

The complaint

Mr S is unhappy that he couldn't cancel a fixed sum loan agreement he took out with Specialist Lending Limited trading as Duologi, to fund an online educational course for his children with a supplier I'll call E.

What happened

In June 2018, Mr S brought an online educational course from E for his children. He told us he was visited at home by E's salesperson and was told it was a pay as you go course that could be cancelled at any time. Mr S told us his children used the course for several months. But around March 2019, Mr S got in touch with E saying his children felt the content was too old and they didn't understand what they were being told. He stopped his payments and asked E for a refund.

E replied saying Mr S had signed all the relevant paperwork and it didn't agree with the concerns he'd raised. E told him to contact Duologi about the finance arrangement. Mr S had already been in touch with Duologi. There'd been various communications between all three parties, but no resolution was agreed.

Then, in October 2020, Mr S got back in touch with Duologi after receiving an arrears notice. Briefly, it told him that the loan agreement could only be cancelled within the first 14 days and, as he'd asked to end it outside of this period, he wasn't eligible to cancel.

Mr S wasn't happy with this. So, he brought his complaint to our service where it was looked at by one of our investigators. In brief, she didn't think Mr S would have entered into the agreement if he'd understood it was a loan agreement that couldn't be cancelled at any time. Our investigator set out that Duologi should now cancel the agreement, remove any adverse information from Mr S's credit file, and give him a refund of the deposit he'd paid.

Duologi didn't accept our investigator's view. It said it considered the sales paperwork to be clear and transparent. Duologi also pointed to different disputes our service had looked at where we'd reached a different outcome.

As the matter remains unresolved, it's been passed to me for a final decision.

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've decided to uphold it. I'll explain why. But first, I'm very aware I've summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is at the heart of the matter here: is it fair and reasonable for Duologi not to cancel Mr S's loan agreement?

If there's something I've not mentioned, I haven't ignored it. I've not commented on every individual detail. I've focussed on the details that are central to me reaching what I think is the right outcome. This reflects the informal nature of our service as a free alternative to the courts.

I'll now turn to Duologi's comments about our service reaching different outcomes on similar disputes. While cases may seem similar on the surface, they are often important differences that may not be apparent from the outside – and these differences can be what determines the outcome of a particular case. I'm required to reach my decision based on the individual circumstances of a case. That's what I've done here.

Mr S paid for the educational course through a fixed sum loan agreement from Duologi. Section S75 of the Consumer Credit Act 1974 (CCA 1974) sets out that in certain circumstances, as the finance provider, Duologi is jointly liable for any breach of contract or misrepresentation by the supplier, E. I'm satisfied those circumstances apply here.

Also, Section 56 of the CCA 1974 has the effect of making E an agent of Duologi during the "antecedent negotiations" leading up to Mr S entering into the loan agreement. This means Duologi can be held responsible for the things E said or didn't say, and what it did or didn't do during the sales process. This would include all the discussions Mr S had with E's salesperson on the day he agreed to buy the course.

Mr S is unhappy that he wasn't allowed to cancel the course when, after his children had used it for several months, they weren't happy with the content and couldn't understand what they were being told. Mr S says he was told by E's salesperson that it was a pay as you go arrangement that he could cancel at any time.

It's not disputed that the terms of the loan agreement state Mr S could cancel it within 14 days of the loan being made, but after that it was a non-cancellable contract. He told us if he'd known he was entering into an agreement that he'd have to continue to pay for four years, he never would have purchased the course. So, I'm satisfied the key issues I have to think about is whether the course and agreement were misrepresented to him by E.

Duologi's position is that the sales paperwork Mr S completed is clear and transparent. I agree that the documents signed by Mr S should be taken into account – and I've done this. I've looked at the relevant documents to see if it was reasonable for him to think he would be paying for the course on a pay as you go basis.

While I've looked at the documents signed by Mr S, I've also taken into account the salesperson's responsibilities to provide clear information to enable him to make an informed choice before he agreed to sign up to the course. Also, I don't think the loan agreement is necessarily always an accurate description of the conversations that took place before the contract started. What was said in these discussions is key to if Mr S was misled about entering into the loan agreement.

The Financial Conduct Authority (FCA) has set out what it expects a responsible credit broker to do when arranging a loan. This is set out in the Consumer Credit Sourcebook (CONC). As the lender, these regulations and guidance don't apply to Duologi directly. But I think E was acting as a credit broker by arranging the loan agreement on behalf of Duologi. So, I've taken this into account.

I won't go in to detail here about the provisions of CONC other than to say that it sets out that E's salesperson had a duty to ensure Mr S had enough information about the loan agreement before he agreed to enter into it to buy the course.

The Customer Clarification and Satisfaction Form signed by Mr S refers to purchasing a "Lifetime Licence" and uses the generic term "Finance" throughout, rather than loan. I accept the words "loan" and "finance" are used interchangeably in the lending industry, but I think it's understandable that a lay person may not have understood they were entering a loan agreement. In any event, Mr S says he was told he could cancel the agreement at any time.

He told us that the salesperson said that taking the loan over a longer period would make his payments cheaper than a pay as you go option - but Mr S wanted an arrangement he could come out of anytime. He said he chose a more expensive payment amount which he says he understood was a pay as you go agreement. As the agreement was on an interest only basis, it wouldn't have cost him anything extra to take the loan over a longer term, with lower payments.

On balance, it seems unlikely to me that he wouldn't have taken this cheaper option unless he was led to believe that by paying a higher amount, he was getting something different, such as a pay as you go agreement. I've found Mr S's testimony to be consistent and credible on this point.

I've also thought about Mr S's personal situation at the time of E's visit. I can see he told Duologi that he wanted extra tuition for his five children. At that time, their ages ranged from five to twelve years old. Again, on balance, I think it would be very unusual for a parent to commit to arrangement lasting for four years given how much the needs of his children were likely to develop and differ over that time.

Taking all the above into account, I'm satisfied Mr S wouldn't have gone ahead with a four-year loan agreement if it had been made clear to him he could only cancel it within the first 14 days and, after that, he would still have to make the repayments even if the course didn't help his children and wasn't being used.

For completeness, I know Mr S has also: expressed his dissatisfaction over the quality of the course But, the evidence supplied isn't enough for me to conclude that it wasn't of sufficient quality for there to be a breach of contract.

Also, Mr S has claimed this was a scam; and, denied having an agreement with Duologi. I can understand why Mr S might feel like this. It was E who sold the course to Mr S, and it was E he dealt with its administration. Also, the majority of the initial paperwork was also from E rather than Duologi. So, I think it was natural for him to be very wary when he received request for outstanding payments from Duologi when nearly all his dealings had been with E.

I'm also satisfied Mr S understood he was entering into some kind of financial arrangement, but that he understood this was a pay as you go, subscription style service with E, rather than a four-year fixed sum loan agreement with Duologi.

In any event, as above, I'm satisfied Mr S wouldn't have entered into the agreement if it had been made clear to him it was a four-year loan agreement that could only be cancelled within the first 14 days. So, I've set out below what Duologi needs to do to resolve things

Putting things right

Mr S says his children used the course for several months. This is consistent with him making payments until early 2019 before he stopped and told E he wanted to cancel. So, I think it's fair he pays for this use. I'm satisfied the payments he made until early 2019 are a reasonable charge for this.

To put things right Duologi should:

- End the agreement and remove any adverse information relating to it from Mr S's credit file;
- Refund Mr S's £80 deposit. It should also pay 8% annual simple interest on this amount on this amount from the date the payment was made until the date of the refund;
- Waive any outstanding payments due; and
- Cancel Mr S's access to the course and collect any relevant course equipment and materials at no cost to him. If Duologi has no interest in collecting these, it should tell this to Mr S.

If Duologi thinks it's required by HM Revenue & Customs to deduct income tax from the interest noted above, it should tell Mr S how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate.

My final decision

My final decision is that Specialist Lending Limited must take the action I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 September 2022.

John Miles

Ombudsman