

The complaint

Mr G complains about Caledonian Consumer Finance Ltd's (Caledonian) response to his claim that a training course he purchased using a fixed sum loan from it was mis-sold to him.

What happened

In October 2019 Mr G bought a training course from a supplier I'll call N at a cost of £7,800. He paid a deposit of £60 and financed the remainder with a fixed sum loan from Caledonian.

Around March 2020 Mr G wrote to Caledonian with a number of concerns about the course. From Mr G's submissions to this service and Caledonian's response to his complaint, I've taken these to include the following:

- He was pressured into buying the course by a salesman of N that visited his house late in the evening and told him that he needed to make a decision quickly as places were limited and he needed to say yes or he would lose the opportunity for good.
- When assessing the affordability of the loan repayments the salesman told him to "just write down the basic outgoings" and not "go into any detail", despite Mr G explaining that he had several loans and credit cards. The salesman also told him what to say on the phone to Caledonian so that "he wouldn't get declined" for the loan.
- He had seen several reviews online from other people saying they had similar experiences of being pressured into the purchase.
- He hadn't received the promised support from a tutor.
- He thought the course was pay as you go and didn't realise he had to cancel in the first 14 days to get out of his obligation to pay for the course in full.

Caledonian looked at Mr G's concerns and responded in May 2020. It said:

- It didn't think Mr G had been pressured into purchasing the course as he would have received paperwork at the time of the sale explaining that he could withdraw from the purchase in the first 14 days. So, he had time to consider whether the course was right for him after he agreed to buy it. He also didn't make any allegations of pressure until a few months after his initial claim to it.
- Mr G had signed to agree the course was largely self-directed and that tutor support was not to be assumed but would be optionally available. He accessed the course material a number of times so would have received the contact information and contact methods for the tutor team. Again, no complaints were made about tutor support initially.
- It was unable to comment on what may have been discussed at the point of sale but based on the available evidence Mr G had confirmed his income and expenditure and confirmed the loan repayments were affordable for him. It had subsequently reviewed some bank statements from Mr G which it felt supported his income declaration and the regular monthly payments he said he was making. Based on all of this information it didn't think it had irresponsibly lent to Mr G.
- Reviews from other customers was not evidence of mis-selling in Mr G's particular

case.

- The information about the course and how it worked was provided and Mr G was afforded time to consider it.

Dissatisfied Mr G referred a complaint to this service.

I issued a provisional decision where I explained why I didn't plan to uphold Mr G's complaint. I said:

"It is important to note that my decision here is about the actions of Caledonian– and what it should fairly have done for Mr G in response to his claim in its position as a provider of financial services. In looking at how it handled the claim Mr G brought to it I've considered the information reasonably available to it at the time, along with the relevant protections available to Mr G. I consider s.75 to be relevant here.

S.75 provides that in certain circumstances Mr G can hold Caledonian liable for a breach of contract or misrepresentation by N. There are certain criteria which have to be met in order for s.75 to apply, and I am satisfied these are met here. Therefore, I've considered whether N has breached its contract with Mr G or misrepresented it.

Misrepresentation

Generally, in the context of Mr G's complaint, a misrepresentation is a false statement of fact that induces someone to enter into a contract. The two key elements are the false statement of fact, and the inducement and both must be present for a misrepresentation to have taken place.

Mr G has said he was promised the support of a tutor by N's salesman but he didn't receive the kind of support he feels he needed and struggled with the parts of the course he attempted as a result. I've not seen anything such as advertising material or anything on N's registration documents which details exactly how much support Mr G was promised and his recollections on this particular point don't give this kind of detail either. I've seen no evidence of any attempts from Mr G to request tutor support that went unanswered or were declined. I can't say from what I've seen that N promised something to Mr G that he didn't receive in respect of the support that would be available. So, it doesn't appear that a false statement was made in this respect at the time of the sale.

Mr G has also suggested that N promised he could get a job with a better salary at the end of the course. However, as Mr G didn't finish the course there's no way of knowing if this statement was true or not in Mr G's particular case.

Mr G said he should have been told the course was not geared towards beginners. But I've not been provided with any persuasive evidence, such as from an expert or some equally persuasive alternative that the course material was not suitable for Mr G. Without this, I cannot conclude that N misrepresented the position as to the level of existing knowledge that he'd need before completing the course.

Lastly, I've considered Mr G's point that he thought the course had been purchased on a pay as you go basis rather than paid for upfront in full with a fixed sum loan. There isn't anything within the available paperwork that suggests to me the course may have been described as one that Mr G could cancel at any time – I've explained already that the terms relating to cancellation appear to have been prominently laid out in the supply agreement. And the finance agreement is clear that the total amount repayable is £7,800 over 43 months. Besides that, beyond the bare allegation, little

has been provided about what exactly was said by N's representative to make Mr G think he could cancel the course at any time without any further obligation to pay for it.

Overall, based on the available evidence I don't find Caledonian unreasonably declined Mr G's claim on the basis of a misrepresentation.

I think most of Mr G's other points relate to either breach of contract or something else so I've moved on to consider those.

Breach of contract

In considering whether there has been a breach of contract by N, I've looked at the express terms of the contract along with any terms implied by relevant law. I consider the Consumer Rights Act 2015 (CRA) to be of particular relevance in considering any implied terms.

Implied terms

The CRA implies terms into consumer contracts that services will be provided with reasonable care and skill. This is generally determined with reference to what is considered good practice in the relevant industry and what a reasonably competent provider of that service would provide.

I've not seen enough evidence that the service N provided was done so without reasonable care and skill. For example, no evidence has been provided the course material was not of an appropriate standard or that N didn't respond to Mr G's attempts to contact them when he needed help. So, I don't find Caledonian unreasonably declined to meet Mr G's claim on the basis of a breach of contract either.

Express Terms

I've seen a copy of the terms and conditions Mr G is likely to have agreed to be bound by when he bought the course. The terms are clear that if Mr G wanted to cancel the course, he had to do so within 14 days of purchase. He asked to cancel outside of this period and in those circumstances, N was not contractually obliged to provide a refund. So, it doesn't appear there was a breach of the express terms of the contract in this respect.

Affordability checks

Caledonian needed to make sure that it didn't lend irresponsibly. In practice, what this means is that Caledonian needed to carry out proportionate checks to be able to understand whether Mr G could make his payments in a sustainable manner before agreeing to lend to him. And if the checks Caledonian carried out weren't sufficient, I then need to consider what reasonable and proportionate checks are likely to have shown.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate.

We might think a lender needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a

significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Caledonian said it carried out a credit check and asked Mr G about his income and expenditure before deciding to lend. It's provided a copy of the income and expenditure information Mr G provided but not the results of its credit check. So, I don't know what this check would've revealed. Mr G has provided a copy of a credit report so I've used this to get an idea of what Caledonian would likely have seen.

This shows that while Mr G had several active credit accounts including car finance, a mortgage, some loans and some credit cards, the repayments on these were all up to date. However, the information that is available from the credit report about the repayments Mr G was making to these accounts shows he was making payments of at least £400 per month towards personal loans which was double the amount of £200 Mr G declared for 'debt' on the income and expenditure form. There were also two other credit card accounts where the monthly repayment was not shown on the credit file.

All of this considered, I think Caledonian ought to have had concerns with the information Mr G had provided about his expenditure as it didn't appear on the face of things to be consistent with the information on his credit file. In the circumstances I think it needed to know more than it did about his ability to repay the loan. So, I think proportionate checks in this case ought to have included things like verification of his income and expenditure also. This didn't happen, so it doesn't appear that Caledonian carried out proportionate affordability checks.

There are a number of ways Caledonian could have verified Mr G's income and expenditure, but I've looked at his bank statements to do this.

The bank statements show that over the four-month period before Mr G took out the agreement, his income averaged around £1,900 per month. This is a difference of around £600 compared to what was declared. So, if Caledonian had verified Mr G's income it would have seen that he had overdeclared by some way.

I can see that Mr G maintained a joint account with his partner and it appears several of their living expenses and credit commitments came from this account – which is consistent with what Mr G has told us about servicing several credit cards between him and his partner. However, there also appears to be an income coming from Mr G's partner into that joint account. So, it doesn't appear Mr G was responsible for paying all of his and his partner's credit commitments or living expenses. Looking at all of the income and outgoings between the joint and sole accounts, it doesn't look clear enough to me that Mr G's disposable monthly income was insufficient to afford the repayments on the loan such that Caledonian ought not to have lent to him. And looking at Mr G's own income, along with the credit commitments on his credit file and his living expenses this still doesn't appear to have been the case.

Mr G said he was told by N's salesman to provide an incomplete picture of his finances when he applied for the loan so that he would be approved for it and said he was told to withhold information relating to some of his outgoings. Caledonian was responsible for the actions of N in relation to the arranging of the loan as principal to N, so I can consider this as part of a complaint against it.

It's difficult to know if N's representative did tell Mr G to give incorrect figures. I've found the information Mr G provided to N about his income and expenditure was not entirely consistent with that on his bank statements but that doesn't necessarily mean

it's because N's representative told him to withhold information. In any event, I've concluded that it wouldn't have been irresponsible to lend to Mr G, even on verification of his income and expenditure.

So even if Caledonian had obtained a fuller picture of Mr G's finances than what he disclosed, it's likely it would still have lent to him. So, I don't find Caledonian ought to have refunded Mr G or cancelled his loan on this basis.

Pressure

Mr G said he was pressured into signing up to the course by N's representative. He said N told him that places were limited and he would lose the opportunity of the course if he didn't sign up immediately.

I've thought carefully about what Mr G said. It's possible that he did feel pressure to sign up on the spot because of something N said to him. But if that were the case, noting the prominent reference to a 14 day cancellation in his contract with N, I find it difficult to understand why he wouldn't have gone on to cancel the agreement during this period if he thought the course was not for him. It looks like it took Mr G a number of months to bring this up with either N or Caledonian and in the meantime Caledonian said he accessed the course material. Mr G said it took more than 14 days for him to realise that he'd been pressured into buying the course. However, If Mr G felt his ability to exercise choice had been significantly impaired by N, that seems to me like something that ought to have been apparent to him quite quickly. I've taken account of what Mr G said about his health at the time, and while I'm sorry to hear about this, I've not seen evidence this would have impaired his realisation that he'd been pressured into buying something he didn't actually want.

I know Mr G thinks that the marks on the contract show he was given no time to read the documents before he signed them. But it's not uncommon for someone to mark where a document should be signed and I don't think this by itself is enough to say Mr G was pressured into signing the agreement without being given any time to read what h was signing.

With all of that being the case, there is insufficient evidence to demonstrate that Mr G made the decision to purchase the course because his ability to exercise that choice was significantly impaired by pressure from N.

I appreciate that Mr G will be disappointed with my decision but with everything considered I don't find Caledonian unreasonably declined to meet Mr G's request for a refund of the course. So, I don't think it needs to do anything in respect of his complaint."

Caledonian accepted my provisional decision.

Mr G did not agree with it. He said his outgoings exceeded his income at the time of the sale and provided his own income and expenditure calculation.

The complaint has therefore been passed back to me for a final decision.

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 note Mr G has focused his response to my provisional decision primarily on the irresponsible lending part of his complaint. I've therefore concentrated mostly on this. But for the avoidance of doubt, I've not seen anything that makes me think my provisional findings on the rest of the complaint were unfair or unreasonable. So, my findings on those other points remain the same.

I thank Mr G for the additional information he has provided relating to two credit cards held by him and his partner. He said that the ad-hoc monthly payments he was making towards these credit cards was around £1,000 per month. He said, with reference to his own income and expenditure calculation, that if Caledonian had completed more detailed affordability checks it would have seen these payments, along with all of his other credit commitments and regular living expenses exceeded his and his partner's income.

I've thought very carefully about Mr G's comments. Looking at his income and expenditure calculation I note that he's included information from his bank and credit card statements for October 2019. However, it doesn't appear that all of these would have been available to Caledonian if it had carried out proportionate affordability checks as the statement production dates look to be after Mr G took out the loan. I don't find therefore that it would be appropriate to include the information from the October 2019 statements when assessing what proportionate affordability checks might have revealed.

I also note some of the ad-hoc payments made on the credit card accounts were significantly more than the minimum repayment – particularly those that Mr G has referenced on his income and expenditure calculation. While it is of course prudent to make repayments in excess of the minimum balance, and to reduce large balances, Mr G was not contractually bound to make such large repayments and so I don't think Caledonian would reasonably have had to include the full amount of them as regular longer term credit commitments for the purposes of the income and expenditure assessment.

Taking all of this into account, I accept it would have been a tight call as to whether the loan was affordable or not. However, I've still not seen enough to make me think that if Caledonian had completed proportionate affordability checks it would have seen the repayments were unaffordable for Mr G.

I note in any event that Mr G's loan was provided interest free. The common remedy this service would direct where a business is found to have lent irresponsibly is to refund interest and charges associated with the borrowing. This takes account of the fact that typically a consumer will have had the use of the capital they have borrowed. I explained in my provisional decision why I didn't think the training course had been mis-sold to Mr G and I remain of that view. And, although Mr G didn't complete the course, I've not seen a persuasive reason why he couldn't have. So, I think he has had the use of the capital he borrowed in this case because it paid for the training course which he could have utilised.

Therefore, even if I'd concluded that Caledonian had lent irresponsibly to Mr G, it's very unlikely I'd have directed it to return the capital he borrowed in this case. And, with the loan having been provided interest free, and Mr G having not incurred any form of charges for late payments etc. this would have meant that there was likely nothing to direct Caledonian to refund to him.

Overall while I know Mr G will be disappointed by my decision, I still don't find that Caledonian needs to do anything in respect of his complaint.

My final decision

For the reasons I have explained, I do not uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 28 May 2025.

Michael Ball
Ombudsman