

## **The complaint**

Mr E complains about a loan with Honeycomb Finance Limited's ("HFL").

## **What happened**

In April 2018 a salesman from a company I will call "E" visited Mr E at home. The purpose of the visit was for the salesman to tell Mr E more about an online educational course provided by E. The course is meant to complement and support the studies of pupils at least up until GCSE level.

Mr E's position is that he was interested in the course for his school age children, and one of the things that clinched it for him was that he was told by the salesman that the course was cancellable at any time. It appears that Mr E valued flexibility in relation to the course, as he was mindful that it was there to supplement the education his children were already receiving in school.

English is not Mr E's first language so he had a translator present so he could communicate with the salesman. According to Mr E the translator read and translated everything that was presented to him by the salesman. Part of Mr E's stance is that most of the written contractual documents E's salesman subsequently submitted to both E and HFL was not shown to his translator on the day.

Mr E agreed to purchase the course. But he is clear he did not sign anything with an electronic signature. Moreover, crucially, Mr E indicates that he thought he was paying as he went along for the course by direct debit. He thought he was on a pay as you go deal because that was in line with what he'd been told about the course being cancellable at any time.

In September 2020 HFL contacted Mr E about a loan it said it had with him. In particular, it was contacting him about the arrears on the loan repayments. At this point Mr E told HFL that he knew nothing about the loan and asked it to cancel it. When it did not Mr E cancelled his direct debits. HFL continued to chase him for payment.

HFL's stance is that Mr E was never told the course was cancellable at any time. Rather, he signed up for a lifetime licence with E and this was to be paid for by means of a fixed sum point of sale loan from it. Moreover, he entered knowingly and willingly into the loan with it to pay for this course and he electronically signed paperwork on the day to prove it. Further, it points to the fact that Mr E contacted it in July 2018 to ask it about a direct debit for the loan repayments which he did not recognise. HFL tells us Mr E did not object at this point or suggest he knew nothing about an agreement with it. On this basis HFL's stance is that it is entitled to rely on the loan, and it does not agree to cancel it.

Dissatisfied, Mr E complained to our service.

One of our investigators looked into Mr E's complaint. He was satisfied that the loan had been misrepresented to Mr E and that HFL was responsible for this. Therefore our investigator recommended that Mr E's complaint be upheld.

Mr E accepted our investigator's recommendation, HFL did not. In summary its objections were as follows.

- HFL suggested Mr E's account of event was inconsistent. For example, it mentioned again that Mr E spoke to it in July 2018 asking it about the direct debits and what they were for. It told him then that the direct debits related to the course with E. Yet in September 2020 Mr E suggested he had no knowledge of the loan, which could not be correct because "*the matter had already been explained to him in July 2018*". It also suggested it was significant that Mr E had not complained to it between July 2018 and September 2020 given he says he did not agree to the loan.
- Moreover, Mr E had, according to it, signed the loan agreement which by itself should be taken as showing he agreed and accepted the loan. Furthermore, the loan agreement set out Mr E's right to withdraw and to a cooling off period, yet he'd not asked for either at the time.
- HFL's records show Mr E signed for the loan in April 2018. Those same records show it sent a welcome letter to Mr E in May 2018. In HFL's opinion the welcome letter, amongst other things, made it clear that he had taken out a loan with it. In addition, from HFL's perspective this letter ought to have made it clear to Mr E that the finance was not cancellable at any time. Therefore, if this letter conflicted with what he'd been told by E's salesman it would have expected him to have contacted it then.
- HFL points out that all the direct debit payments went to HFL and this in turn showed the relationship between them.
- Mr E paid off the loan in full after complaining about it which does not indicate that he was misled about the loan.
- The initial information that HFL received about Mr E's complaint suggested that Mr E wanted to cancel the loan in March 2020 once his son no longer needed the course. This to it suggests that Mr E knew about the loan all along.
- Mr E first tried to cancel the loan in April 2020 according to HFL, Mr E explained he wanted to do this due to financial difficulties he was experiencing due to the Covid-19 pandemic. It appears Mr E contacted E to do this and he was told to contact the "*finance company*". Mr E did not appear to express surprise about the involvement of a finance company. Moreover, it was not until September 2020 that Mr E contacted HFL. Given this timeline HFL's point is that Mr E did not show the sense of urgency it might have expected from someone who says they never took out the loan with it.
- HFL tells us its records show the conversation it had with Mr E in July 2018 was not the first conversation it had with him about arrears. In these earlier conversations he never mentioned misrepresentation.
- HFL questions how we have assessed the evidence we have got. Specifically, it suggested our investigator had relied solely on Mr E's recollections about verbal misrepresentation.

HFL asked that an ombudsman take a fresh look at Mr E's 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. I haven't. 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

In a nutshell Mr E complains that he was given incorrect information by E about the contract with E. Further he complains that E omitted to mention anything about the loan agreement with HFL. Mr E suggests both the act of commission and omission were misrepresentation. He suggests he relied on the false information and this made him enter into the contracts.. On that basis he wants the contract to be cancelled with nothing further owed by him. HFL's stance is that Mr E was given correct information about both contracts and only started to complain once he no longer wanted to be a party to the contracts. Moreover it suggests the written evidence supports its stance. And Mr E's behaviour post contract contradicts what he tells us about knowing nothing about the loan at the time the contracts were made. Therefore it is entitled to continue to rely on the finance contract and to pursue Mr E for payment.

The positions of the parties are very far apart. 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.

I have to take account of relevant law when I make a decision. On the face of it, although I accept Mr E denies it, Mr E has a point of sale loan with HFL. As a result of the loan, in principle, Mr E has rights against HFL under Section 75 of the Consumer Credit Act 1974 ("Section 75"). The general effect of Section 75 is that if Mr E has a claim for misrepresentation or breach of contract against the supplier that is E he can also bring a like claim against HFL provided certain conditions are met. Therefore in the context of this complaint Section 75 is relevant law.

I think it's important to set out my role here. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under Section 75. Rather, in deciding what's a fair way to resolve Mr E's complaint, I've taken Section 75 into account. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Mr E pursued a claim for breach of contract or misrepresentation.

In addition E acted as a credit broker in relation to the loan between Mr E and HFL. This means that under further relevant law here Section 56 of the Consumer Credit Act 1974 ("Section 56") HFL can be held to account for misrepresentations made by E as a credit broker before Mr E entered into the loan. I have also taken this relevant law into account.

Misrepresentation in this context means a false statement of fact that induced Mr E to contract.

For these reasons, if I thought that the contracts had been misrepresented to Mr E by E I'd think it was fair and reasonable to ask HFL to put this right.

Moreover E had specific regulatory duties as a credit broker. Amongst other things E had to give Mr E adequate explanations of the nature of the agreement he was entering into. I also think the regulatory guidance for credit brokers about the potential pitfalls involved in broking finance, including where the salesperson is credit broking on a commission basis, in a consumer's home is also relevant. If I was persuaded that E had not complied with these requirements that would also make me find it was fair and reasonable that HFL should take responsibility to put things right.

Mr E's main point is that E's salesman told him that the service contract that is the contract with E, was cancellable at any time. He suggests he therefore thought he was paying as he went along. He also suggests at no time was he told he was entering into a finance

agreement with a third party HFL to pay for the service contract. He indicates but for these misrepresentations he would not have entered into the service contract.

Mr E's version of events relies mainly on what he tells us he was told prior to the contract. By their very nature such alleged verbal misrepresentations are hard to substantiate, I think this, in part, is what HFL meant when it objected to how it thought our investigator had dealt with the evidence.

However, just because there are evidential difficulties with verbal misrepresentations that does not mean I have to entirely discount what Mr E says, or automatically prefer the written evidence. Rather I think I therefore have to assess this aspect on the basis of the balance of probabilities. When I do that I think I can look at the consistency of what Mr E says and whether his behaviour and the behaviour of others fits with what he says about verbal misrepresentation.

Moreover, Mr E's account of what happened is a first-hand account and I can think about that when deciding on what weight to give what he says. I note that HFL could have asked E's salesman to give his first-hand account too, but it did not.

Mr E's version of events about what he was told on the day the salesman came to visit him has been consistent. Furthermore, I think it likely in the circumstances that he would be able remember with accuracy the key messages from that meeting. As I have already mentioned I have no account from the salesman about his recollections of the day. Although I think HFL has had a fair opportunity to provide this.

But I don't just have Mr E's account of the sales process, I can also look at wider relevant circumstances I can take on board that this service has seen several complaints about the sales practices of E which suggest that E's salespeople did not always give clear information to prospective consumers about the educational course and the finance taken out to pay for it. This fits with Mr E's version of events. This also suggests that either through design or through poor explanation E misrepresented what it was selling and how it would be paid for.

Further, I find it difficult to understand why Mr E might have committed himself to a lifetime agreement in this way given that E did apparently sell pay as you go subscriptions to its service. Mr E's need for the service was presumably time limited he would need it only for as long as his children were in primary and then secondary education.

For all these reasons when I weigh up all the information I have about the what most likely happened in the sales meeting I am more persuaded by Mr E's account of events than I am by HFL's.

That said I accept that both the written information and the conduct of the parties after the contract was made is also significant.

I do agree that as a starting point that when a person reads and signs an agreement – they are representing that they understand the terms of the agreement and they are agreeing to be bound by them. That seems to be what HFL is saying is the start point here. However, Mr E's position is that he did not see, read, or sign the agreement for the point of sale loan or the service contract. Therefore just because the loan agreement and the service contract were signed does not necessarily mean, in this instance, I can take it as read that he signed either contract. What Mr E says about wanting the flexibility of being able to cancel the service contract and stop the payments seems to suggest he would have been unlikely to have signed up for a loan or a lifetime licence in these circumstances.

The written information does set out what Mr E appears to have bought from E. But that does not necessarily mean that he knew about this or agreed to it. It seems that there are five contractual documents but four out of the five documents which includes the application form and the loan agreement, which I consider to be the key documents are electronically signed. This could fit with the scenario that Mr E outlines that he never saw or signed these documents. Moreover, this also fits with complaints this service has seen about the

occasions when E on balance misrepresented what it was selling, and the salesman appears to have signed everything electronically for an unwitting consumer.

When I look at the written contractual documents I am not satisfied that they represent what Mr E was told about the deal.

HFL has highlighted Mr E's behaviour after the event. I think it is fair to note the obvious fact that this behaviour took place after any misrepresentation would have occurred. So this behaviour does not speak directly as to whether a misrepresentation occurred. Rather if behaviour after the event is not consistent with what the parties say happened at the time it could negatively impact on the weight I am able to place on what the parties say happened prior to the contract being made. In other words, if Mr E says one thing happened but then his later behaviour suggests otherwise that weakens his stance. HFL has highlighted several instances where it suggests Mr E's post contract behaviour undermines what he says about verbal misrepresentations made by E. I'll look at each in turn.

I think HFL's account of the July 2018 telephone call is not inconsistent with Mr E's version of events. I don't doubt that HFL told Mr E that he was making direct debit payments to it to pay for the course provided by E. I don't find it significant that Mr E did not pick up on the point that his payments were going to HFL rather than E. I think the penny just did not drop with Mr E. That is that he did not think about that he had contracted with E but was paying HFL. Mr E's poor grasp of English may on balance, have been to blame for this. Mr E knew he was paying direct debits to pay for the course. What he tells us he did not know, at this point, is that he had a loan. Nothing HFL relies on tells us it specifically discussed the loan with Mr E in July 2018. Therefore for all of these reasons, I don't find it surprising he did not call it again between July 2018 and September 2020.

I have already dealt with why I don't agree that just because the loan agreement was electronically signed I must take it that Mr E knew about the loan and agreed to be bound by its terms. The mere fact that Mr E did not ask to withdraw from the loan or use the cooling off period does not mean I have to infer Mr E knew about the loan. The contrary could be true, that is if Mr E did not know about the loan, as he says, it follows that he would not have asked to withdraw from it or use the cooling off period.

We have asked Mr E about the welcome letter. I find it likely that the correctly addressed welcome letter would have been delivered to him. I also find the letter set out the situation in relation to the loan very clearly. A native English speaker would be expected to understand from it that they had a loan with HFL. Mr E tells us he can't remember if he received this letter. But he also tells us in any event that his written English is at such a level that he needs translation services to understand written English. I think this might on balance explain why he did not recognise the significance of this letter.

I don't agree that paying off the disputed loan is inconsistent with saying that the loan is invalid. Mr E may well have taken this step to protect his credit rating whilst his complaint was in play.

Mr E may have wanted to cancel the agreement at the point when his children no longer needed it and/or when he began to experience financial difficulties. This does not mean he knew about the loan all along. Mr E may not have initially mentioned misrepresentation but at that point it seems he believed the service contract was cancellable. It was only when it became clear it was not cancellable that misrepresentation became relevant.

HFL indicates it had conversations with Mr E about arrears prior to July 2018. It find no reason to doubt the accuracy of its records. Mr E seems to have had an imperfect understanding of the underlying financing of the agreement with E. He seems to have thought he was making month to month payments by direct debit. In that context if he missed payments he might well have expected a conversation about this. What I have not seen is anything to suggest (other than the welcome letter of May 2018), that Mr E and HFL

had a discussion about the existence of the loan. It seems once Mr E understood there was a loan he did complain.

I have looked at all the evidence I have available to me, not just the information supplied by Mr E about verbal misrepresentation. When I look at the situation as a whole I find it more likely than not for the individual reasons I set out above that the contracts that is the service contract and the finance contract to support it were misrepresented to Mr E as he suggests. It follows that I find it fair and reasonable that HFL has to take responsibility for this.

### **My final decision**

My final decision is that Honeycomb Finance Limited must.

- Work out how much Mr E owed under the loan at the time he first asked either HFL or E (whichever is the earlier) to cancel it which appears to be April 2020. It appears that Mr E was using the services provided under the service contract up to this point and therefore it is fair and reasonable he should pay for this. However, his liability should be limited to the amount he owed under the service contract up to this point. HFL cannot pursue Mr E for anything more than this amount. Any remaining balance must be written off
- HFL tells us that Mr E has repaid the loan in full. It appears likely therefore Mr E will have paid more than he is liable to pay according to this decision. Any repayments that Mr E has made that are in relation to the period after he first asked to cancel the loan must be reimbursed so must be any charges or fees that HFL has charged after this point for example to recover arrears. HFL must pay interest on this refund at the rate of 8% simple per year. The interest to run from the respective dates the respective payments were made until the date of settlement.
- Instruct the credit reference agencies remove any negative information that HFL or its agents have asked them to register on Mr E's credit file in relation to the loan. The loan must be marked as settled as at the date that Mr E first asked for the loan to be cancelled.
- Arrange and pay for Mr E to return any learning materials that belong to E in relation to the services contract.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 24 November 2022.

Joyce Gordon  
**Ombudsman**