

complaint

Mr K complains that Career Finance 4 Trade Skills Limited ("CF4TS") won't refund him for a training course. He says there are various issues with what he was told about the course when he agreed to undertake it. The course was funded using a fixed sum loan provided by CF4TS.

background

In March 2015 Mr K enrolled on a training course provided by a company I'll refer to as 'N'. A representative from N had a meeting with Mr K about the course at his home. He paid a £50 advance payment and took a fixed sum loan with CF4TS to cover the remaining cost which was £6,720.

In April 2018 Mr K got in touch with N as he said he'd been locked out of his online account. N explained the course had a time limit of three years which Mr K had now passed without completing the course. It said Mr K could pay £250 to another company to extend the term. Mr K said he was surprised at this as he didn't know the course had a time limit. At this point he had completed a few of the modules of the course, but not all of it.

Mr K complained to N. It said the terms and conditions for the course made it clear that there was a three year timescale to complete. And it said most people have no issue completing the course in this time.

Mr K then later complained to CF4TS in June 2018. He reiterated his point about not being told about the three year time limit. He also said when he signed up for the course he was told various other things that turned out not to be true. He said that he was told test centres would be open at weekends – but they turned out to be only available Monday to Friday. He said he was told that all his travel and accommodation costs would be reimbursed – but he later found out only £30 per day could be claimed. He said he was told the qualification would lead him to be fully qualified within 18 months in his chosen field and he would earn more than his income at the time. Mr K says he later found out this wouldn't be the case.

Mr K also complained that he thought the course had delays 'built in' which meant he couldn't have completed it within three years.

Mr K also made other complaints to CF4TS. He said he was unhappy with N's response to his complaint. He complained N was now refusing to provide him with further training or materials. And, he said there was a conflict of interest between CF4TS, N and the company he'd been referred to for an extension.

Mr K said he either wanted to be able to continue with the course at no cost, or he wanted a refund to allow him to continue with his studies elsewhere.

CF4TS issued its final response letter (FRL) in August 2018. It said it couldn't comment on what was discussed during the meeting with N. But, it said the terms and conditions for the course made it clear there was a three year time limit to complete it. It said the "*Plan of the Course*" made it clear the practical training would take place in week long sessions and not at weekends. It said a voucher Mr K was provided to claim expenses stated that he could claim for up to £30 a night for travel and/or accommodation.

CF4TS said Mr K's work was marked in a reasonable time and the time between him

booking and completing the practical parts of the course was not unusual – so it felt Mr K was not delayed completing the course. It also said N responded to Mr K's complaint properly.

CF4TS explained it wasn't upholding Mr K's complaint and it didn't consider that any refund was due. It said if Mr K wanted to contact the third company N had referred him to it would have no involvement in this.

Mr K was unhappy with this response and our service began to investigate his complaint. While we were looking at the case CF4TS made two offers to settle the complaint as a gesture of goodwill. It initially offered to extend the course by up to 24 months free of charge. Mr K declined this as he'd already continued some of his studies with another provider. CF4TS then offered to extend the course by 24 months and cover £400 of Mr K's costs for the courses he completed elsewhere. Mr K was unhappy with this and declined the offer. So, our investigator issued her opinion.

Our investigator upheld Mr K's complaint. She said she thought the course had been misrepresented to Mr K, as she believed it was likely he was told he could complete the course over a longer time. And she believed he'd been told the test centres were open at weekends.

The investigator said she believed Mr K had completed around 40 percent of his course. So, she said it was fair for him to receive a refund of 60 percent of the total cost – which she said was £4,062.

Mr K agreed with the investigator's opinion. CF4TS disagreed. It referenced some other cases our service had looked into. It said Mr K hadn't provided material evidence to back up his version of events. It reiterated what it said about the terms and conditions making things clear to Mr K. And it said had this service investigated things quicker, it could've come to a solution with Mr K.

I sent Mr K and CF4TS a provisional decision on 18 June 2020. I've included the findings from this decision below:

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 initially think this complaint should be upheld. I'll explain why.

This complaint is about a fixed-sum loan which is a regulated finance agreement. This means I can look into the complaint Mr K has made against CF4TS.

Mr K raised concerns about the way CF4TS, N and a third company are set up and operate. This service only looks into individual complaints and isn't here to investigate general business practices – so I won't look into this further.

I've thought about everything Mr K has said in relation to his complaint and all of the issues he's raised with CF4TS. But, when making my decision I'm going to consider what I think are the most relevant issues – so I won't necessarily address every individual point Mr K raised.

When considering what's fair and reasonable, I take into account relevant law. Section 75 of The Consumer Credit Act 1974 is relevant to this complaint. This says, in certain circumstances, the borrower under a credit agreement has an equal right to claim against

the credit provider if there's been a breach of contract or misrepresentation by the supplier of goods or services.

So, I need to consider whether N misrepresented the course to Mr K, or if there was a breach of contract when Mr K was doing the course he signed up for.

Mr K has gone into detail about several things he says he was told about the course that he later found out weren't true. I'll consider each of these in turn.

Time limits to complete the course

Mr K says he wasn't told about the three year time limit for the course when he signed up for it. CF4TS says this was made clear to him in the terms and conditions he was provided with. Mr K has gone into some detail about what was discussed during the meeting when he signed up for the course. He said he was told he would have "as long as I need to complete the course". He says he was told "it could take two years or five, it goes at your own pace". He said no information was discussed with the representative about time limits. Mr K was employed at the time, and he says he fully discussed with the representative that he worked full time and had limited annual leave.

CF4TS were asked to provide details of a script that the representative would've followed during the meeting, but hasn't been able to provide one.

I've considered that it appears Mr K was steadily working through the course at his own pace. This suggests to me he genuinely believed he had as much time to complete the course as he needed.

Taking everything into account, I'm persuaded by what Mr K says here. He's been consistent about what was said in the meeting. I think it's most likely he was told he could take longer than three years to complete the course without being charged.

I've then considered what the documents given to him said and if I think these would've made it clear enough to him to negate the information I think it's likely he was told in person. On the registration form Mr K signed it says:

*"I understand that my self-study programme **may** take from 12 to 36 months and it can be paid for according to the schedule issued at registration. **I understand that the pace at which I choose to work** through the material remains under my control and **is a matter of personal preference**" (emphasis added by myself).*

Thinking about this, I don't think this makes it clear the course has a 36 month time limit. Saying a course "may" take from 12 to 36 months is not the same as saying it must be completed within 36 months.

The terms and conditions say:

"The duration of our delivery of services to you should normally be complete within 36 months. Your work programme will complete at the end of that period or when you have completed all the modules, whichever comes first. If we consider that you have shown good progress within the period and provided you have completed more than 50% of the course content, you may apply in writing for an extension to the period allowed. Any extension is at our discretion and a charge of £300 will be made for this service"

Thinking about the terms and conditions, I don't think the wording is particularly clear. But, in isolation, I think Mr K would've understood from this part of the terms and conditions that the course had a 36 month time limit.

I need to consider that the registration form appears to say something different to the terms and conditions, which at best would've been confusing for Mr K - particularly as I think it's most likely he was told in person he could take longer than three years to complete the course. I've also considered the prominence of these two pieces of information. In the terms and conditions the passage above is in section 15 of 21. It appears these conditions would've been on the back of the registration form.

The passage above from the registration form is in section three of five, with "IMPORTANT" in bold just above it to draw attention. And, Mr K was required to sign below. So, I think the first, unclear, piece of information would've been much more prominent to Mr K than the second somewhat clearer one.

In order for a misrepresentation to have taken place, Mr K would've had to have been told a 'false statement of fact'. And, this would've had to persuade him to go ahead with the agreement when he otherwise wouldn't have. I'm satisfied in this case that Mr K was told he could take longer than three years to complete the course without charge. And, I'm satisfied the documents provided weren't clear enough to explain to Mr K that this wasn't the case.

Mr K says he wouldn't have signed up for the course had he known about the time limit, as it wasn't feasible for him to complete the course in this time. Had he been told about the time limit, given what he's said about his annual leave and work, I'm satisfied he wouldn't have gone ahead with the course or finance. So, I'm satisfied the course was misrepresented to Mr K because of the time limits.

Test centre opening times

Mr K says he was told during the meeting with the representative from N that test centres were open at weekends. Mr K says this was an important part of the discussions as he had talked with N about working full time and having limited annual leave.

Mr K says the ability to use weekends to supplement his training was a "strong factor" in his decision making. He says there were other test centres closer to him that he could've used instead had he known he would've had to take annual leave to attend.

CF4TS said it was made entirely clear to Mr K that training would take place in the week. It pointed to the 'course programme' and said this made it clear the course would not take place at weekends.

I've looked at the course programme and it describes parts as "In Centre Practical Training & Assessment – 2 weeks", or "In Centre Practical Training & Assessment – 1 week". I've thought about what CF4TS said about this. But, I don't agree this makes it clear the training would not take at weekends. "2 weeks", or "1 week" are periods of time – not a description of when this would take place. The 'plan of the course' doesn't mention that this training needs to take place on specific days – namely Monday to Friday.

Taking everything into account, I'm again persuaded by what Mr K has said here. I think it's most likely he was told that test centres were open at weekends when they weren't.

I've considered whether this means Mr K wouldn't have signed up for the finance and course if he was aware of this. It doesn't appear he complained about this until he had other things to raise with the business, which I'm not sure is consistent behaviour for someone who found this very important. But, that being said, given I have found the course was misrepresented due to the time limits, I don't think I need to make a finding here as it won't ultimately affect the outcome of the complaint.

Expenses

Mr K says he was told all of his travel and accommodation expenses could be reclaimed. He says this was important, as the test centre was around 90 miles from where he lived and he would require stopovers to attend. He says he later found out there was a £30 per day limit – which wouldn't be enough to cover even just his accommodation.

I've thought carefully about this. But I don't think it would be realistic for N to say to Mr K it would offer unlimited cover for travel and expenses – for instance if Mr K decided to stay in an expensive hotel this could very quickly become a large amount of money over the time of the course.

I've also considered what CF4TS say Mr K was provided with at the time. They've given a copy of a 'voucher' that they say he would've received when he signed up for the course. This says "We will require receipts for both travel and/or accommodation and will make a contribution up to the value to £30/night".

Thinking about this, I haven't seen enough to make me think it's most likely Mr K was told he could claim unlimited expenses for travel and accommodation. It follows I don't think the course was misrepresented for this reason.

Delays during the course

Mr K says there were delays 'built in' to the course which meant it couldn't be completed within the three year limit. I'm satisfied that there's an implied term in the contract that the course needed to be delivered using 'reasonable skill and care'. I would consider any excessive delays to be a breach of contract. So, I'll consider if I think this was the case.

Looking at when Mr K booked his practical training, it appears this took around two to three months from when he was eligible to apply to him attending. I don't consider this to be a short timeframe, but it appears Mr K could continue studying other modules during this time. And, CF4TS pointed out that this timescale allows people time to organise leave from work and accommodation – which doesn't seem unreasonable. In total, the course had five practical training and assessment sections. If each of these took three months to book onto, Mr K still could've completed the course well inside the three years, with quite a significant amount of time to spare.

Thinking about this, I don't think the delays in booking onto the practical training and assessments would've meant Mr K couldn't have completed the course within the timeframe set. So, it follows that I don't consider this to be a breach of contract.

Summary

In summary, I'm satisfied the course was misrepresented to Mr K because I think it's likely

he was told he could take longer than three years to complete it without charge. And I'm satisfied he wouldn't have agreed to the course or finance if he knew this wasn't the case.

I've considered what CF4TS said in response to the investigator's view. It said Mr K hadn't provided 'material evidence' to back up his version of events, whereas it had provided copies of documents etc. from the time. In this case, Mr K has been consistent in what he's told us and CF4TS. And, he's given detailed reasons, as I've gone into above, for the points he's made. So, I consider Mr K's testimony to be a key piece of evidence in this case. And the fact he hasn't provided documents to back this up doesn't change my opinion on this, as I'm not sure what other evidence it would've been possible for him to provide.

Finally, I've considered what CF4TS said about delays in this service dealing with Mr K's complaint meaning it couldn't reach a solution with him. I don't agree this was the case. If CF4TS wanted to make an offer to Mr K to put things right, it might have been prudent to do this before the complaint came to this service, rather than after we had begun to investigate.

Putting things right

As I'm satisfied the course was misrepresented to Mr K, I considered whether he should get a full refund – which would put him as close as possible to the position he would've been in had he not taken the finance. But, in this case, Mr K has had some benefit of the course. So, I don't think it would be fair for him to receive a full refund.

Our investigator said that there were five practical training and assessment parts to the course and Mr K had completed two – so she thought he'd had benefit of 40% of the course. I think splitting the course by practical sections like this seems a reasonable way of working out the benefit Mr K had from the parts of the training he completed. So, it follows I think it's fair that Mr K should pay for 40% of the course's total cost - £2,708.

Our investigator said she thought Mr K should be refunded 60% of the value of the course – which she said was £4,062. But, according to the account statements CF4TS provided, Mr K didn't pay for the full amount of the course. It appears there is a balance of £960 outstanding. If Mr K received the refund recommended by the investigator, he would end up paying for less than 40% of the course – which I don't think is fair.

It appears Mr K has paid a total of £5,810 towards the course. So, I think he should receive a refund of £3,102.

I also think that had the course not been misrepresented, Mr K wouldn't have taken the loan and had it on his credit file. So, I think it's fair that the loan is removed.

I gave both parties one month to respond to my provisional decision with any further information or evidence.

Mr K responded and said he accepted the decision, but made a few points for me to consider.

CF4TS responded and told me it disagreed with the conclusions I'd reached. But, it offered to refund Mr K £3,102 with 8% interest added, on the condition Mr K didn't discuss the settlement with any third party without CF4TS and N's permission. Mr K didn't accept this offer.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having thought about everything again, including the additional comments from Mr K and CF4TS, I still think this complaint should be upheld. I'll explain why.

I've thought about what Mr K said in response to my provisional decision.

Mr K said he raised the issue of training centres not being open when he booked onto the first practical course. He says he had a lengthy conversation with the representative from N and they apologised about this at the time. I've no reason to doubt what Mr K is saying here. But, I still don't think I need to make a finding about whether the course was ultimately misrepresented to him for this reason because it won't impact on what I think is a fair resolution to the complaint.

Mr K reiterated that he was told all expenses would be reimbursed when he agreed to the course. He also said the voucher was given to him in a large amount of paperwork. I've thought carefully about this, along with the evidence I previously had. But, this new information isn't enough to persuade me it's most likely the course was misrepresented to him because of this.

Finally, Mr K pointed out that he would've acted much quicker had all of the issues happened in quick succession. I take Mr K's point and I understand one of the issues may have been the 'straw that broke the camel's back'. But again, this doesn't affect my decision.

I've also considered what CF4TS said in response to my provisional decision. It said it thought the terms and conditions were clear about the duration of the course. I've thought very carefully about this and reviewed the evidence again. But, I still think the course was misrepresented due to the time limits, for the reasons explained in my provisional decision.

my final decision

My final decision is that I uphold this complaint. I instruct Career Finance 4 Trade Skills Limited to do the following:

- Cancel the agreement with nothing further to pay
- Reimburse Mr K £3,102 of the total he's paid*
- Remove the agreement from Mr K's credit file

*this should have 8% simple interest added from the time Mr K paid to the date he is reimbursed. HM Revenue & Customs requires Career Finance 4 Trade Skills Limited to take off tax from this interest. Career Finance 4 Trade Skills Limited must give Mr K 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 K to accept or reject my decision before 24 August 2020.

John Bower
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