

## The complaint

Mr A says Carnegie Consumer Finance Limited has treated him unfairly in relation to a loan taken to pay for a training course.

## What happened

In early 2017 Mr A contacted a Course Provider to enquire about taking a training course. A representative visited him, and a modular training course was agreed to be undertaken. A loan agreement was created by Carnegie to pay for this course and Mr A paid £165 a month to Carnegie whilst doing the course for some years.

Then in July 2020 Mr A complained to Carnegie about many aspects of the sale and the course. This complaint included not knowing he'd entered into a loan agreement, that his signature has been falsified, that he wasn't told there was a time limit on completing the course and a variety of other issues. Mr A wanted (and wants) the agreement unwound and all payments he made refunded to him.

Carnegie responded explaining that it supplied the loan and that a separate party (the Course Provider) provided the training course. Carnegie made clear it had responsibilities for any breach of contract or misrepresentation in the sale or supply of the training course. It considered the elements of Mr A's complaint and felt that it hadn't done anything wrong and nothing needed to be remedied. So Mr A brought his complaint here.

Our Investigator decided that there had been a failing in the sale of the training course with regard to the time limit in the contract to complete the course. So decided that Carnegie should extend the period of time Mr A had to complete the course. Mr A disagreed with this saying his circumstances had changed, and he no longer wanted the course. Mr A still wants the agreement to be unwound and all payments returned.

Carnegie didn't agree with the Investigator's position either and remained of the opinion that nothing had gone wrong. But as a gesture of goodwill and in an attempt to bring the matter to an end it offered an eighteen-month extension to the course in order for Mr A to complete it and gain the qualifications available. This offer has been put to Mr A and he's explained he doesn't accept it.

As both parties didn't agree with the Investigator's position and Mr A was unwilling to accept Carnegie's offer this complaint came to me for a decision.

I issued a provisional decision in October 2021 which set out my preliminary position that I didn't think any element of Mr A's complaint should be successful. Carnegie responded that it didn't have anything to add. Mr A said in summary that there must be issues here because lots of people complain about the matter online, that he reiterates he didn't know it was a loan, that the evidence Carnegie is "tainted" (which I take to mean is false) and that they could create the documents after his meeting with the representative. Mr A also says that he has *"been hospitalised due to this and the stress caused by this matter has had a huge impact on my mental health which has raised safety concerns with health professionals."*

## 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 very sorry to hear Mr A has not been well and has been in hospital. I hope he receives all the support he requires and has a speedy recovery.

The following paragraphs which are italicised, indented and in smaller font are the key areas of my provisional decision. After I've quoted these I'll address Mr A's concerns.

*Carnegie and Mr A don't agree to some of the key issues here. I can only make my decision based on the evidence available and the arguments made. In short I must decide what is most likely to have happened. Or in other words, what happened on the balance of probabilities.*

*Mr A purchased his course with the Course Provider through a loan with Carnegie which was specifically arranged for that purpose. This means Carnegie has certain responsibilities to Mr A which arise from the relevant law, specifically, sections 56 and 75 of the Consumer Credit Act 1974 ("CCA"). There is no need for me to go into great detail about how these sections operate, but in summary section 56 has the effect of making Course Provider the agent of Carnegie during the "antecedent negotiations" which led up to Mr A entering into the loan agreement and beginning with the first communication he received from the Course Provider. In practical terms this means Carnegie can be held responsible for representations made by the Course Provider during the sales process.*

*Section 75 has the effect of allowing Mr A to hold Carnegie liable for breaches of contract by the Course Provider, or misrepresentations made by it in relation to the course. Again without going into a large amount of detail, a misrepresentation is a material, false statement of fact which a person relies on to their disadvantage, for example, by going into the contract that it otherwise wouldn't have done. A breach of contract occurs when one party to a contract fails to provide what it has agreed to under that contract.*

*Mr A's contract with the Course Provider would be defined under the Consumer Rights Act 2015 ("CRA") as a contract to supply a service. The CRA causes a number of terms to be treated as included in such a contract. These are that the service in question will be performed with reasonable skill and care, within a reasonable time, and for a reasonable cost (if a price hasn't been pre-agreed). So I now turn to key aspects of this complaint.*

### *Signatures*

*Mr A says the signatures on the documents aren't his. I've considered this carefully. Mr A has pointed to his signature on his passport and a document which relates to his agreement which is unsigned to support his stance that he didn't sign any documentation here. But I have to bear in mind a number of issues here. Firstly Mr A didn't complain to Carnegie for over three years after agreeing to take the Course which was arranged at the same time as the loan. This is a significant period of time and it would be understandable for memories of the sale to have faded in that time.*

*Carnegie have provided a number of documents including a registration form, the Loan Agreement, an Affordability Assessment and the Student Status Credit Application which it says were all completed at the time and in Mr A's presence. I can see that all of these documents have customer signatures on them. They are all dated when Carnegie says the representative visited Mr A. And across all of them they contain a significant amount of personal information about Mr A including addresses, monthly expenses, account details, driving licence details, bank statements and bank account details. This is not information publicly available, so I think it likely that Mr A provided these details during the meeting. And the number of documents present and the amount of handwritten entries made on these suggests to me that the completion of them (with Mr A providing extensive details in their completion) suggests to me that the completion of these documents would have taken a*

significant amount of time. And I think Mr A provided the information written on these forms. Mr A suggests the representative could have completed this all on his own. I disagree-these documents contain information that I think more likely Mr A provided.

Mr A argues that an unsigned document demonstrates he didn't sign the documentation. I disagree. Often copies are made and just because one copy is unsigned doesn't demonstrate that another identical copy was not signed by Mr A.

Mr A also points to variances in the signatures between what he accepts is his signature and the signatures on the documentation here. And he is correct that they are not absolutely identical. However signatures vary for a variety of reasons, so I don't think this is persuasive here.

I can also see a letter which the Course Provider says it sent to Mr A shortly afterwards which says it contained copy documentation including the credit agreement. It is worth remembering that Mr A made the payments and continued with the course for three years after this point. And I'm satisfied the signatures on all the documentation from the sale are sufficiently consistent for me to not think they were signed by different people.

Taking all of this into consideration I'm satisfied on balance of probabilities that Mr A did sign all this documentation as Carnegie suggests he did in order to get the course he clearly wanted to do (and did for some time).

*Not knowing it was a Loan*

I can see from the documentation signed one of the documents is titled "Fixed Sum Loan Agreement" which is clearly branded with Carnegie's company details. It has the amount of credit, advance payment made on the day and the monthly repayments (which Mr A accepts he made). And it has a signature consistent with the other signatures on the documentation which I've found on balance Mr A made. I can also see references to the loan and a credit agreement on the other paperwork. And bearing in mind the amount of this paperwork and the details therein I think it likely Mr A was present during its completion. And I can see a copy of the letter sent after the sale to Mr A's listed address which explains it includes the credit agreement which showed it was a loan. And Carnegie says statements were sent to Mr A also in the following years and has pointed to its records of this.

Mr A says he was told it was a direct debit arrangement which could be cancelled whenever he wanted. But he was also aware that it was a modular course which worked towards qualifications and that it had limited places, which doesn't seem consistent with being able to cancel at any time. Evidently Mr A paid throughout the three-year period. And the documentation shows it was a loan. And as Carnegie point out he was sent statements during this time. And also as Carnegie point out Mr A made contact and in July 2018 a statement of the loan was provided to him. But he didn't complain to it until 2020. If Mr A had not known he'd taken a loan I'd have expected him to raise the issue when he was sent a copy of the credit agreement a few days after agreeing it in 2017 (and within the cancellation period). Or when he received statements about the loan in 2018 and later. But there was no complaint made until 2020. Which doesn't seem consistent with what Mr A says he thought was the situation.

Taking all I've said above into account and Mr A's extensive arguments on the matter I'm satisfied on balance that it was made sufficiently clear to Mr A that this was a loan and not a 'pay as you go' type arrangement. So I don't think Carnegie has to do anything here.

*The three-year issue*

Mr A says that he wasn't told he had to complete the course within three years of taking it when he bought it. He says if he'd been told he would not have taken the course or the loan.

The investigator in this case has said she felt that Mr A was misrepresented to on this point. But I'm not persuaded this is the case here. I say this for a number of reasons. Firstly this course is designed to give specific qualifications for a specific industry in order for those who complete the course to then go into that industry and work in that industry. It was clearly a

course with numerous stages and requiring a significant commitment in terms of time and effort. Carnegie say that depending on time available, effort level and other variables people doing this course complete it in between twelve months and thirty-six months. Twelve months being the minimum time required to do the course and thirty-six being the maximum. Clearly this was a course with significant expense, significant time commitment and with the clear aim of going into that profession that the course trained people taking the course to do.

It's clear that Mr A intended to take the course alongside his other commitments when he started the course. But three years is a long time and I think it unlikely Mr A would have been put off by the three-year limit when he took the course. I say this because he's not given any persuasive reasons why he'd plan to take longer than three years to qualify in this profession bearing in mind he'd need to qualify on the course before he'd be able to start earning significantly from his new profession. It would seem likely that he'd want to get the qualifications as soon as practicable (whilst alongside his other commitments) in order to start earning from his new profession. So whether or not he was told there was a limit to the course or not I don't think would have made a difference to his decision making. I think it likely he'd still have taken the course if he'd been told about the three-year limit. I'm not persuaded there was a misrepresentation here. I see no reason for Mr A to have known in 2017 that he'd have to take longer than three years to complete the course. And importantly for a finding of misrepresentation to be made I'd have to be persuaded that the representative lied to Mr A and that he relied on that to his detriment. Even if the time limit wasn't discussed that wouldn't be enough to say Carnegie had a responsibility here.

And this is now no longer key issue anyway as Carnegie has offered an 18-month extension as a gesture of goodwill. Having listened to the call with our Investigator at the start of this Service's involvement discovering the three-year time limit at the three-year point in the agreement was clear issue for Mr A. and now Mr A can complete the course in the extra time he's been offered. But Mr A has refused this because he says he no longer wants to do so. As it seems he doesn't want to proceed with this career. But that doesn't mean Carnegie did anything wrong.

#### **Qualifications**

Mr A has said the Course Provider isn't entitled to award the qualifications advertised. Our Investigator looked into this and confirmed that the Course Provider outsources the qualifications to be assessed by third parties who are entitled to award such qualifications. So was satisfied that there had been no misrepresentation to Mr A on this issue at the point of sale. But bearing in mind Mr A's confirmed position that he doesn't wish to continue to the qualification stages of the course I don't think any potential issues on this point would make a difference to the outcome of Mr A's complaint. And bearing Mr A's position in mind, his comments regarding the training he has undertaken being in breach aren't persuasive to my mind. I say this because if he continues with the course and completes it and then doesn't get the qualifications described then there will be breach. But as he's decided to stop before the end of the course and the third parties haven't reached the stage of being asked to award the qualifications yet then no breach is made out. And nor is there any persuasive reason to expect the qualifications not to be awarded based on what Carnegie and the Course Provider have said to this Service's investigations.

#### **The Course Provider**

Mr A has said that the Course Provider is no longer trading so he could not get the course if he wanted to. However Carnegie have confirmed the course is being provided and has offered an extension to Mr A in order to complete the course. So I'm not persuaded by what Mr A says here. He should also be aware that even if the Course Provider did fail, Carnegie would be entitled to provide the same or similar courses from other providers to remedy any breach. But as Carnegie tell us that the course is still available to Mr A and he's choosing not to continue with it I'm not persuaded this is a sufficient reason to uphold this element of complaint.

#### **Limited Places/Act Fast**

Mr A says he was misrepresented to at the point of sale. He says that he was told that there were limited places and that he had to act fast to secure a place. But it is important to

*remember that it was Mr A who approached the Course Provider initially. And Mr A hasn't persuaded me that there were unlimited places for the course or that there wasn't some degree of time pressure to get on the course. So although Mr A may in retrospect feel such comments in a sales meeting are disingenuous, I'm not persuaded that they were untrue or that they decisively led him into purchasing the course and loan that he would not have purchased otherwise.*

#### *Training Centre*

*Mr A points to having to go to a training centre far further away than his preferred training centre. Carnegie has considered this and pointed out that Mr A hasn't attended any practical sessions at either training centre. It also points out that if he wishes to attend his preferred training centre for the practical elements of the course he can. And so I'm not persuaded this is as key an issue as Mr A suggests. And considering he doesn't wish to continue the course anyway then I'm not persuaded that this makes a difference.*

#### *A full refund*

*Mr A says he wants all his payments refunded to him. But Mr A has clearly had the benefit of three years of training in this specific profession. Mr A still has the option of getting fully qualified due to Carnegie's offer to extend the time to complete the course. So even if I was persuaded that there were significant failings here (which I'm not) a full refund would clearly be unfair and unreasonable. And at this stage I'm not persuaded that there should be any refund or unwinding of the agreement Mr A entered at all.*

I shall now address Mr A's comments that he made in response to my provisional decision.

Mr A points to online comment about similar issues. However I can only consider the evidence relating to Mr A's complaint about Carnegie. And although Mr A passes comment on the relationships of the parties it is clear these are legally distinct parties fulfilling separate roles in this case. And that Carnegie's liability is limited to what it is liable for under the Act as I've described. And for the reasons I've given above I'm not persuaded that his complaint should be successful. It maybe that the online comment shows other people have complained but it doesn't necessarily follow that Mr A's complaint should be upheld. And as I've described there are many reasons which I think show his complaint should not be successful.

Mr A reiterates that he didn't know it was a loan. But he hasn't explained why my analysis of this issue is wrong. I have reconsidered this, but I think Mr A was aware it was a loan for the reasons I've given.

Mr A makes clear that he believes a lot of the documentation available has been falsified or created after he complained to defeat his complaint. I'm not persuaded by this for the reasons already stated. But it is worth adding that Carnegie knows that when Mr A complained he'd already received benefit of some years of this course. So it follows that even if the complaint was upheld against Carnegie, it would know that Mr A had received benefit of the training and paid for it, so its liability would be limited significantly and may only be the loss of future payments or similar. So why would it commit the crime of falsifying documents when there would be limited financial gain in doing so and the consequences of such criminal action could be disastrous for both Carnegie and the individuals concerned if this were to be evidenced? I think it more likely that the evidence Carnegie has put forward is reliable.

I appreciate that Mr A is very invested in this complaint. But the length of time Mr A took part in the course, the weight of evidence provided by Carnegie which comes from throughout what happened here, Mr A's own actions during the time in question and all the other reasons I've given already mean I cannot fairly find in his favour.

Accordingly this complaint is unsuccessful, and Omni has nothing further to do here. I appreciate this isn't the decision Mr A wants to hear but I think it is fair. And as I've said I hope Mr A has a speedy recovery.

### **My final decision**

My final decision is that I do not uphold this complaint against Carnegie Consumer Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 8 December 2021.

Rod Glyn-Thomas  
**Ombudsman**