

complaint

Mr G complains that Caledonian Consumer Finance Limited, ("CCFL"), will not cancel his loan with it. The complaint is brought on Mr G's behalf by a solicitor, but for ease, I shall refer below to all actions and comments being provided by Mr G, unless I say otherwise.

background

Mr G took out a loan with CCFL in June 2014 to finance a course provided by a training company, T. Mr G made six payments to CCFL, but stopped paying for the course in January 2015. He told CCFL in a phone conversation in January 2015 that he couldn't open some documents he had received from T and wanted to stop payment until he could open the documents. But Mr G's solicitor's letter at the end of January 2015 said that he had been told by T's representative ("Mr R") that he could stop paying for the course at any time and that he didn't understand that he had a loan because he had little knowledge of English. Other letters from the solicitor suggested that Mr G couldn't afford the course and wasn't able to understand the course material. Mr R no longer works for T.

The adjudicator didn't recommend that the complaint should be upheld. She concluded that Mr G had a reasonable grasp of the English language, and noted from the recordings of two conversations between Mr G and CCFL that Mr G was able to engage in conversations about matters of finance. She also said that Mr G had been provided with the loan agreement and letters confirming he had entered into a loan and setting out the loan cancellation rights. She also noted that T had offered to provide additional support in order to assist Mr G in achieving his qualification.

Mr G disagreed and responded to say, in summary, that he had been told by Mr R that he would be able to cancel the course at any time. If this wasn't the case, he wouldn't have entered into the agreement. It was also noted that CCFL hadn't commented on whether Mr G had been told this.

my findings

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

Where things are not clear, or in dispute, I make my findings on what I think is most likely to be the case. I take into account the evidence which is available to me and the wider surrounding circumstances.

I've listened to the recordings of the two phone conversations between Mr G and CCFL. I think Mr G understood what CCFL said to him in those conversations. I also note from Mr G's credit application form that he had lived at his address in the UK for six years at the time of the application, and had a bank account with his UK bank for eight years. He had also been self-employed for three years. So, I think that Mr G had lived and run his own business in the UK for a long enough period to have a reasonable understanding of English.

I note that Mr G told CCFL in one of the conversations that he would make his payment later that day, but didn't do so. His main complaint in the conversation was his inability to open some documents which had been sent to him by T and that he was unable to get them to assist him. I note that CCFL said that it would contact T and ask it to contact Mr G. I don't know if T did contact Mr G. But I note that T is now offering to provide additional tutorial

support in order to assist Mr G in achieving his qualification. T's letter to Mr G's solicitor dated March 2015 said it could arrange for a member of the tutor team to contact Mr G on a daily or weekly basis in order to provide additional support throughout the course. This appears reasonable to me.

I also note that Mr G said that CCFL hadn't provided comment on whether Mr G was told by Mr R that he could stop his payments at any time and cancel the course. Unfortunately Mr R no longer works for T, so I cannot see how CCFL can comment on this. But CCFL has provided copies of all the documents which were seen and signed by Mr G before entering into the loan.

In particular, by signing T's registration form, Mr G confirmed that he understood his cancellation rights (to cancel within seven working days). This form also said that the course could be deferred due to illness or holiday, but that payments must continue to be made to the credit provider. It also said that if there were special circumstances which physically prevented Mr G from carrying on, a pro rata refund may be considered. Perhaps this latter clause was the clause Mr G had referred to, but it doesn't appear to apply in his case. The form also said that the conditions should be read carefully before signing the form and if further explanation is required, T should be contacted. I cannot see any evidence that Mr G contacted T for further explanations although if Mr G felt that his English wasn't sufficient, I would have reasonably expected him to have contacted T or CCFL or a consumer adviser about the documents to ensure he understood them before signing.

I can see that the fixed sum loan agreement was signed by Mr G in June 2014. The document is headed "Fixed Sum Loan Agreement". By the signature box, the agreement said that it should be signed only if the signatory wanted to be legally bound by its terms. On the agreement I can see that it said that 42 payments of £160 must be made with conditions setting out the consequences of a failure to pay. There is also a clause giving the right to withdraw within 14 days.

Mr G said that he didn't know that he had a loan agreement. I have seen no evidence of what was said during the sale. But I consider that Mr G was responsible for ensuring that he understood what he was signing, or for raising questions about the finance agreement or the course material if he was not. I cannot hold CCFL responsible if Mr G chose not to read the agreement. But I think it's very clear from the document signed by Mr G that it was a loan agreement.

I also note that CCFL sent Mr G two letters on 19 June 2014 (within the cancellation period) referring to the loan payments needing to be paid on the same date each month until the full balance was paid, and giving Mr G his withdrawal rights from the finance agreement. I think Mr G should have reasonably known from these that he had a loan with CCFL and if he didn't want this, he could have cancelled the loan within the cancellation period.

Overall, whilst it is difficult for me to know for certain what was discussed at the time Mr G signed the loan agreement, I cannot safely conclude that there is enough evidence of misrepresentation. So, on balance, and in all the circumstances of this complaint, I do not find that CCFL has done anything wrong in rejecting Mr G's claim.

my final decision

My decision is that I don't 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 30 November 2015.

Roslyn Rawson
ombudsman