

complaint

Mr G's complaint relates to his dissatisfaction with an agreement he entered into with third parties, A and B, to provide educational support for his children. Zebra Finance Limited arranged the finance Mr G used to pay for A and B's services.

background

Mr G was attracted by a leaflet in his child's schoolbag, setting out A's educational services. He made further enquiries, and ultimately entered into agreements with A and B. The cost of A and B's services was covered by a four-year finance agreement, arranged by Zebra with a lender, C. Zebra says it wants to take responsibility for Mr G's claim against C.

Mr G's personal circumstances later changed. He was also unhappy with what he considered a poor deal. He says he'd understood he'd be supplied with further materials over the four-year period, but that turned out not to be the case. He asked the parties concerned if they'd allow him to exit the contract. But they weren't willing to do so, and Mr G brought his concerns to us.

Our adjudicator didn't think there was any basis on which he could fairly uphold Mr G's complaint. He didn't find any problems with the arrangement of the finance. And Mr G had signed a number of documents detailing what A and B were providing under the contract. He'd also had the right to cancel within a given period, but hadn't done so.

The adjudicator didn't find anything to suggest there'd been misrepresentation, or a breach of contract. So he couldn't say the finance provider bore any liability to Mr G. And while Mr G had said his financial position had changed since entering the agreement, in conversation with the adjudicator he made it clear he could afford it.

Mr G didn't accept the adjudicator's findings and asked for this review. He said, in summary:

- the businesses he's dealing with refuse to understand his fundamental point, which is that he's aggrieved he's paying for something he can't and won't use.
- he has no faith in A or B's products and services, and is unhappy with how they were sold.
- he didn't cancel the agreements during the cancellation period because of ongoing family issues.

my findings

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

connected lender liability under the Consumer Credit Act 1974

Mr G's concerns relate mainly to his dissatisfaction with the agreement he entered into with A, though there are some aspects that might also relate to B. C's provision of the finance enabling the contracts means it could face a claim from Mr G under relevant sections of the Consumer Credit Act (CCA). If A and/or B breached its contract with Mr G, or

misrepresented aspects that led him to enter into the contracts, then C may be equally liable for such a claim.

That isn't the case with Zebra. It hasn't provided Mr G with finance. So it can't have connected lender liability under the CCA. There isn't the required debtor-creditor-supplier agreement in place. In this respect, then, my finding must be that Mr G can't properly bring a claim against Zebra relating to a breach of contract or misrepresentation by A and/or B.

Zebra's comments on responsibility for the complaint

Zebra has said it's willing to take responsibility for dealing with Mr G's claim. But it doesn't appear to be the owner of the debt. And I haven't seen any formal agreement it might've made with C setting out such an arrangement. I can't just say that, because Zebra wants to take responsibility, I should treat the case as if it does.

It's possible, though, that such an arrangement does exist. With this in mind, I've considered how that might affect the outcome of Mr G's complaint. Having reviewed Mr G's points closely, I can see he's unhappy that A and B haven't met his expectations. And his main point is that he's unwilling to continue paying for a product he's not going to use. So I've examined the relevant documents, to see what A and B said they would provide, and whether they've fulfilled their contractual obligations.

was there a misrepresentation by A and/or B?

In simple terms, a misrepresentation is a false statement of fact, made by one party that induces the other to contract with it. Mr G has said he expected to receive materials over the course of the four-year finance agreement, but that A later told him that wasn't the case. It's notable that Mr G hasn't said anyone told him that was what would happen. It seems to me more of an assumption on Mr G's part, rather than a representation by A or B.

It's clear that A and B did make some statements about their services. But I don't find anything to indicate that such statements misled Mr G. Materials and support were made available to him that were, on the face of it, suitable for the tuition programme he wanted. And he says his children used those materials; they simply completed them relatively quickly. They may not have used B's tuition support, but that doesn't mean it wasn't suitable. I think what's happened here is that, rather than any misrepresentation, Mr G's simply disappointed because he wrongly assumed he'd receive more than he did.

was there a breach of contract by A and/or B?

Mr G's agreement with A was that, in return for his payment, A would provide specific tuition materials. Those materials are listed on the form Mr G signed, and include some ancillary items. Mr G doesn't dispute that A sent the specified materials – indeed, he acknowledged receiving them a few days after entering into the contract.

B's arrangement with Mr G is rather different. It doesn't provide tuition materials. Rather, its contract is to provide four years of education support services. This is essentially a 'teacher helpline' for maths and English grammar up to GCSE level, along with some remote marking services. Although Mr G's said he didn't find A or B to be of much help, that seems to have been in the context of his concerns about tuition material. He doesn't appear to have been referring to any use of B's services. It's unclear to what extent he or his children have used

them. I appreciate Mr G feels B's services would now be of little use. But that isn't the same as saying they're in some way lacking.

As A appears to have performed its contractual obligation, and B remains willing to do so, I can't see that a claim for breach of contract would be successful.

should Mr G be allowed to terminate the finance agreement for other reasons?

There doesn't appear to have been any breach of the underlying agreements. A provided the materials, as it undertook to do. And B still appears willing to provide its services. C paid A and B on Mr G's behalf. And Mr G doesn't suggest C's in breach of the finance agreement. So it's entitled to be repaid in line with it.

I'm conscious Mr G's initial correspondence mentioned his need to reduce his outgoings, because of significant financial pressures arising from a family situation. However, he's since told us that affordability isn't an issue for him.

The agreement makes provision for Mr G to settle it early, by repaying the remaining balance. But as it appears to be an interest-free agreement, I don't think he'd receive any rebate if he did so.

Overall, there's no basis on which I can fairly find Zebra must arrange to cancel the finance agreement. As it stands, to terminate the agreement Mr G needs to repay the balance in full.

my final decision

For these reasons, I'm afraid I can'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 11 April 2016.

Niall Taylor
ombudsman