

The complaint

Mrs B has complained about a course she paid for using a running account credit agreement with Premium Credit Limited (PCL).

What happened

The circumstances of the complaint are well known so I won't go over everything again in detail. But in summary, Mrs B entered into a running account credit agreement with PCL in July 2022 to pay for a course with a company I'll call L. The course cost £1,140 and Mrs B was required to make an initial repayment of £57.44 when she entered into the agreement, followed by 23 monthly repayments of £52.44 on the 21st of each month. After Mrs B signed the agreement, over the next few days L wrote to her to see if she needed any help, and to ask if she'd attended any classes.

I can see the first repayment debited Mrs B's account on 3 August 2022, and the next repayment went out on 22 August 2022.

Following on from this I can see Mrs B contacted L on 30 August 2022. She said she'd activated her account but had been unable to login to the first course. She said her computer was not working and she had technical issues logging in using her phone. She said some of the courses were expiring soon and she wanted to extend the course. She said she was told when being sold the course she could do that. L wrote back the next day to ask if she was still having issues and gave her a number to call to discuss any extensions. But it also said the course was only open to complete for one year. It looks like Mrs B couldn't open the course work and she asked for things to be reset again. On 2 September 2022 L said it would reset things so Mrs B could start the course again.

Mrs B said she wanted to cancel the course. She said she was made to feel she wouldn't receive the support she'd been promised. She asked L to refund her the two payments she'd made. Meanwhile L suspended access to the course because it said Mrs B cancelled her direct debit. Mrs B complained. I can see she also said the course may not have been suitable. L responded to say it could do a course swap for her if she wanted. It said it couldn't cancel or refund the course. And it asked what misinformation she was referring to.

PCL sent a final response to Mrs B in March 2023. It supplied a response from L and said Mrs B's bank told it her direct debit had been cancelled so it cancelled the agreement on 22 September 2022. L's attached response said it acknowledged Mrs B asked for support on 30 August 2022, but it wrote back within 24 hours. It also said a tutor emailed Mrs B on 2 September 2022 to let her know it had pushed back the course and learning platform to try and assist. L said the direct debit was cancelled at the beginning of September 2022 and once a payment is outstanding the course is shut off so it couldn't assist further until Mrs B reinstated her payment. L said Mrs B was notified of the payment schedule. It said she was outside of the 14-day window to withdraw but it would be happy to set up a payment plan. It said it would look to offer support to resolve things for her when a payment plan was back in place.

Mrs B wasn't happy and so referred her complaint to our service.

Our investigator initially said, in summary, that PCL sent Mrs B a repayment schedule setting out when repayments would be taken. She said there was a 14-day window to withdraw from the agreement. And she said L responded to Mrs B promptly about her concerns at the end of August. She said as no direct debit was in place, the course was shut down. But that it could be reinstated once repayment was made. Our investigator didn't make any recommendations.

Mrs B didn't accept the view. She said her reason for discontinuing the repayment for the course was that after two repayments she still had no access to the course. She said she told L about this, but its reply said she'd not made payments. This is why she wanted to cancel. Mrs B said no course was provided by L. She said she made several attempts to access it but couldn't. Mrs B said because of the issues she was having accessing the course she cancelled her direct debit and informed L on 6 September 2022 and asked for a refund.

Our investigator made some further enquiries. In summary she said she thought the course had been shut down following cancellation of the direct debit, which meant Mrs B needed to make payment for the course to have it reinstated. She also said L had said Mrs B's last login to the course was on 30 August 2022 for nearly an hour.

Mrs B didn't agree. She was unhappy that the course was cancelled before the direct debit was cancelled. She says she wasn't able to access the course. And that she'd lost trust in L given the lack of support.

I issued a provisional decision that said:

Mrs B paid for the course using a regulated running account credit agreement. Our service is able to consider complaints relating to these sorts of agreements.

It doesn't seem to be in dispute Mrs B didn't exercise her right to withdraw from the credit agreement she'd signed within the stipulated 14-day window. I don't think PCL was unreasonable in not allowing her to withdraw from the agreement. I understand L considers cancellations requested after the first 14 days on a case-by-case basis. It didn't allow Mrs B to cancel.

The payment schedule set out Mrs B needed to make an initial repayment of £57.44 and monthly repayments of £52.44 from 21 August 2022. Mrs B made the first two repayments, so by the end of August at least, she was up to date.

There's some dispute about when Mrs B cancelled her direct debit. L is saying it was on the 1 September 2022 which led to it putting a stop to the course. Mrs B is saying she cancelled the direct debit after the course was cancelled. On balance, I think the direct debit was likely cancelled on 1 September 2022. This is supported by the fact PCL wrote to Mrs B on 1 September 2022 saying she needed to set up the direct debit. It included a default notice. But importantly, the letter said Mrs B had until 22 September 2022 to contact it, and if she didn't it might cancel the agreement and ask L to cancel the service.

It looks like L put a stop the course while Mrs B was up to date on her payments, and before the deadline that PCL had given Mrs B to put things right. I've not been provided with a copy of the course contract. But from looking at L's website, it says If you are paying by instalments and your card is declined or you miss a payment for any reason, we will notify you by email, and your course account will be locked until your overdue payments have been made. While I can appreciate Mrs B showed intent that she wanted to cancel the course, I think at the point L put a stop to it, I can't see it had grounds to do that. I can however see that the credit agreement has a term that says Mrs B must always have a direct

debit instruction at place. Subject to sending any notice it was required to serve under the Consumer Credit Act 1974 PCL could end the agreement if the direct debit was cancelled. And that it could let the service provider know of the termination. This is backed up by PCL's 1 September letter.

It's not straight-forward but based on the evidence I've seen it looks like L likely breached the contract by stopping access to the course while Mrs B was up to date with her agreement. It's also likely Mrs B breached the terms of the credit agreement by not having a valid direct debit in place, albeit she says this was as a result of the dispute she was having with L. PCL did give her the opportunity to put things right which is what I'd expect.

In all the circumstances, I think L was responsive to Mrs B and it was trying to help her. It got back to her promptly and offered the sort of support I'd expect. It's not clear whether Mrs B had issues accessing the course without supporting evidence. L said she accessed the course for nearly an hour at the end of August 2022. Mrs B said she had trouble accessing the course, which is what led to her contacting L for help. It's hard to reach firm conclusions here but, on balance, I think L stopped access to the course sooner than it should have done. I don't think it should have stopped access to the course before the September 2022 repayment had become overdue, or until PCL had gone through the termination process, which would have taken it up to that point as well.

I appreciate PCL (or L) may say Mrs B was clear she intended to stop paying towards the agreement which is why it stopped access. But PCL hasn't shown me where in the supply contract L was able to do that. I don't think it would be fair to ignore that. Had the access not been stopped, and had L continued to try and resolve things with Mrs B, she may have reinstated her direct debit before it came due. The whole issue may have been avoided. But as it turned out, once L told her it had stopped access, Mrs B lost faith in it because she was up to date with her payments at that point.

I take into account the relevant law. So, in this case, section 75 of the Consumer Credit Act 1974 makes PCL responsible for a breach of contract or misrepresentation by L under certain conditions. I think the necessary relationships between the parties exists and the claim is within the relevant financial limits.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that services will be carried out with reasonable skill and care and that digital content will be of satisfactory quality. The CRA also sets out what remedies are available to consumers if statutory rights under a services or digital content contract are not met.

It's important to note that I'm not considering a complaint against L. I'm considering a complaint against PCL. So I have to consider PCL's obligations as a provider of financial services – in this case its liability for breach of contract or misrepresentation under section 75. By stopping access to the course while Mrs B was up to date on her payments, based on what I've seen, I think there are grounds to conclude L breached the contract.

Where a service doesn't conform to the contract the consumer can request repeat performance or a price reduction. And where there's a breach of terms in relation to digital content there are remedies available in certain scenarios including repair/replacement, price reduction and refund. Consumers can also seek other remedies such as damages.

The problem I have now is that things have moved on since Mrs B wanted to carry out the course. Turning back the clock to say the course should be reinstated if Mrs B brings her payments up to date isn't practicable. The course should have already finished now.

There are no goods to return. I'm also mindful that Mrs B hasn't completed the course or obtained any real benefit from it, from what I've seen. Given the nature of the course was online, I don't think PCL (or the course provider) has likely suffered a significant loss. In all the circumstances, I think the fairest way forward, based on the evidence I've seen, is for PCL to arrange to cancel the course with L; end the credit agreement; bring back the debt; refund Mrs B anything she repaid towards the agreement; and remove any adverse information about it from her credit file.

I'm also conscious Mrs B indicated the course may not have been appropriate for her and I can see there are some allegations it was mis-sold. Other than L asking for further evidence of this, I've not been supplied further evidence from any of the parties so I can't reach conclusions on that part of the complaint. But given the findings I'm intending to reach put her back into the position she'd have been in had she not entered into the course, I don't think I need to consider that part of the complaint further at this time.

I should point out that these are only my provisional findings. I need to give the parties the chance to respond before I decide whether to issue a final decision.

I can't see we received a response from PCL. Mrs B broadly accepted the provisional decision, but she said she also wanted to claim damages. She reiterated some earlier points and sent in evidence again showing contact she had with L during the relevant period.

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've not been supplied anything substantively new to consider so I'm not going to depart from the conclusions I reached in my provisional decision.

I appreciate Mrs B would like to claim for damages. I think this is in relation to the impact the situation has had on her. I have to consider what PCL can be held liable for – which is the like claim Mrs B would have in court against L for breach of contract or misrepresentation. Courts do consider what's known as general damages. But damages in breach of contract cases aren't generally recoverable for distress or inconvenience.

When Mrs B first got in contact L was trying to help her resolve things in a fair way. Moreover, I have to bear in mind it looks like L did have a reason for stopping access to the course because Mrs B cancelled her direct debit, albeit I think it did that earlier than it should have done. I also have to bear in mind that Mrs B originally sought for the course to be cancelled and for contact from PCL and L to stop to resolve the complaint. From what I've seen, the events of the complaint happened over a short period – a few days. I've not been shown the matter caused any ongoing detriment. In all the circumstances, I think the conclusions I reached broadly seem like a fair and reasonable way for all the parties to be able to draw a line under things. And they're in line with what Mrs B was originally seeking.

My final decision

My final decision is that I uphold this complaint and direct Premium Credit Limited to:

1. Arrange to cancel the course with L.
2. Bring back the debt from any third parties.
3. End the agreement with nothing further to pay.
4. Refund Mrs B anything she paid towards the agreement.

5. Interest should be added to the above amount at a rate of 8% simple annual interest from the date PCL declined the claim to the date of settlement.
6. Remove any adverse information about the agreement from Mrs B's credit file.

If PCL considers it is required to deduct tax from my interest award it should provide Mrs B a certificate of tax deduction so she may claim a refund from HMRC, if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 14 February 2024.

Simon Wingfield
Ombudsman