

The complaint

Mr T complains that a training course that he paid for using a fixed sum loan agreement with Carnegie Consumer Finance Limited was mis-sold to him. He's being helped with his complaint by a representative.

What happened

Mr T entered into a fixed sum loan agreement with Carnegie Consumer Finance that he signed in December 2018 to pay for a welding course. The price of the course was £7,800 and he made an advance payment of £60 so the amount of the loan was £7,740 which he agreed to repay by 43 monthly payments of £180. The loan was interest free.

Mr T complained to Carnegie Consumer Finance in December 2019 that the course had been mis-sold to him. It responded in detail and said that: Mr T hadn't completed the parts of the course that he had to complete before he started the practical training; he had contacted the course provider but hadn't raised the majority of his concerns with it; and the course remained available to him. It said that it had found no evidence to indicate that any misrepresentation or breach of contract had occurred and that there was no reason to cancel the remaining balance of Mr T's loan agreement.

Mr T wasn't satisfied with its response so complained to this service. His letter of complaint referred specifically to three areas: information provision (and he said that course providers need to provide up front, clear, intelligible, unambiguous and timely information); terms and conditions (and he said that the course provider's terms and conditions that apply to students need to be fair and balanced); and complaint handling processes and practices (and he said that course providers need to ensure their complaint handling processes and practices are accessible, clear and fair to students).

Our investigator didn't recommend that his complaint should be upheld. He considered each of the three areas about which Mr T had complained. He was satisfied that the course provider had delivered what it said it would and he thought that Carnegie Consumer Finance had acted reasonably in respect of any responsibility it might face under the provisions of section 75 of the Consumer Credit Act 1974.

Mr T's representative, on his behalf, has asked for this complaint to be considered by an ombudsman. He has provided an extremely detailed 25 page response to our investigator's recommendations in which he sets out the reasons that he considers that the course was misrepresented to Mr T. He says in his summary that: he and Mr T disagree with our investigator's conclusions; misrepresentation did occur in the sale of the course as there was no City and Guilds accreditation for the course; the service given to Mr T was absent, both from the course provider and from Carnegie Consumer Finance as he couldn't access the service; and that's a breach of contract in contravention of section 75.

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.

Having done so, I agree with the conclusions reached by our investigator for these reasons:

- Mr T used credit in the form of a loan from Carnegie Consumer Finance to pay for the course and, in certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier;
- to be able to uphold Mr T's complaint about Carnegie Consumer Finance, I must be satisfied that there's been a breach of contract or misrepresentation by the course provider and that Carnegie Consumer Finance's response to his claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of Mr T's claim under section 75 as only a court would be able to do that;
- we offer an informal dispute resolution service and try to resolve complaints by customers about financial businesses by looking at what we consider to be fair and reasonable in the circumstances but in complaints such as this one, where the evidence is incomplete, inconclusive or contradictory, I have to make my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances;
- I have read and considered Mr T's representative's detailed response to our investigator's recommendations, as well the other evidence and arguments, but I won't be responding to all of the information that Mr T's representative has provided and will focus on what I consider to be relevant for me to decide whether Carnegie Consumer Finance's response to Mr T's complaint has been fair and reasonable;
- Mr T signed a registration form for a welding skills course with the course provider in December 2019 in which he confirmed that he'd been left with a complete course kit for appraisal, which included the study guide and plan of the course and that he understood how the open learning nature of the self-study program works;
- he also signed the fixed sum loan agreement, an affordability assessment and a credit application;
- Carnegie Consumer Finance says that Mr T started the course but didn't complete the introductory modules that he was required to complete before he could start the practical training so he was unable to start the practical training;
- it also says that the course provider had confirmed that it was a requirement for Mr T to be registered with City and Guilds on the day he commenced his practical training – but as he hadn't completed the introductory modules he hadn't become eligible to start the practical training and there was no need for him to be registered with City and Guilds;
- Mr T's representative says that the course was represented to Mr T as being accredited by City and Guilds but it wasn't accredited by them so the course was misrepresented to Mr T and he's provided information from his investigations about City and Guilds accreditation of the course;
- Mr T's complaint to Carnegie Consumer Finance, and his complaint letter to this service, didn't claim that the course had been misrepresented to Mr T because of the lack of City and Guilds accreditation and I don't consider that it would now be fair or reasonable for me to make any finding as to whether or not the course provider misrepresented its City and Guilds accreditation to Mr T;
- I consider that Mr T was provided with enough information about the course before he registered for the course, he confirmed that he'd been left with a complete course kit for appraisal, which included the study guide and plan of the course and he had enough information to be able to start the course and then to contact the course provider;

- Mr T signed the registration form which said, immediately above his signature: *“I confirm the conditions overleaf form part of this agreement. I have read them and agree to be bound by their terms”*;
- I’m not persuaded that he’s provided enough evidence to show that the terms and conditions aren’t fair or balanced, he agreed to be bound by the course provider’s conditions and, if he didn’t agree with them, I consider that it would be reasonable to expect him not to have signed the registration form;
- Mr T and his representative clearly feel that the course provider didn’t take Mr T’s complaints about the course seriously and didn’t properly consider them – I can appreciate that that will have been frustrating for Mr T but I don’t consider that to have been a breach of contract or misrepresentation by the course provider and Carnegie Consumer Finance can only be liable under section 75 for a breach of contract or misrepresentation by the course provider;
- Mr T and his representative clearly feel very strongly that the course was misrepresented to Mr T and that there’s been a breach of contract by the course provider, but I consider that the course was adequately described to Mr T and was made available to him and he didn’t complete the introductory modules that he had to complete before he could progress to the practical training;
- the course provider said that the course remained available to Mr T but I’ve seen no evidence to show that he has done any further work on the course;
- I sympathise with Mr T for the issues that he’s had with the course but I’m not persuaded that there’s enough evidence to show that there’s been a breach of contract or misrepresentation by the course provider in these circumstances and I consider that Carnegie Consumer Finance’s response to his claim under section 75 was fair and reasonable; and
- I understand that Mr T’s account with Carnegie Consumer Finance has been settled but I find that it wouldn’t be fair or reasonable for me to require it to refund to him any of the money that he’s paid for the course, to pay him any compensation or to take any other action in response to his complaint.

My final decision

My decision is that I don’t uphold Mr T’s complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 21 December 2021.

Jarrold Hastings

Ombudsman