

## The complaint

Miss A complains about a fixed sum loan agreement (“loan”) she entered into with Specialist Lending Limited (“Duologi”).

## What happened

A company that I will call “P” offered Miss A a study/training programme that she had showed an interest in. The programme was available as a total package, costing £6,645.60, or as a number of individual units/elements costing, in total, £14,510.

Miss A elected to purchase the total package at a cost of £6,645.60 and signed a ‘Training and Consultancy Service Level Agreement’ in respect of the same on 13 May 2020.

As well as selling Miss A the study/training programme, P also brokered on Miss A’s behalf a loan with Duologi. The loan was signed by Miss A on 4 May 2020.

Under the terms of the loan, everything else being equal, Miss A agreed to pay an advance payment (deposit) of £750.00, one monthly payment of £149.59 and then 59 monthly payments of £149.54 – making a total repayable of £9,722.45 at an APR of 19.5%.

In September 2020 Miss A contacted P to say she wished to withdraw from the course.

In March 2021 Miss A ceased making payments to her loan having made the following payments to Duologi:

Advance payment of £750.00

1 monthly payment of £149.59 June 2020

8 monthly payments of £149.54 July 2020 to February 2021

In April 2021 Miss A contacted P asking for the course to be cancelled and for a refund of the monthly payments she had made since she had ceased studying. P responded to say it had started the process of closing her account and its finance department would be in touch regarding “*any financial matters*”.

In May 2021 Miss A contacted P to say she hadn’t heard from its finance department and she was being pursued by Duologi for arrears on her loan. P responded to say she should hopefully hear from its finance department shortly.

In June 2021 Miss A contacted P on two further occasions about securing a refund.

In September 2021 Miss A complained to Duologi. Duologi responded (under cover of a final response letter (“FRL”) dated 21 September 2021) to say that it didn’t believe it had done anything wrong and that it expected the loan to be repaid in full.

In October 2021, and unhappy with Duologi’s FRL, Miss A complained to our service. She said that she purchased the study/training programme on the understanding that she could cancel at any time with nothing further being payable under the loan.

In May 2022 Miss A paid Duologi 1 monthly payment of £149.54. It's also my understanding that since making this payment Miss A has made a number of other payments to Duologi.

Miss A's complaint was considered by one of our investigators. He upheld it and outlined what Duologi should do to fairly compensate Miss A. In summary the investigator said Duologi should:

- cancel Miss A's loan agreement with nothing further to pay
- refund all payments made by Miss A since October 2020 – together with interest

Miss A accepted the investigator's findings, but Duologi didn't.

The investigator considered Duologi's reasons for disagreeing with his findings, but he wasn't persuaded to change his mind. Therefore, Miss A's complaint was passed to me for review and decision.

In August 2022 I issued a (first) provisional decision. In summary I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It's clear that both parties have very strong feelings about this complaint. Both parties have provided detailed submissions in support of their respective views which I can confirm I've read and considered in their entirety. However, I trust that the parties will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a discourtesy. The purpose of my decision isn't to address every point raised. The purpose of my decision is to set out my conclusions and reasons for reaching them.

I would also point out that where the information I've got is incomplete, unclear, or contradictory, I've to base my decision on the balance of probabilities.

In the particular circumstances of this case I'm satisfied that P was acting for both itself (as the study/training programme provider) and Duologi (as the loan provider).

Duologi has responsibilities to Miss A under the Consumer Credit Act 1974. There are two sections of the Act which might provide Miss A with protection – section 56 and section 75. Section 56 has the effect of making P, who sold the loan, the agent of Duologi during the negotiations leading up to Miss A entering into it. This means Duologi can be held responsible for things which were said during the sales process.

Section 75 makes Duologi responsible for any breach of contract or misrepresentation made in relation to the purchase of the study/training programme.

Duologi relies on the documents signed by Miss A and says she would've been aware that she was entering into a loan that couldn't be cancelled, at least at the point in time she looked to do so. But this isn't the only issue here. It's important to look at what happened before the various documents were signed, and in particular, to look at what Miss A was told. Unfortunately, we don't have a recording of what was discussed between Miss A and P before she committed to the study/training programme and the loan. However, we do have submissions from Miss A, Duologi and P as to what they 'understand' was discussed.

Now I haven't discounted entirely what Duologi and P says was discussed with Miss A before she decided to commit to both the study/training programme and the loan. But, I find Miss A's submission as to what was discussed with her to be more persuasive and plausible.

Miss A has been consistent in her submissions to our service that she was advised by P, before committing to the study/training programme and the loan, that she could cancel at any time with nothing further to pay. And in support of her submissions in this respect she has provided our service with a communication sent to her on 4 May 2020 by P which says:

*"At no point will you be locked into the programme. You can cancel your programme at anytime within the programme. You only need to give 14days before the next services and the programme will be cancelled and charge for only the services you have already taken where applicable.*

*Due to high demand in the programme and our programmed dates, we will need the necessary document signed so we can secure the dates and offer already given. If you have any further clarifications with the programme, please feel free to reach out to me so I can provide further guidance where needed."* [sic]

In order to find that there's been a misrepresentation, I need to be satisfied that P made an untrue statement of fact, which induced Miss A to enter into the loan. And taking everything into account, I think it's more likely than not that P told Miss A that she could cancel at any time with nothing further to pay. Because this wasn't true, I'm satisfied that this was a misrepresentation, for which Duologi must accept responsibility. I would also add that I'm satisfied that had there been no misrepresentation on the part of P Miss A wouldn't have committed to the study/training programme or the loan.

Given what I say above, what I now need to decide is what Duologi should have to do to fairly and reasonably compensate Miss A.

I've considered whether Miss A should have to pay for the cost of the units she completed, whether at a discounted or undiscounted cost. But in my view this wouldn't provide a fair and reasonable outcome. In my view Miss A was led to believe that regardless of the underlying costs of the units she might complete, she wouldn't be liable (to Duologi) for anything other than what she had paid it under the loan up to the point in time she cancelled the study/training programme (assuming no arrears). And for the avoidance of doubt I'm satisfied that the cancellation date should be taken as being September 2020, not a later date. I say this because it was in September 2020 that Miss A, in my view, tried to cancel the study/training programme with P.

I'm also of the view that Duologi's refusal to accept cancellation of the loan (with nothing further to pay), its persistence in pursuing for payment and its communications more generally caused Miss A both distress and inconvenience for which she should be fairly and reasonably compensated for. And taking everything into account, I find £300 represents an appropriate sum in this respect.

Miss A responded to say she accepted my provisional findings.

Duologi responded to say that it didn't accept my provisional findings. In summary it said:

- I had included certain wording in my provisional findings so as to “*tick the box*” and to avoid having to “*provide any important counter arguments*” to its submissions and defence of Miss A’s complaint
- there is no evidence in my provisional findings to demonstrate I had considered “*anything [it had] said*”
- I had taken Miss A’s “*unsubstantiated claim*” over the “*hard evidence [it had] provided*”
- my investigation hadn’t been “*handled impartially*”
- it was unfair for me to have accepted Miss A’s unsupported version of events over the signed documentation it had provided
- it viewed my award of £300 (for distress and inconvenience) as “*punitive damages*” which I’ve no power to award
- this isn’t the first time our service has “*believe[d] a customer’s version of events over contracts and agreements [which raises the question] as to why [it has] customers sign agreements in the first place*”

Duologi also provided a response it had received from P to my provisional findings. In summary P said:

- the position (with the study/training programme and the loan) hadn’t been misrepresented by it
- the pre-sale email correspondence between it and Miss A clearly demonstrates Miss A understood the nature, terms and conditions of the loan
- Miss A could and should have understood that the loan term would always exceed the proposed study/training programme term by more than four years, the standard study/training programme term being eight months
- Miss A was aware, or should have been aware, that she was liable to pay for all services provided and these services were always going to be provided more quickly than she was paying for them under the loan
- Miss A was never advised that the loan repayments would keep pace with the cost of the services being provided to her
- no one would ever deduce that £1,192 (£149 a month for eight months) would pay for an entire study/training programme costing £14,510 undiscounted, or £6,645.60 discounted
- the email it sent Miss A on 4 May 2020 was in respect of her rights to cancel the study/training programme not the loan
- Miss A was aware that if she was to cancel the study/training programme ‘early’ she would be obliged to pay it something for services provided to date (as detailed in section 12 of the study/training programme contract)
- Miss A was aware that if she was to cancel more than 60 days of starting the first scheduled service she would be liable to pay 100% of the total service fee (as detailed in section 12.4 of the study/training programme)
- Miss A asked to withdraw from the study/training programme after attending seven out of eight courses
- it has incurred time and resources providing what it has to Miss A and for this it should be fairly paid

As well as providing the above response, P also provided Duologi with a substantial amount of documentation it said it would like me to take into account.

In October 2022 I issued a (second) provisional decision. In summary I said:

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 can confirm that I'm still of the view that this complaint should be upheld, but I'm now minded to make a different award against Duologi in favour of Miss A.

Notwithstanding what Duologi has said in response to my provisional findings, I'm again not going to address every point raised, rather I'm again going to focus on what I think are the central issues. Our powers allow me to do this.

In my (first) provisional decision I found, on the balance of probabilities, that Miss A was advised she could cancel the study/training programme at any time and would be under no obligation to pay (assuming no arrears) anything further under the loan.

Now having considered Duologi's response to my provisional findings I'm still of the view, on the balance of probabilities, that Miss A was misled about what her (loan) obligations would be if she cancelled the study/programme early. And I remain of this view given Miss A's consistent and plausible recollection of events together with P's communication dated 4 May 2020.

But on reflection I'm now of the view that Miss A, on the balance of probabilities, was led to believe that she could cancel the study/programme early and would be required to pay only for the services she had started (and completed). I've come to this view because I accept that this is an equally reasonable interpretation of P's communication dated 4 May 2020 and given that Miss A was always going to get the services P had undertaken to provide substantially sooner than she was paying for those services under her loan repayment schedule – the study/training programme being scheduled to run for 6 to 8 months and the loan being scheduled to run for 60 months.

Given what I say above, I will now go on to consider what, if anything, Duologi should have to do to fairly and reasonably compensate Miss A.

Duologi, amongst other things, says it should be able to rely on section 12 of the study/training programme contract, with section 12.4 being particularly relevant in this case.

Section 12 of the study/training programme contract states:

## **12. Termination**

12.1 This agreement shall terminate in the following circumstances, subject to whichever happens first:

12.1.1 This agreement shall terminate immediately after P has completed the Services in compliance with Clause 2; or

12.1.2 Either party may terminate this Agreement at any time by giving written notice to the other party if:

12.1.2.1 The Client wishes to terminate the Services at their own discretion; or

- 12.1.1.2 The Client fails to make payments by the due dates for more than 3 times or has defaulted on any payment for more than 60 days; or
  - 12.1.1.3 The other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
  - 12.1.1.4 The other party repeatedly breaches any of the terms of this Agreement in such manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
  - 12.1.1.5 The other party is the subject of a bankruptcy petition or order; or
  - 12.1.1.6 The other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her on affairs or becomes a patient under any mental health legislation; or
  - 12.1.1.7 The other party (being a company) suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 12.2 If the client's termination notice is received no later than 14 days prior to commencement of the first scheduled Service:
  - 12.2.1 Within 30 days of their enrolment completion: The Client shall incur no charge and be refunded any payments made to P (except for the registration fee).
  - 12.2.2 Later than 30 days of their enrolment completion: The Client shall pay £250 administration fee and be refunded the balance of any payments made (except for the registration fee).
- 12.3 If the Client's termination notice is received less than 14 days prior to commencement of the first scheduled Service, or within 60 days after starting the first scheduled Service, the Client agrees to pay:
  - 12.3.1 The undiscounted price for each Service started by the Client; and £250 administration fee for each of such Services.
  - 12.3.2 The undiscounted price for any of the following scheduled Service that is cancelled less than 14 days prior to its commencement; and £250 administration fee for that Service.
- 12.4 If the Client's termination notice is received later than 60 days of starting the first scheduled Service:
  - 12.4.1 The Client shall be liable to pay 100% of the total Service Fee as set out in the Enrolment Form.

Now I don't dispute that a strict application of 12.4 allows P, and therefore Duologi, to hold Miss A liable for the sum of £6,645.60 and on the assumption Miss A had completed services 1.1 to 1.6 as Duologi submits, Miss A had the benefit of services (at an undiscounted cost) of £8,436.

But as I said in my provisional decision it's important to look at what happened before the various documents (Duologi are looking to rely on) were signed, and in particular, to look at what Miss A was told.

As I say above I'm satisfied that Miss A was told, or led to believe, that she could cancel the study/training programme early and if she did so she would only be required to pay for the services provided up to the date of cancellation.

Now having considered both parties submissions very carefully I'm not persuaded that Miss A ever had section 12 of the study/training programme contract explained to her, at least in terms she could understand. So, in the particular circumstances of this case, although I think Miss A should have to pay for the services she received from P, in my view this should be at the discounted cost.

As I say above, Duologi says Miss A completed services 1.1 to 1.6 at an undiscounted cost of £8,436.00. Now based on a total undiscounted cost of £14,510.00, a discounted package cost of £6,645.60 represents a 54.2% discount on the undiscounted cost.

And applying this 54.2% discount against the sum of £8,436.00 gives a discounted cost of these services of £3,863.69, a (capital) sum that in my view Miss A should have to fairly pay for the services she received from P.

Miss A responded to my provisional findings. In the main she reiterated what had she had previously said and submitted, which was that both the study/training programme and the loan had been misrepresented to her. She also said that:

- She sent an email to P on 17 July 2020 asking to "*stop the course and future payments*", but P persuaded her to continue.
- She was never given a breakdown of the package cost of £6,645.60.
- She didn't understand the possible consequences of the study/training programme and loan having different terms, particularly in the event she exercised her rights to withdraw from the study/training programme 'early'.
- She doesn't understand P's point that she attended seven out of eight courses. She understood the study/training programme was made up of three parts with the first part consisting of "*six courses, then assignments*".

Duologi responded to my provisional decision with a counter proposal (from P) to settle matters.

In summary P said:

- Miss A had completed services 1.1 to 1.6 at an undiscounted cost of £8,536
- Miss A completed three assignments at an undiscounted cost of £600 (£200 per assignment)
- Miss A, in essence, received services totalling £9,136 undiscounted (£8,536 plus £600)
- The discount applied to Miss A's package was 54.2%
- It's prepared, as a gesture of goodwill, to discount the cost of services provided to Miss A by 50%, bringing the sum payable by her down to £4,568 (£9,136 x 50%)

And on this basis it was prepared for:

- Duologi to credit Miss A's loan the sum of £1,327.60 (representing £6,645.60 less £4,568 less £750) backdated to 14 days after the date of Miss A's request in September 2020 to withdraw from the course.
- Duologi to treat the sum of £1,327.60 as a partial settlement of the loan so that Miss A can benefit from an appropriate interest adjustment
- Duologi to provide Miss A with an updated statement reflecting the loan status after the above backdated credit has been applied.
- Duologi to ensure any information recorded with credit reference agencies in respect of the loan accurately reflects the position after the above backdated credit has been applied to it
- Duologi "*as much as possible*" to treat Miss A if she is in financial difficulties, with patience and forbearance with regards to payments she might still be required to make under the loan

### **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 would like to thank both parties for their respective responses to my (second) provisional findings. And having considered these responses I can confirm that I'm not persuaded to change those findings and I now confirm them as final. But for the sake of completeness I would like to make the following comments:

#### *in respect of Miss A's response to my (second) provisional findings*

- I accept that Miss A asked to cancel the study/training programme (and her payments) in July 2020. But given that she didn't actually cancel the study/training programme in July 2020 I'm not persuaded this is material to my findings.
- I accept that Miss A was never given a breakdown of the package cost of £6,645.60. But I've seen nothing that prevented Miss A for asking for a breakdown or anything that would lead me to conclude that the lack of a breakdown was, in itself, material to her decision to embark on the study/training programme and to enter into the loan.



- It's because no breakdown of the package cost of £6,645.60 has been provided to Miss A, or our service, that I made the assumptions that I did in my provisional decision in concluding what Duologi should do, to fairly and reasonably compensate Miss A.
- I'm not persuaded by Miss A's submission that she didn't understand the possible consequences of the study/training programme and loan having different terms, particularly in the event she exercised her rights to withdraw from the study/training programme 'early'. I say this in part because based on what Miss A has said and submitted, it's my understanding she is saying she understood she could have left the study/training programme after say 12 months (with 95% of it completed) and after she had paid (under the loan) 20% of the cost of that study/training programme. And I simply don't find this plausible.
- I can confirm that I'm satisfied that the study/training programme was made up of three parts, but each part was further broken down into sub-parts. And part one was broken down into 7 sub-parts, six of which she completed.

*in respect of P's response (on behalf of Duologi) to my (second) provisional findings*

- I'm satisfied that the undiscounted cost of services 1.1 to 1.6 completed by Miss A was £8,436 and not £8,536 (£1,782, £1,782, £1,188, £1,188, £1,188, £1,308).
- I accept that Miss A may have completed three assignments at an undiscounted cost of £600. But taking everything into account, including the undiscounted cost schedule provided by P making (in my view) reference to a single cost in this respect of £200 – rather than multiples of £200 – I don't think it would be fair or reasonable to hold Miss A to any cost in this respect, discounted or undiscounted.
- Given what I say above, the total undiscounted cost of services received by Miss A should be treated as being £8,436.
- I remain of the view that discounting the above sum by 54.2% represents a fair and reasonable thing to do in the particular circumstances of this case. Therefore, I see no reason to change my view that the sum of £8,436 should be discounted to £3,863.69.

**My final decision**

My final decision is I uphold this complaint and Specialist Lending Limited trading as Duologi must:

- credit Miss A's loan the sum of £2,031.91 (£6,645.60 less £3,863.69 less £750) backdated to 14 days after the date of Miss A's request in September 2020 to withdraw from the study/training programme.
- this credit must be treated as a partial settlement of the loan so that Miss A can benefit from an appropriate interest adjustment
- provide Miss A with an updated statement reflecting the loan status after the above backdated credit has been applied
- ensure any information recorded with credit reference agencies in respect of the loan accurately reflects the position after the above backdated credit has been applied to it
- treat Miss A, if she is in financial difficulties, with patience and forbearance with regards to payments she might still be required to make under the loan

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 16 November 2022.

Peter Cook  
**Ombudsman**