

The complaint

Mrs C complains that she couldn't cancel a fixed sum loan agreement that she took out with Specialist Lending Limited trading as Duologi, to finance an online educational programme for her children.

What happened

In September 2019 Mrs C bought an online educational programme for her children from a supplier I'll call E. She paid for the course using a fixed sum loan from Duologi borrowing £4,716, at 0% interest and repayable over 60 months.

Mrs C said the programme was sold to her at home by a salesperson of E. She said the salesperson told her the programme was a subscription-based service that she could cancel at any time.

Mrs C's children used the programme until late 2020 when Mrs C asked E if she could cancel 'the subscription'. E replied and said it couldn't help because Mrs C made her purchase using an interest free finance agreement and the cancellation period for that had passed. E referred Mrs C to Duologi. When Mrs C contacted Duologi she said it referred her back to E as it said it had no authority to cancel the agreement.

Mrs C complained to Duologi in April 2022. Duologi didn't provide a substantive response to Mrs C's complaint so she referred her complaint to this service.

After learning of this, Duologi said Mrs C would have been taken through a comprehensive presentation of the products and finance options and that by signing the various documents, Mrs C confirmed her agreement and understanding of the arrangements. Duologi didn't believe the programme had been sold as a subscription-based service and it thought the paperwork Mrs C signed made it clear this wasn't the case.

An investigator thought Mrs C's complaint should be upheld. He thought Mrs C had been led to believe by E's salesperson that the programme was a subscription that could be cancelled at any time, and she wouldn't have entered into the agreement had she known that wasn't the case. He asked Duologi to cap Mrs C's liability for the loan at the sum of the repayments due when Mrs C first contacted E or Duologi to cancel.

Mrs C agreed with the investigator's assessment.

Duologi did not agree with the investigator's assessment and asked an ombudsman to review the complaint. It said, in summary:

- There is no evidence at all to support that Mrs C bought a subscription and all of the sales paperwork makes clear it she was signing up to a finance agreement and the course could only be cancelled in the first 14 days.
- It was reasonable to expect Mrs C to have read and understood any document put in front of her before signing it.

- The investigator had unfairly dismissed its evidence and favoured an unsupported and unevidenced recollection from Mrs C.

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.

Mrs C paid for the educational programme through a fixed sum loan agreement from Duologi. Section 75 of the Consumer Credit Act 1974 ("section 75") 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 Consumer Credit Act 1974 ("section 56") has the effect of making E an agent of Duologi during the "antecedent negotiations" leading up to Mrs C 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 Mrs C had with E's salesperson on the day she agreed to buy the programme.

Duologi has provided a number of documents which it says were signed during the process of selling the programme to Mrs C. Mrs C hasn't said that these documents are not genuine or that she did not sign them, so I've proceeded on the basis that these are documents she signed.

It's generally held that if someone has signed a document they are taken to have read and understood it. I think in most circumstances the documents Mrs C signed would have left a reasonable person with the impression that they had 14 days to cancel their purchase. So, the starting point here might be that Mrs C had understood and agreed that she would only have 14 days to cancel her purchase once she had received the DVDs and any associated materials from E.

However, while what has been set out in writing often represents what has been agreed between the relevant parties, it does not always reflect what was said during the conversations leading up to the contract being entered into. This is important, as it is during these verbal conversations where misunderstandings tend to occur, and sometimes these occur due to incorrect or false information being given.

Mrs C said she thought the programme was a subscription-based service from the way it was explained to her by the adviser. She has said she specifically recalls asking the adviser what would happen if her children returned to their age-related expectations and was told the payment could be cancelled at any time if the programme was no longer required.

One could say that this was such a significant promise that Mrs C should have obtained this in writing so she could point to it in the event of a later dispute. Clearly, she did not, and this fact doesn't help her case. However, there are some factors in this case which weigh in her favour.

Mrs C's actions and the way she described the programme when she no longer wanted it support what she's said she was told about the way payment would work. Mrs C contacted E, not Duologi asking if she could cancel her 'subscription'.

As was pointed out by the investigator the FCA wrote to credit brokers in 2020 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 E's sale to Mrs C fit at least some of the criteria the FCA identified as presenting a high risk of mis-selling: E brokered a credit agreement between Mrs C and Duologi in order to sell her a product, in her home.

Mrs C has also said that she wasn't afforded much time to read through the paperwork she was being asked to sign. I note from the audit trail of signed documents that all of the finance documents E asked Mrs C to sign were signed within two minutes of each other, including the pre contract credit information and the credit agreement itself. This in my view supports what Mrs C said about not having much time to read the documents. It seems that Mrs C was therefore more likely to rely on what she was being told by the adviser about how the agreement would work.

Finally, this is not the first time this service has seen a case involving E. We have seen a number of cases where complainants have claimed they were advised by E's salespeople that they could cancel the programme at any time, or that they were using it on a "pay as you go" basis. There doesn't seem to have been anything connecting Mrs C's complaint with the others we've received, other than the fact the products in question were sold by E. While this does not mean salespeople routinely gave incorrect information, it suggests to me that misunderstandings may have occurred not infrequently during the sales process.

Having considered the evidence and the factors I've outlined above very carefully, I accept Mrs C's testimony that she was given verbal assurances that she could cancel and stop paying for the programme at any time. This means I think she was given incorrect information about her cancellation rights. Mrs C doesn't appear to have wanted to have been tied into a long contract. From what she has said it appears she only wanted to use the programme to help her children get back to their age-related expectations so might only have required it for a limited period of time. So, I don't think she'd have gone ahead if she had not been given this incorrect information. Due to the operation of sections 56 and 75 of the Consumer Credit Act 1974, Mrs C can hold Duologi liable for the incorrect information provided by E's salesperson. So, it needs to do something to put things right.

Putting things right

As I've said above, I don't think Mrs C would have agreed to enter the contract for the educational programme and related services, had she not been given incorrect information. However, I understand her children used the programme for a time, so I think it is right that she pays something.

It's not clear to me what the current status of the loan is, but our investigator thought Mrs C should pay up to the point at which she first tried to cancel. This looks to have been around 13 October 2020. However, looking at the lesson report that's been provided, it appears the programme was in fact used up until 14 December 2020. I don't think Mrs C should be responsible for any payments she was due to make after this point rather than the point she asked to cancel as it's fair she pays for what was used.

I'm therefore directing Specialist Lending Limited trading as Duologi to take the following actions:

- Cap Mrs C's liability for the loan at the sum of the repayments which were due as of 14 December 2020. Anything above this amount must be written off and no longer pursued.

- If Mrs C has paid more than her capped liability, then any overpayments must be refunded to her, along with 8% simple interest per year* calculated from the date she made each overpayment, to the date she receives a refund.
- If Mrs C has paid less than her capped liability then an affordable repayment plan must be arranged for the outstanding balance up to the cap.
- Remove any negative information relating to the loan from Mrs C's credit file, and mark it as "settled" from 14 December 2020. If Mrs C has not paid up to her capped liability then Specialist Lending Limited trading as Duologi does not need to mark the loan as settled until she has paid up to the cap.
- Arrange with Mrs C for the return of any programme materials, DVDs and anything else she received under the contract, and the ending of any other services supplied under the contract.

*If Specialist Lending Limited trading as Duologi considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs C how much it's taken off. It should also give Mrs C a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold Mrs C's complaint and direct Specialist Lending Limited trading as Duologi to take the action set out in the 'putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 3 November 2023.

Michael Ball
Ombudsman