

complaint

Mr S complains that Career Finance 4 Trade Skills Limited ("CF4TS") won't refund the money he paid for a vocational training course.

background

In July 2014 Mr S enrolled on a domestic gas engineer course with an independent training provider. He chose to fund it by taking out a fixed sum loan agreement with CF4TS. Mr S says the training course was misrepresented to him at the point of sale as he wasn't told it had to be completed in 36 months. He says he completed two weeks of a seven week practical course, had some books and completed some online modules. But he hasn't been able to complete the whole course in the time limit imposed. And he wants CF4TS to refund the money he's paid in accordance with his rights under section 75 of the Consumer Credit Act 1974.

CF4TS said in its final response that it couldn't comment on what Mr S had been told at the point of sale. But the training provider has confirmed he was given a copy of the contract he signed. This said the training course would normally take 36 months to complete. But if good progress has been made an extension could be allowed of a further six months. Here the course material remained available to Mr S for a total of 42 months. Mr S also hadn't withdrawn from the finance agreement in the cooling off period and didn't raise any concerns about completing the course in time. It's found no evidence the training course was misrepresented to him or that any breach of contract had occurred. And it won't make any refund to him.

Our investigator felt this complaint should be upheld. In summary he said:

- He was satisfied there had been a misrepresentation. Mr S wasn't told that the entire course would time out after a fixed period. The training provider's registration form wasn't clear about him having to finish the course in 36 months. No description of the course seems to have given him a fixed time limit for completing it.
- He's satisfied this misrepresentation induced Mr S to sign up for the course and if he'd been told there was a time limit he wouldn't have gone ahead with it.
- As the service cannot be delivered as promised by the salesman the contract should be unwound as if it'd never existed. Mr S should be refunded all his payments less a deduction for the training he did complete and his course materials. As Mr S completed two weeks of a seven week practical course he should be refunded five sevenths of the repayments made under the agreement. And as he completed some online modules and received five text books a nominal £100 should also be deducted for them from this refund. He should also be paid interest on this refund and £250 compensation for the trouble and upset he's been caused.

CF4TS doesn't agree and has asked for an ombudsman review. It responded that Mr S didn't say to the training provider what his personal issues were or that he wouldn't be able to finish the course in the specified time. It still doesn't consider there was misrepresentation or a breach of contract.

Mr S emphasised he told the course provider about his particularly demanding family circumstances including in emails and on the phone.

The investigator listened to two phone call recordings between Mr S and the course provider in January 2018 and thought Mr S had made it clear that he was strongly under the impression he could take as long as he wanted to complete the course.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Some of the evidence in this case is incomplete, inconclusive or contradictory. So, I've made my decision based on what I think is more likely to have happened than not.

The parties have provided detailed submissions in this complaint. I've read and considered them all. But my findings are expressed in considerably less detail. And they focus on what I think are the main issues.

In deciding what's fair and reasonable I take into account relevant law. Mr S makes his complaint under section 75 of the Consumer Credit Act 1974 which in certain circumstances gives a consumer an equal right to claim against the supplier of a service or the provider of credit, if there's been a breach of contract or misrepresentation by the supplier.

To be able to uphold Mr S' complaint about CF4TS, I must be satisfied that there's been a breach of contract or misrepresentation by the training provider.

In this case I don't think there's been a breach of contract but I do think, on balance, that there was a misrepresentation. Let me explain why.

We will never know what exactly was said at the point of sale in Mr S' home when he met with a representative of the training provider. But Mr S has consistently and plausibly said throughout that he made the training provider aware from the very start that he was looking for a way to qualify as a gas engineer that would allow him to take as long as he needed to complete the course so he could accommodate his family's particularly demanding care and health needs. And he said he couldn't commit to a fixed end date for the course. He also says he wasn't told the course must be completed in 36 months and, as mentioned in the January 2018 phone call, that he had as long as he needed to finish the course.

CF4TS says that the paperwork given to Mr S when he signed up was clear and said that the training would normally take 36 months to complete. But if good progress has been made an extension could be allowed of a further six months. And it says the course materials actually remained available to Mr S for a total of 42 months.

Having reviewed the relevant documents I'm not persuaded, on balance, that Mr S was clearly told at the point of sale that the entire course would time out after a fixed period. The training provider's registration form wasn't clear about him having to finish the course in 36 months. The form actually said the *"duration of our delivery of services to you will normally complete within 36 months. Your work programme should be complete at the end of that period or once you have completed all modules, whichever comes first if we consider you have shown good progress in that period, but you have not completed it within the specified duration you may apply in writing for extension to the period allowed although any extension is at our discretion"*. And the document signed by Mr S also said *"I understand that my self study program may take from 12 to 36 months"*.

I agree with the investigator that this doesn't suggest the course provider was overly concerned about timings for completing the course and the wordings are rather ambiguous when they say the course "*should be*" and will "*normally*" complete within 36 months.

Mr S also wasn't told the consequences of overrunning the 36 month time limit without an extension or of overrunning any 6 month extension. I think any risk of the course being withdrawn should've been specifically brought to Mr S' attention and prominently highlighted in the documentation when he signed on. Here it would've been fair and reasonable for him to have been told of the strict time limits and the consequences of not finishing the course in 36 or, with an extension, 42 months. In particular that he would effectively then lose his significant investment of the £6,700 course fee.

I think this lack of clarity and what Mr S was told amounted to a misrepresentation at the point of sale which induced him to enrol on the training course. I've no doubt if he'd been told it must be finished in 36 months - or even 42 months with a discretionary extension - or else the course would be withdrawn and he'd lose his money, it's more likely than not that he wouldn't have signed up for the training course in the first place as it wouldn't have met his specific needs and circumstances.

I've considered whether it would be fair to require CF4TS to facilitate Mr S being given the opportunity to complete the course. But I don't think that's reasonable. Not only has he clearly lost faith in this particular training provider but I don't think he could practically complete the course with another provider in a period of around 12 months given his circumstances.

To put things right I agree with the investigator that Mr S should, so far as is reasonably possible, be put back to the position he would've been in if he hadn't entered into the contract with the training provider.

Here Mr S completed two weeks out of seven weeks of a practical course. He also received some books and did some online modules.

Our investigator recommended Mr S should therefore be refunded five sevenths of the payments he made to the agreement less a £100 deduction for the books and training modules he completed. And that he should be paid interest on the refund and awarded £250 compensation for the trouble and upset he's been caused.

Overall, I think the investigator's proposed redress is a fair and reasonable resolution of this complaint. And I don't see any compelling reason to change the proposed outcome in this case.

my final decision

I uphold this complaint. To put things right I require Career Finance 4 Trade Skills Limited:

1. To refund To Mr S five sevenths of the repayments he made under the agreement together with simple interest at the rate of 8% a year* from the date each such sum was paid until the date of settlement less the sum of £100; and
2. Pay Mr S £250 compensation.

CF4TS must make the refund and pay the compensation within 28 days of the date on which we tell it Mr S accepts my final decision. If it pays later than this it must also pay interest on these sums from the date of my final decision to the date of payment at 8% a year* simple.

* If HM Revenue & Customs requires CF4TS to take off tax from this interest. It must give Mr S a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 January 2019.

Stephen Cooper
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