

The complaint

Ms M complains that 3J Finance Limited will not let her out of an arrangement to pay for an educational course for her children.

What happened

In July 2019 Ms M says she was sold a direct debit agreement for an online education course for her children by a course provider. 3J Finance says she took out a Fixed Sum Loan Agreement over five years with it to pay for this online educational course supplied by the course provider.

Ms M says she discovered this direct debit agreement was actually a loan agreement when she saw it on her credit file. She said she rang in and was told if she changed the amount she paid it would harm her credit file. She says she previously had an Individual Voluntary Arrangement (IVA) and wouldn't have entered the agreement if she'd known it was a loan.

Ms M wants out of the agreement with nothing else to pay but 3J Finance say she's responsible for the total amount of credit (which was £3438 when the loan was set up). 3J Finance say it's done nothing wrong. So Ms M brought her complaint here.

Our Investigator upheld Ms M's complaint, but 3J Finance didn't agree and pointed to the paperwork from the sale. So the complaint has been passed to me to decide.

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.

Ms M says that having learned about the educational course she expressed an interest in learning more about it, and a representative visited her home in July 2019. By the end of this meeting Ms M had purchased an educational course for her children. It appears the representative was acting for both the course provider and 3J Finance during the sales process. And a loan from 3J Finance was arranged by the representative to pay for it (in addition to the £50 deposit Ms M paid at the time. The loan was interest free and was to run over the following five years.

Ms M has been very clear and consistent in her representations that during the meeting with the representative that she understood she was setting up a monthly direct debit arrangement. Repeatedly Ms M has said that she didn't understand that she was entering a loan agreement. Ms M does agree she entered an arrangement but believed it was monthly direct debit type arrangement. She said she only discovered it was a loan when reviewing her credit file. She says she monitored her credit file from time to time because she'd had significant problems with her credit in the past and had been in an IVA.

3J Finance didn't sell Ms M the course or the loan, but it has some responsibilities to Ms M due to certain protections afforded to consumers by the Consumer Credit Act 1974. The loan

Ms M entered with 3J Finance is regulated by this Act, and there are two sections of the Act which provide her with some protection namely section 56 and section 75.

In summary section 56 has the effect of making the representative who sold the loan the agent of 3J Finance during the “*antecedent negotiations*” leading up to Ms M entering into the loan agreement, beginning with the first contact she had with the course provider. In essence this means 3J Finance can be held responsible for the things that were done or said during the sales process. Section 75 has the effect of allowing Ms M to hold 3J Finance liable for breaches of contract by the course provider, or misrepresentations made during the sales process.

3J Finance has pointed to a number of documents which were electronically signed by Ms M on the day in question. 3J Finance’s position essentially is that the documentary evidence from the point of sale is overwhelming and is, in short, the end of the matter as Ms M agreed to everything in those documents. But I don’t agree that position is a complete or fair appreciation of what happened here. What was said by the representative is also important as the discussion will have started before the paperwork was signed. And Ms M would have considered what the representative said in her decision making during the sale.

I think a particularly important issue here is the reliance Ms M placed on what the representative told her. And I can see she says she’d never have entered a loan agreement if she’d known bearing in mind her having had an IVA in the past and being a single parent with four children.

As for the broader context of this sale I’m also aware that the Financial Conduct Authority (FCA) wrote to credit brokers outlining some key risks for them to consider and act upon. The FCA said it had found firms brokering credit agreements with third party finance providers had poor oversight of staff, leaving sales practices unchecked and potentially increasing the risk of mis-selling, fraud or other poor consumer outcomes. It highlighted in particular brokers which sell products in consumers’ homes as presenting a higher risk of consumer harm, especially where sales took place without appropriate oversight and on a commission-basis. The FCA did not name individual firms, but I’m mindful of the fact that the sale here does, at least, fit some of the criteria the FCA identified as presenting a high risk of mis-selling.

Importantly I also need to consider that this service has seen a number of cases about the course provider involved here and it using credit providers such as 3J Finance. These include the common theme of people understanding that they could cancel at any time or outside the stated terms. I haven’t seen anything that connects these complainants other than they were sold courses such as this by this particular course provider and often took finance to pay for it. That doesn’t mean that the representatives always provided misleading or untrue information. But it does show that there was a significant risk that such representatives either were unclear on the arrangement being entered into or that unscrupulous or incompetent representatives may have presented the situation differently to that articulated in the documentation. In this case I can see that the documents which 3J Finance have pointed to were all signed by Ms M within a three-minute timespan. These documents had a number of pages and a large amount of information to be considered within them. It maybe that they were all considered individually at length beforehand and then signed as a batch at the end of the meeting. But what couldn’t have happened in three minutes was that they were properly considered individually. And Ms M makes clear she wasn’t provided with clear information about what this agreement was. So at least to some degree these time stamps do seem to support Ms M’s comments about not being able to properly consider the matter.

This service has also received information that the course provider sometimes operated informally a longer cancellation period than the fourteen days set out in its contracts. I can see the existence of official and unofficial cancellation periods of different lengths being a potential source of confusion during the sales process, and this again leads me towards a conclusion that misunderstandings were not uncommon.

I've considered what Ms M has said very carefully. And taking everything into account I'm persuaded on balance that Ms M was told a different story by the representative regarding the operation of the agreement to that set out in the documentation provided by 3J Finance. I think it likely she was told that this was a 'pay as you go' type arrangement. And it was on this basis she entered into the agreement. And similarly I think it is on this basis things should be put right. And as I've described due to the operation of sections 56 and 75 of the Consumer Credit Act 1974, Ms M can hold 3J Finance liable for the incorrect information provided by the representative in this case. So 3J Finance needs to do something to put things right.

3J Finance is also obliged to ensure it takes proportionate checks when lending to consumers to ensure she could repay the loan it provided in a sustainable way. 3J Finance has pointed to an affordability statement Ms M signed. Which simply says she can pay from her salary. But I've not seen any persuasive evidence that 3J Finance did proportionate checks on Ms M. Ms M has made clear she wouldn't have taken a loan knowingly due to her IVA and bad credit history. Having reviewed her credit file I can see a number of missed payments and other significant issues with her credit. All of these being indicators to a conscientious lender that there should be at the very least, further consideration of whether the lending should go ahead. And bearing in time the date stamps of the documents Ms M signed it would seem unlikely that the sales representative here would have had real time support from 3J Finance as to Ms M's credit worthiness. Ms M has said due to her IVA and being a single parent with four children she would not have taken the loan knowingly. And 3J Finance hasn't pointed to proportionate checks that it did with regard to her credit worthiness other than the statement of affordability. And as the statement of affordability was apparently completed in the same three-minute timespan as the other documentation and it contains very little detail about Ms M's reasons for considering the loan affordable in her particular circumstances. And having considered her credit file and what Ms M has said I think if 3J Finance had done proportionate checks like it ought at the point of sale it would have decided not to lend to Ms M.

I also note that when these issues around affordability and what Ms M was told were put to 3J Finance in the Investigator's assessment of the matter, 3J Finance chose not to respond to these issues with any meaningful comment. It didn't provide any clarity on what it does to check affordability in situations such as Ms M. So I'm satisfied it has had proper opportunity to consider these important issues but chose not to comment on them. And I note that 3J Finance hasn't persuasively engaged here on why these complaints about such sales keep arising and coming to our service. All in all I'm persuaded by what Ms M says did happen here rather than what 3J Finance said would or should have happened in her case. So it's my decision that Ms M's complaint is successful.

Putting things right

I direct 3J Finance to take the following actions:

- Cancel the loan agreement with no further repayments to be made.
- Refund all the payments Ms M made towards the loan
- Pay 8% simple yearly interest on any refunds due, calculated from the date of payment to the date of settlement.

- Remove any record of this credit agreement from Ms M's credit file.
- Arrange with Ms M for the return of any course materials, DVDs, and anything else she received under the contract, and the ending of any other services supplied under the contract.

*HM Revenue & Customs requires 3J Finance to take tax off this interest. 3J Finance must give Ms M a certificate showing how much tax it's taken off, if Ms M asks for one.

My final decision

For the reasons set out above, I uphold the complaint against 3J Finance Limited and direct it to put things right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 18 July 2022.

Rod Glyn-Thomas
Ombudsman