DRN-3552256

The complaint

Mr A complains that Caledonian Consumer Finance Ltd ("CCFL") has treated him unfairly in relation to a finance agreement he has with it.

What happened

According to Mr A in May 2018 he was looking to train to qualify in a certain profession. He searched online and found a limited company which I will refer to as "N" which offered training for this qualification. He contacted N and N arranged for its salesman to do a home visit. Mr A tells us the salesman said, amongst other things, the following about the course:

- The course had a theory module which was to be done online to be followed by a practical module which would be delivered at a specific location which was close to his hometown.
- He would work with a mentor provided by N to build up a portfolio of work and he'd get paid for this work.
- Further, Mr A explains that the salesman never signed the copy of the finance agreement that he left with him. Mr A suggests the salesman did this to reassure him. He said the salesman told him because the contract was unsigned it was invalid and therefore unenforceable. This in turn meant the contract was cancellable at any time and this was guaranteed.

Mr A tells us he relied on all of these representations. Mr A tells us more about why the location of the practical training was so important to him. Mr A indicates that it was imperative that he was able to study while continuing to work in his current job which is a location specific role. He worked full-time six days per week in this role. He also explains that he has a young child with his wife, who also worked full-time and they both shared the childcare responsibilities. As a result, at the time he decided to do the course, he needed and continues to need to work and study close to home.

Mr A used finance provided by CCFL and credit brokered by N's representative, the salesman, to pay for the course.

Around ten days into starting the online course Mr A spoke to N. It told him that the local centre did not offer the practical training for the course. Mr A suggests this concerned him, so he contacted the salesman by text (he has provided a copy of his texts). He tells us the salesman responded by phone and reassured him in that phone call that he could do the practical module at the local centre. It is Mr A's position that it was only once he received this reassurance that he continued with the online course which he completed.

But much later, when it came to actually starting the practical part of the course Mr A suggests he was surprised to find that N said that he had to go to a location around 140 miles away to study for this. Mr A tells us the online part of the course is of no use without the practical part of the course. He cannot simply go elsewhere, transfer his credits for the online course, and complete the practical module nearer to home with another provider. Mr A indicates that as far as he is concerned the course was verbally misrepresented to him by N via its salesman and also N breached the terms of the service agreement. As a result, he wants all of his money back. Mr A complained to CCFL.

In summary, CCFL responded that it did not agree that Mr A had provided any information that demonstrated that the salesman had verbally misrepresented the course or the situation with being able to cancel the finance contract.
Moreover, CCFL pointed out that Mr A could have cancelled his finance agreement within 14 days during what is known as the "cooling-off" period. CCFL indicated that the salesman had left all relevant paperwork with Mr A on the day of the home visit when he signed up for the course. It suggested if Mr A had looked at the paperwork when he got it, as he ought to have done, he would have seen that the finance was not cancellable at any time. Therefore, if this point was important to Mr A why did he not object on receiving the paperwork?
Further, CCFL said when Mr A signed up for the course and the finance in May 2018 the salesman left him a "*course kit*" and Mr A also signed a declaration. The course kit included various documents related to the course and contained relevant information about the location of the practical training. The declaration confirmed that Mr A had been given all relevant information about the course. Once again, CCFL pointed out that Mr A received the course kit and signed the declaration well before the cooling-off period.
In addition, CCFL set out what N had told it. CCFL seems to have adopted N's position as its own. Mr A and N spoke in May 2018 at which point it, N, told him that the location for the practical training was either the location that was around 140 miles away (I'll call this "Location 1"), or another location which was around 193 miles away (I'll call this "Location 2"). N's version of events is that Mr A spoke to it again in December 2018 and he accepted the situation re the location of the practical training, once it agreed to pay his travel expenses. N added Mr A had signed a Non-Disclosure Agreement ("NDA") in which he agreed to a full and final settlement of his claim against it on this basis. N also told CCFL that Mr A had in fact gone to one of the locations and done two weeks training. In the light of all of this N expressed surprise as did CCFL, that two years later Mr A was complaining about the location of the practical training.
CCFL suggested that the written contractual documentation makes it clear that Mr A has to arrange his own work experience this will not be provided. Moreover, that same documentation makes it clear he has to provide and create his own work portfolio.
In the circumstances, CCFL suggests it is entitled to rely solely on the written documents it has seen.
Further, CCFL underlined that Mr A had made 24 repayments before he ever complained to it.
CCFL agreed that on the day of the home visit Mr A had been left with an unexecuted copy of the finance contact. But this, it suggested, was normal practice, it was not an admission that the contract was invalid or a guarantee that if Mr A was unhappy with the finance agreement it would not be enforced. In any case, CCFL suggested it had sent an executed copy of the agreement to Mr A shortly after he'd met with N's salesman. It pointed out again that if Mr A had not wanted to proceed, he could have cancelled the finance contract within the cooling-off period.
For all of these reasons CCFL rejects the suggestion that there was any misrepresentation or breach of contract for which it ought to take responsibility.
Dissatisfied, Mr A complained to our service.
Once Mr A's complaint was with this service, he raised new points about affordability and about the whether CCFL can canvass off trade premises.
Later CCFL sent us the transcript of the phone call between Mr A and N which took place during the cooling-off period, this is the call I mentioned above of May 2018. Moreover, CCFL did not accept that Mr A was unable to attend the two training centres due to them being so far from his home. It came to this conclusion because Mr A had in fact attended training at one of the centres – Location 1. It also questioned why at first, Mr A had not told this service that he had attended a practical training session in Location 1.
Mr A responded that he had attended two weeks of practical training but suggested it had very difficult to attend even those two weeks. He indicated that carrying on further was unsustainable. He also told us that N had never paid him the travel expenses that CCFL mentions in any event.

One of our investigators looked into Mr A's complaint. Our investigator concluded that it was more likely than not that N had misrepresented the location of the practical training and but for this misrepresentation Mr A would never have gone ahead with either contract. That being so, our investigator also concluded it was fair and reasonable in the circumstances for CCFL to take responsibility for putting things right. Our investigator said CCFL had to do the following:

- End the loan agreement without nothing further owed by Mr A.
- Refund all the payments Mr A has paid towards the agreement and add interest to that refund at the rate of 8% simple per year.
- Mr A's access to N's online portal should be cancelled and he must return any course materials that have been provided. CCFL should cover the cost of the return.
- Ask the credit reference agencies to remove from Mr A's credit file any adverse information relating to the finance agreement.

It appears Mr A accepted our investigator's recommendation but CCFL did not. In summary, it repeated its previous stance. It added that it did not agree that it was proper to rely on Mr A's recollection of events which it referred to as *"his interpretations of conversations he had with the course advisor [i.e. the salesman] more than 4 years ago".*
CCFL asked that an ombudsman take a fresh look at Mr A'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 considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The type of finance agreement Mr A used to purchase the course is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it.

Relevant law includes, but is not limited to, both Section 56 of the Consumer Credit Act 1974 ("the CCA") and Section 75 of the CCA.

Section 56 means that CCFL can be held to account for misrepresentations made by N in the antecedent negotiations when it was acting as a credit broker for the finance provided by CCFL.

The general effect of Section 75 is that if Mr A has a claim for misrepresentation or breach of contract against the supplier i.e. N, he can also bring a like claim against CCFL provided certain conditions are met.

I think it's important to set out my role here in relation to Section 75. 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 A'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 A pursued a claim for breach of contract or misrepresentation. This service is an alternative to the courts.

If I found that N misrepresented the contracts or that the contract of supply was breached, then I'd further find it was fair and reasonable to say CCFL had to take responsibility for this.

In this context misrepresentation means a false statement of fact that induced Mr A to enter into the contract(s).

Mr A talks about verbal misrepresentation. I don't agree with CCFL when it suggests Mr A has provided no information to support his stance merely because he is relying on what he tells us he was told. A misrepresentation can be verbal. I don't have to disregard representations simply because they are verbal as opposed to written.

Rather the difficulty with verbal representations is not that they cannot be used to support a stance but that by their very nature such alleged verbal conditions are hard to substantiate and I therefore have to assess this aspect on the basis of the balance of probabilities.
I don't agree with CCFL that I should automatically doubt the accuracy of what Mr A says he was told because I must necessarily see his recollections as *"his interpretations of conversations he had with the course advisor [i.e. the salesman] more than 4 years ago".* Rather, I see no reason why given he was clearly interested in gaining the qualification and paying thousands of pounds to do so Mr A might not have listened with very close attention to what the salesman said. And I also think, as result, it likely that in the circumstances, he would remember with accuracy what was said that induced him to enter into the contracts. However, as well as doubting the accuracy of Mr A's recollections, CCFL also invites me to find that no such statements were ever made at all. Although I note that is not what N said to Mr A initially - it apologised if its salesman had suggested that Mr A could do the practical training locally. I also think it is significant that the practical training had been done at the local centre at one point.

I look at Mr A's actions and I find them consistent with what he says he was told about the location of the practical course. He complained to the salesman immediately following the May 2018 call. Moreover, as soon as he had to start the practical module and found out where it was to be held, he complained again. CCFL provided us with the call transcript for the phone call in May 2018. But I don't think it supports its stance, rather the opposite. Mr A is asking a series of questions about the location for the practical training and those questions and his responses suggest that what he is being told in the phone call is not what he was told previously or expected. In addition, the internal notes from N also show Mr A querying the location of the practical training and asking about the training in the local centre he says he was told about.

The December phone call that CCFL also relies on does not suggest to me that Mr A accepted that no misrepresentation took place about the venue for the practical training. Further the terms of any NDA between N and Mr A are no bar to Mr A bringing a complaint to this service about CCFL.

I take account of Mr A's work and home situations. It seems unlikely to me that given that for professional and personal reasons Mr A needed to stay close to home, he would have agreed to taking a training course that in part required him to attend essential training so far from home.

Mr A has explained that he did try to go to the practical training for two weeks. But due to the location the logistics were too difficult. Moreover, just because it was possible for Mr A to attend that training, it does not mean there was no misrepresentation. Mr A's stance after all is not that it was physically impossible for him to attend the training in the offered locations rather, he suggests that had he known he'd have to go to these locations he would not have gone ahead with the contracts.

That said, Mr A did not enter into the contract solely based on the pre-contractual negotiations. Rather, he signed a number of contractual documents that stated, reasonably clearly and prominently the basis on which the parties were contracting.
I agree with CCFL that as a starting point Mr A should be taken to have read and understood the agreements he signed; he does not dispute he signed. He should also be taken to have agreed to the terms of the agreements by signing, also as a starting point.
However, I have seen nothing in the contractual documents that said the training location for the practical module would be Location 1 and Location 2. Instead the most pertinent terms mention practical training taking place at the venue of N's choice. The documentation also mentions that the location of the practical training will be "*agreed and advised at the point in my self-study where I become eligible and meet the appropriate requirements as highlighted in the Plan of The Course*". But I don't think it follows that it is likely therefore that N's salesman told Mr A prior to the agreement that N's chosen location would be up to 140 miles away.

Neither do I find it significant that Mr A did not cancel the finance agreement in the cooling-off period, I am persuaded that he spoke to the salesman who gave him the reassurance he has told us about.

Ideally Mr A would have told us from the get-go that he did attend a practical training session, But his omission does not so undermine the rest of what he has told us that I feel unable to place weight on the rest of his submissions.
For all of these reasons I am satisfied that on balance N did give Mr A inaccurate information about the venue for the practical training and this information induced him to contract. It follows that is fair and reasonable that CCFL has to take responsibility for this and put things right.

I don't need to look at any of the other representations Mr A has raised, because based on the finding above I can fairly and reasonably ask CCFL to put things right.
Neither do I need to look at the breach of contract points Mr A has also raised. This is because even if I found that there had been breaches, I'd not be able to give more redress on top of the redress for the misrepresentation, based on the information I have. In any event the thrust of Mr A's complaint appears to about the misrepresentation not contractual breaches.

Further, Mr A raised new matters once he had already received a final response from CCFL and we had begun to investigate his complaint. We have not investigated these new matters as part of this complaint. I have no proper basis therefore to deal with these new issues in this decision.

My final decision

My final decision is that Caledonian Consumer Finance Ltd must.

- End the finance agreement with nothing further owed by Mr A and it must stop pursuing him for repayments.

- Refund all the repayments Mr A has made towards the finance agreement. It must also add interest to this refund at the rate of 8% simple per year. The interest is to run from the date of payment until the date of settlement.

- Contact the credit reference agencies and ask them to remove any information it has asked them to register on Mr A's credit file about the finance agreement.

- Assist Mr A to arrange to return to N, any course materials he may have. If any costs are incurred by Mr A in doing this it must pay these. However, the type of costs I am anticipating are postal costs to return any hard copies of training course materials. Mr A is not for example to be paid for his time in arranging the return of the course materials. If there is any dispute about these costs both parties may return to this service for guidance.

If Caledonian Consumer Finance Ltd considers it's required by HM Revenue & Customs to take off income tax from the interest mentioned above, it should tell Mr A how much it's taken off. It should also, if it is able to, give Mr A, if he asks for one, a certificate showing this, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Mr A should refer back to Caledonian Consumer Finance Ltd if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 August 2022.

Joyce Gordon
Ombudsman