

The complaint

Miss G complains that 3J Finance Limited will not let her out of an arrangement to pay for an educational course for her child.

What happened

In May 2019 Miss G says she was sold a “*pay as you go*” and “*cancel any time*” direct debit agreement for an online education course for her child by a course provider. 3J Finance provided credit in the form of a Fixed Sum Loan Agreement to pay for this online educational course supplied by the course provider (a separate company).

In April 2020 she complained, having had a phone call with the provider where she called to cancel the subscription (as she believed it to be) only to be told it was a loan which couldn’t be cancelled. She complained because she says she didn’t understand she’d been signed up to a loan agreement but was told it was pay as you go. Miss G wants out of the agreement.

Our Investigator upheld Miss G’s complaint, but 3J Finance didn’t comment when asked to do so. So the complaint has been passed to me to decide.

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.

3J haven’t engaged properly on this matter with Miss J and nor with this service about this dispute. From consideration of records at Companies House it is apparent that it is still trading and in existence. It would be unfair on both parties for no decision to be issued here and the dispute to continue perpetually just because one party doesn’t engage with this service. Accordingly I think it is fair for me to issue a decision on these matters.

Miss G says that having learned about the educational course she expressed an interest in learning more about this, and a representative visited her home. By the end of this meeting Miss G had purchased an educational course for her child. It appears the representative was acting for both the course provider and 3J Finance during the sales process. The total price of the course was £6225 of which £6180 was paid for with a loan from 3J Finance which was arranged by the representative. The loan was interest free and was to run over the following five years.

Miss G has been very clear and consistent in her representations that during the meeting with the representative she understood the situation was that they had a service which could be cancelled anytime. She also makes clear from the start that she understood she was setting up a monthly direct debit arrangement and not anything else. She says that it was a “pay as you go” arrangement.

Repeatedly Miss G has said that she didn’t understand that she was entering a loan agreement. Miss G does agree she entered an arrangement but believed it was monthly

direct debit type arrangement she could cancel whenever. It is of note Miss G's testimony about the sales meeting is clear and detailed. She names the individual who sold her this agreement and describes the sale. I find her commentary on what happened consistent plausible and indeed persuasive.

3J Finance didn't sell Miss G the course or the loan, but it has some responsibilities to Miss G due to certain protections afforded to consumers by the Consumer Credit Act 1974. The loan Miss G entered with 3J Finance is regulated by this Act, and there are two sections of the Act which provide her with some protection namely section 56 and section 75. In summary section 56 has the effect of making the representative who sold the loan the agent of 3J Finance during the "antecedent negotiations" leading up to Miss G entering into the loan agreement, beginning with the first contact she had with the course provider. In essence this means 3J Finance can be held responsible for the things that were done or said during the sales process. Section 75 has the effect of allowing Miss G to hold 3J Finance liable for breaches of contract by the course provider, or misrepresentations made during the sales process.

I can see a number of documents which were electronically signed by Miss G on the day in question. I would imagine that 3J Finance's position would be in essence that the documentary evidence from the point of sale is overwhelming and is, in short, the end of the matter as Miss G agreed to everything in those documents.

To my mind that position is not a complete or fair appreciation of what happened here. What was said by the representative is also important as the discussion will have started before the paperwork was signed. And Miss G would have considered what the representative said in her decision making during the sale. Miss G has been consistent in what she says about believing she could cancel anytime. She says she believed this because this is what the representative told her. And events do support this as it is clear that Miss G was trying to speak to the provider to cancel the agreement. I think a particularly important issue here is the reliance Miss G placed on what the representative told her. Miss G says that she was pregnant at the time and considers, on reflection, that the salesperson took advantage of her being vulnerable in that meeting. And lastly I can see the documents were all signed in a short space of time, which supports Miss G's testimony that she didn't have proper opportunity to consider those documents.

As for the broader context of this sale I'm also aware that the Financial Conduct Authority (FCA) wrote to credit brokers 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 who 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 the sale here does, at least, fit some of the criteria the FCA identified as presenting a high risk of mis-selling.

Importantly I also need to consider that this service has seen numerous cases about the course provider involved here and it using credit providers such as 3J Finance. These include the common theme of people understanding that they could cancel at any time or outside the stated terms. I haven't seen anything that connects these complainants other than they were sold courses such as this by this particular course provider and often took finance to pay for it. That doesn't mean that the representatives always provided misleading or untrue information. But it does show that there was a significant risk that such representatives either were unclear on the arrangement being entered into or that unscrupulous or incompetent representatives may have presented the situation differently to

that articulated in the documentation.

I've considered what Miss G has said very carefully. And taking everything into account I'm persuaded on balance that Miss G was told a different story by the representative regarding the operation of the agreement to that set out in the documentation used here. I think it likely she was told that she could cancel anytime, and it was a 'pay as you go' arrangement. And it was on this basis she entered into the agreement. And similarly I think it is on this basis things should be put right.

And as I've described due to the operation of sections 56 and 75 of the Consumer Credit Act 1974, Miss G can hold 3J Finance liable for the incorrect information provided by the representative in this case. So 3J Finance needs to do something to put things right.

3J Finance, by not liaising with this service properly, has chosen or cannot provide any commentary from the representative in this case (named by Miss G) in support of its position. Miss G was there in person and heard what was actually said and I find her comments persuasive in light of what we already know. And along with what I've already said with regards to sales such as this more broadly and considering what this service knows of sales such as this, means I consider it fair on balance that 3J Finance put things right in this particular case.

I note that 3J hasn't persuasively engaged here on why these complaints about such sales keep arising and coming to our service. All in all I'm persuaded by what Miss G says did happen here rather than what 3J Finance said would or should have happened in her case (as it has described in many cases to this service) albeit it has chosen not to liaise with this service in this particular case. So I think Miss G's complaint is successful.

I note that 3J's companies house record shows that it was recently at the first stage of compulsory strike off although that has been rescinded. Its recent accounts showed significant debts although it is being treated as a going concern. I appreciate 3J may argue (having not liaised with this service on this complaint for a considerable amount of time) that it is unfair on it for me to issue a decision at that time. However I think the greater unfairness would be for me to not issue a decision at this time and Miss G to be bound by the loan agreement in place on an ongoing basis considering what has happened. Furthermore were I not to issue a decision and 3J reach a position where it couldn't repay Miss G she would further lose out. Accordingly I'm satisfied it is fair and reasonable for me to issue this decision at this time.

And for the reasons given I uphold this complaint and direct 3J to put things right as described below.

Putting things right

I direct 3J Finance to take the following actions:

- Cap Miss G's liability for the loan at the sum of the repayments which were due as of the 10 April 2020. Anything above this amount must be written off and no longer pursued.
- If Miss G has paid more than this 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 Miss G has paid less than this 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 Miss G's credit file and mark it as "settled" from the 10 April 2020. If Miss G has not paid up to this capped

liability, then 3J Finance does not need to mark the loan as settled until she has paid up to the cap.

- Arrange with Miss G for the return of any course materials, DVDs, and anything else she received under the contract, and the ending of any other services supplied under the contract.

*HM Revenue & Customs requires 3J Finance to take tax off this interest. 3J Finance must give Miss G a certificate showing how much tax it's taken off if Miss G asks for one.

My final decision

For the reasons set out above, I uphold the complaint against 3J Finance Limited and direct it to put things right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 20 February 2024.

Rod Glyn-Thomas
Ombudsman