have all of the same features as the website – noting that in the set-up call Mr L had said he'd primarily be using his laptop to access the material.

Mr L didn't provide any further comment on the investigator's assessment but asked an ombudsman to review his 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.

I am looking here at the actions of Omni and whether it fairly handled Mr L's request to terminate his loan agreement with nothing further to pay. In doing so I am required to

consider relevant legislation. I think relevant legislation in this case includes s.75 and s.56 Consumer Credit Act 1974.

S.75 makes Omni equally liable to Mr L for breaches of contract or misrepresentations by T in certain circumstances. So, if for example Mr L appeared to have a valid claim for either of these things and Omni didn't accept this when he made it aware of his claim, then I might find Omni treated Mr L unfairly and should reasonably do something to put things right.

s.56 also makes Omni responsible for 'antecedent negotiations' conducted by T in relation to the transaction Omni was financing – which put simply can include things said or done or things not said or not done by T about the course up to the point Mr L entered into the loan agreement with Omni.

Mr L said that T omitted important information about the course by failing to disclose that course material would not be available between 5pm and 7pm on Sunday evenings due to site maintenance. He said this resulted in him not being able to complete the necessary study time and meant he couldn't finish the course before his licence to access the material expired. He said if he'd known this, he wouldn't have signed up to the course.

T's contract with Mr L set out that while it would make course materials available during the period of enrolment, there may be times when it was not available due to "scheduled maintenance of the online learning system". T said it was not possible to specifically disclose in its pre-sale documentation when scheduled maintenance would take place as it was carried out by a third party and subject to change. I'm not sure that's entirely the case as the terms and conditions on T's website appear to now specify that maintenance for its courses will take place "weekly between 17:00 and 19:00". And T has accepted that while Mr L was studying, weekly maintenance did take place at those times on a Sunday evening.

However even if I were to conclude that T should have been aware of this at the time of the sale, I still need to consider the significance of the issue, both in terms of whether it was something T needed to disclose and whether it would have affected Mr L's decision to buy the course. If it wouldn't have then Mr L hasn't lost out and it wouldn't be fair to require Omni to terminate the loan.

T provided evidence that Mr L had said in a phone call he intended to study in the week and rest at weekends or work around his shifts and that around five to eight hours of studying per week would be achievable. It seems unlikely to me therefore that at the time of pre-sale discussions, Mr L had contemplated regularly completing the majority of his study between 5pm and 7pm on a Sunday.

With this in mind, it seems unlikely Mr L would have made a different decision had he known that the course material would be unavailable for two hours on Sunday evenings. Equally, it appears T would have been reasonable to take the view this was not significant information that it needed to disclose given what Mr L told it about his intended study pattern. Overall, I'm not persuaded Omni unreasonably refused to terminate Mr L's loan agreement in light of the complaints made by Mr L on this particular point.

I've also considered what Mr L said about the app being misdescribed. There is very little mention of the app in the pre-contract calls T provided and I've not been provided with any written descriptions or screen shots which say it would include all of the same features as the full website.

I'm conscious also that no evidence has been presented of Mr L raising this particular issue with T or Omni for quite a long time after he started the course. I appreciate what Mr L has said about trying to make the best of the situation for as long as he could. But given the

importance Mr L said he placed on the app when making his decision to buy the course, his behaviour in this sense does not appear consistent with someone who's experience of the app was so different to the way it had been described. I've not seen enough from the evidence I've been provided that the app was misdescribed in the way Mr L said.

Mr L was also unhappy that an exam changed while he was studying for the course. The terms of Mr L's agreement did set out that the method of assessment could change after enrolment. But they also said that T had to give Mr L, where practical, reasonable notice of this. In Omni's response to Mr L's complaint it referenced correspondence with T where it said the exam was 'retired at the end of October 2022'. I asked T if it could show us that notice of this was given to Mr L but it didn't provide this. Mr L said he became aware of this change from speaking with one of T's representatives who told him that the exam would change later in the year. So, it appears he may have had some notice of the change.

Whether reasonable notice of this change was provided or not it appears Mr L was granted a six-month extension to complete the course. I've not been shown exactly what changed between the two exams. However, given the overall length of Mr L's licence to use the material and complete all exams appears was around 18 months, this seems like a reasonable extension to allow for any changes that may have been made. So, it seems this would likely have remedied any failure by T to give the appropriate notice of the change. I don't find Omni needs to do anything further in respect of this part of Mr L's complaint.

Mr L said the course was not presented in a way that was accessible to beginners to cyber security. He said it should have been made clearer to him before he signed up that he'd need some understanding of the terminology that would be used. I've not been given examples of this however so there's not a great deal to support it. T said there were resources available that Mr L could have used to assist his understanding of the terminology if he was struggling with it, and it has provided examples of communications it sent to Mr L reminding him of this. T said Mr L did not utilise these resources. Overall, from what I've seen it's not clear enough the course was mis-sold on the basis of this complaint point.

I know Mr L feels strongly about his complaint. But having considered the available evidence, it's not clear enough to me that Omni either breached its contract with Mr L or misrepresented it. Neither have I seen enough to make me think that Omni should have met his request to cancel the loan on the basis of something T did or did not say or do before he signed up to the course. So, I don't find Omni needs to do anything in respect of Mr L's complaint.

### **My final decision**

For the reasons I have explained, my final decision is that I do not uphold Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 11 April 2024.

Michael Ball  
**Ombudsman**