

The complaint

Mr K complains that he was mis-sold a training course he purchased using a loan from Caledonian Consumer Finance Ltd ("Caledonian"). Mr K is represented by another party but to keep things simple I'll just refer to Mr K in my decision.

What happened

On 28 October 2021 Mr K bought a training course from a supplier I'll call S at a cost of £7,800. He financed this using a fixed sum loan from Caledonian.

Mr K said his circumstances changed after he took out the agreement as he lost his job. In early December 2021 Mr K asked S to allow him to cancel the course and provide him with a refund. At this point Mr K expressed concerns with the way the course was sold. He said he was told before he agreed to enrol on the course that he'd only have to pay for the parts he'd completed and it was not made clear he'd have to pay for the whole course if he cancelled early. He also said that he did not receive a copy of the loan agreement or information about how to cancel the course after he signed up to it electronically.

S said that copies of the loan agreement and the course registration form would automatically have been sent to Mr K after he electronically signed them. So, it thought he'd have been aware of the cancellation provisions within the contract and that he could only cancel within 14 days of enrolment. S said Mr K's request to cancel the course had fallen outside the period permitted in the contract so it couldn't accept the request. It suggested he contact Caledonian.

Caledonian didn't accept Mr K's request to cancel the loan. In response to his complaint it said Mr K electronically signed all of the relevant documents including the loan agreement which set out Mr K's cancellation rights and it wrote to Mr K shortly after this reiterating those rights.

Dissatisfied, Mr K referred his complaint to this service.

An investigator didn't think Caledonian should cancel the loan or refund what Mr K had paid. He wasn't persuaded the course, or the loan had been mis-sold to Mr K.

Mr K disagreed with the investigator. He said the information about cancellation was not provided to him in a durable medium before the cancellation period ended as he was never sent a copy of the credit agreement or the cancellation notice. So, he said he should have been allowed to cancel the agreement when he asked.

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.

Mr K paid for the training course through a fixed sum loan agreement from Caledonian. Section 75 of the Consumer Credit Act 1974 ("section 75") sets out that in certain

circumstances, as the finance provider, Caledonian is jointly liable for any breach of contract or misrepresentation by the supplier, S.

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

Caledonian has provided a number of documents which it says were signed during the process of selling the course to Mr K including the registration form and the loan agreement. Mr K hasn't said that these documents are not genuine or that he did not sign them, so I've proceeded on the basis that these are documents he 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 Mr K signed would have left a reasonable person with the impression that they had 14 days to cancel their purchase.

So, the starting point here is that Mr K had understood and agreed that he would only have 14 days to cancel his purchase from when he received the course material

Mr K has said that although he electronically signed the above-mentioned documents, he accessed them via a link provided by S and the documents were never actually made available to him after they were signed. He said because the cancellation rights were not provided in a durable medium, he should be allowed to cancel the loan.

Mr K has referenced some legislation which he says gave him the right to do this. I think he means the Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008. However, these regulations did not apply to this sale because the contract was not made during a visit by S to Mr K's home.

I think the most relevant legislation given Mr K's complaint and given the way the course was sold was more likely the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ("CCR"). These provide certain obligations on suppliers when selling products 'off premises' or via 'distance contracts', some of which are implied into contracts. In other words, the legislation inserts certain rights or obligations in the contract. The ultimate effect of some of these provisions if not followed could result in a right to claim a refund of money paid to the supplier, the cancellation of the supply contract and/ or the cancellation of an ancillary contract, such as related finance agreement.

There are obligations in respect of what information a supplier needs to provide about cancellation rights where they exist.

The sale here appears most likely to have been a distance contract because it was made under an organised distance sales or service-provision scheme and wasn't made in the simultaneous physical presence of Mr K and S. However, if I am wrong on that point and the contract was an on-premises contract then the CCR did not provide cancellation rights.

I've looked at the relevant provisions for this kind of contract in the CCR. If S didn't provide certain information about cancellation to Mr K and in a certain way, the cancellation period was extended (up to a maximum of around 12 months).

The CCR required S to 'give or make available' to Mr K information about how he could cancel (including the conditions, time limit and procedures for exercising that right) in a clear and comprehensible manner, and in a way appropriate to the means of distance

communication used, and a cancellation form which had to be worded in a particular way.

The CCR sets out that something is made available to a consumer if he/she can reasonably be expected to know how to access it.

The registration form that Mr K has confirmed he signed included both the information about cancellation in a clear and comprehensible manner and a cancellation form in the way it was supposed to be worded. So, it appears the necessary information about cancellation was 'made available' to Mr K – even if that was electronically via a link. Mr K signed the documents so he must have known how to access them to have done that.

Mr K has said the registration form was not accessible once he had signed it. It's not clear from the evidence I've been provided that the registration form was emailed or posted to Mr K immediately after he electronically signed it. The evidence S has supplied only appears to confirm that Mr K accessed certain documents to sign them electronically, not that copies were necessarily sent to him for his retention. There is one record of Mr K accessing something the day after he signed the registration form and loan agreement. S said this was the registration form and loan agreement but that's not clear enough from what it has sent us.

Nevertheless, the requirement in the CCR appears to be that the information was made available to Mr K, not that it was provided in a durable medium. And as I've said, it appears the necessary information was made available as Mr K signed the registration form which contained it. I've not seen anything that makes me think Mr K wouldn't have been able to access the registration form after this if he'd asked for it from S.

What this all essentially means is that it appears unlikely the CCR assisted Mr K in a claim for breach of contract or with the cancellation of the course and the loan.

In addition to his rights to cancel the supply contract within a specified time, Caledonian said Mr K was able to withdraw from the loan agreement within 14 days of signing it and it wouldn't have paid S until after this period had expired. I see Caledonian wrote to Mr K on 4 November 2021 reminding him of this and asking him to contact it urgently if he hadn't received a copy of the loan agreement so it could supply one.

That letter looks to have been correctly addressed to Mr K. So, it appears in addition to the information that was set out on the loan agreement confirming this – which again Mr K saw and signed, Caledonian made him aware that he could cancel his agreement within 14 days. It also looks to have put Mr K on notice that he should contact it for a copy of the credit agreement if he hadn't received it. So, I don't find it would be fair to conclude in this case that Caledonian failed to supply this information.

Mr K also said that he was told by the person that sold the course that he would only have to pay for the modules he had completed. S has only provided partial call recordings of the conversations and Caledonian has said that it cannot get the missing parts as it is not the data controller for those calls. It's not clear why S could not provide full recordings and I do understand Mr K's concerns that key parts of the calls are missing.

There is no mention in the parts of the calls that have been supplied that Mr K only had to pay for the modules he completed. From what I have seen, the discussions about how the course would progress gave me the impression that the course was at least a 24 month commitment and the screens that were shared by the adviser supported this.

I accept it's possible Mr K could have been told he could pay for just the modules he'd completed in the parts of the call that haven't been provided. But given what I've said above

and looking at the information on the registration form and credit agreement he signed, this would have significantly contradicted the information about the duration of the agreement and the cost of the course. Overall, I've not seen enough to make me think on the balance of probabilities that Mr K was told he'd only need to pay for the modules he completed.

Thinking about all of this, while I do sympathise with the situation Mr K finds himself in, it doesn't appear that Caledonian treated Mr K unfairly by refusing to accept his request for the loan to be cancelled and written off at the point he asked it do this. I do not find therefore that I can reasonably ask Caledonian to cancel the loan or refund Mr K what he has paid to it.

I would however remind Caledonian of its obligation under the regulator's rules and guidance to treat Mr K with forbearance and due consideration in respect of any financial difficulties he may be experiencing, including coming to a suitable payment arrangement should that be necessary.

My final decision

My final decision is that I do not uphold Mr K's complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 29 September 2023.

Michael Ball
Ombudsman