

The complaint

Miss J complains about a driving course that she purchased with credit provided by Social Money Limited, trading as Payl8r.

What happened

In 2023 Miss J entered into a regulated credit agreement with Payl8r to finance her purchase of a driving course. This was a 40-hour course with a practical test and a theory test, priced £2,590. She paid a deposit of half the price of the course, and the other half was financed by Payl8r.

Miss J complains about the course for a number of reasons. She said the course was advertised as fast-tracked, but this had turned out not to be the case (there were one or two lessons per week). The original instructor scheduled lessons too infrequently and repeatedly cancelled lessons at short notice, and so Miss J had had to ask for him to be replaced half-way through the course. She says the instructor was not skilled enough, and that this is why Miss J had failed her driving test after completing the course. When she complained to the course provider, they were unhelpful and uncommunicative, and denied that they were in breach of contract.

Miss J then complained to Payl8r. She asked for £3,759 as compensation, consisting of a refund plus the cost of arranging new driving lessons and a second driving test. But Payl8r did not agree with her complaint. It said the course provider had found another instructor for her, had waived the fee it would normally charge for changing instructors, had given her an extra two-hour lesson for free, and Miss J had completed the course with the new instructor. Payl8r denied that it had guaranteed she would pass the driving test. Being dissatisfied with that response, Miss J brought this complaint to our service.

Our investigator did not uphold this complaint. She didn't think that the course provider had falsely advertised the course. She accepted that the original instructor's conduct had been unacceptable, but a new instructor had been provided, and so the contract had been fulfilled – there had been no term of the contract to the effect that Miss J would pass her driving test on the first go. The investigator said that our service would not consider the course provider's general customer service while dealing with her complaint.

Miss J asked for an ombudsman's decision. She said there had been a delay caused by the need to get a new instructor, and that this had been stressful. This had affected her ability to pass her driving test.

I wrote a provisional decision, which read as follows.

What I've provisionally 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.

Having done so, I am minded to uphold part of Miss J's complaint.

Under section 75 of the Consumer Credit Act 1974, Payl8r is liable for a misrepresentation or breach of contract by the driving course provider. However, it is not liable for poor customer service falling short of a breach of contract. So I haven't considered her allegations that the course provider was not very helpful when she complained, or that the original instructor sent her an unprofessional text message.

The course provider's advertising includes the following statements:

"Once you've been connected to an instructor, you'll work together to plan a lesson schedule that fits around your daily life."

Elsewhere, the course provider said that its lesson schedule would be flexible. I've considered whether the course provider failed to provide a lesson schedule that was suitable for Miss J's needs. I recognise that the instructor cancelled lessons at short notice at least three times, and this was certainly inconvenient for her, and led to her requesting another instructor, which I think was a reasonable request. However, I don't think that is a breach of contract by itself, because sometimes cancellations are unavoidable, and the instructor's reasons were fair – his car was vandalised, and he was ill. And looking at the dates of the lessons, I think that they were still frequent.

But for the delay in obtaining a new instructor, the lessons would all have been completed within three months. The course provider advertised that taking driving lessons and a driving test takes, on average, six months, but that this course only takes half as long. Obviously half is three months, so I'm satisfied that the course was not falsely advertised as fast-track.

However, there was a delay of a full month while the course provider did nothing at all to find a new instructor for Miss J when she asked for a new one. She made that request on 30 April. On 9 May, the course provider agreed to get her a new instructor. On 18 May, the course provider told her that the reason for the wait was because it had already paid the original instructor for 30 hours of lessons, he had only given 22, and so they had asked him to refund the cost of 8 lessons; they would not provide a new instructor until they got that money back from him. On 23 May, the instructor refunded the course provider, and the very next day the course provider found a new instructor for Miss J. So it only took a day to actually provide a new instructor – the entire delay was caused by money.

That brings me to this promise in the course provider's advertising:

"Also, you won't need to scramble around for cash before each lesson – [we] handle all payments to your instructor. With one less thing to worry about, you can focus on the driving."

I don't think it is consistent with that promise to make a customer wait for a month for a new instructor because of a financial dispute between it and a third party.

I don't think that promise amounts to a misrepresentation, because a misrepresentation is a false statement of fact which induces someone to enter into a contract which they would not have agreed to but for the promise, and I think that Miss J would still have signed up for the course without that promise.

But I do think it was a term of Miss J's contract with the course provider. And I think that term was broken. On that basis (and only on that basis), I propose to uphold this complaint.

That doesn't mean that Miss J should get a full refund though. The course provider's materials never guarantee that a customer will pass their test the first time – in fact, they

make it clear that passing is the customer's responsibility. So I am not persuaded that the course provider, or Payl8r, are responsible for Miss J failing her test and having to take it again, or having to buy more lessons.

I also do not accept that the driving instructors were not good enough at their jobs. Miss J has said that they were supposed to be government-approved but they were not; but I've seen nothing to suggest that they weren't. And in her email of 30 April, Miss J said that her original instructor "has provided very professional instruction and helped me secure a good foundation for manual driving. It is with a heavy heart to make this request."

Taking all of that into account, I currently think that fair compensation for Miss J's inconvenience would be £200.

Responses to my provisional decision

Payl8r pointed out that the driving instructors are not employed by the course provider, but are self-employed contractors. Payl8r also provided the course provider's terms and conditions, and argued that these give a timescale of 45 days to allocate an instructor at the start of the course. Payl8r therefore suggested that although the terms and conditions state that it is not possible to change to another instructor once one has been allocated, it would be reasonable to treat 45 days as a fair timescale for changing instructors once the course provider had agreed to do this. A new instructor had been found in less time than that.

Payl8r also commented on the promise I quoted above. It argued that this only means that as the course is pre-paid, it is not necessary for the customer to pay the instructor at the start of each lesson, giving customers peace of mind. It is not about the time it takes for an instructor to be allocated.

Payl8r added that the free extra two-hour lesson was worth £124:60 (calculated *pro rata*). Together with the waiver of a £30 administration fee for changing instructors, that was enough compensation, and an additional £200 would be unfair.

I shared these arguments with Miss J. She replied to question whether the original instructor had been registered with the Driver & Vehicle Standards Agency, and to complain about his professionalism. She said that £200 was not enough compensation, and she asked for £3,015 (consisting of a full refund plus £175 for inconvenience). She did not address Payl8r's points.

My findings

For the reason I explained in my original decision, I don't think it is necessary for me to investigate the original instructor's status and qualifications to fairly resolve this case. And I still don't think that a full refund is justified.

I have considered Payl8r's arguments, and I find them to be persuasive. The real meaning and purpose of the term I quoted is set out in its opening words. It's about the peace of mind of knowing that each lesson has already been paid for, not about changing instructors. So on further reflection, I now think that the timescale in which the instructor was replaced was reasonable.

My final decision

My decision is that I do not uphold this complaint after all.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or

reject my decision before 19 August 2024.

Richard Wood
Ombudsman