

## complaint

Mr D complains that Caledonian Consumer Finance Ltd won't cancel a finance agreement he took out to fund a training course and qualification.

## background

Mr D signed up for a training course in March 2016. Mr D would receive a qualification in a new field of work on successful completion of the course. Mr D paid a £50 registration fee to the course provider. The training course provider then brokered a loan, financed by Caledonian, in order for Mr D to pay for the course. The total cost of the course (including the registration fee) was £7,145. The loan was to be repaid over 43 months at £165 per month.

In June 2018 Mr D contacted the course provider to say he wanted to cancel the course because he had been struggling with his finances and couldn't afford to keep paying each month. He also said he found the quality of the teaching to be poor and he'd heard similar issues from other people. Because Mr D was unhappy with the course provider's response he complained to Caledonian and asked for a refund.

Caledonian didn't agree to cancel the finance agreement as it wasn't something Mr D could withdraw from. Caledonian considered Mr D's concerns about the course provider as a claim under Section 75 of the Consumer Credit Act 1974. But it didn't think there had been any breach of contract or misrepresentation by the course provider so it didn't agree to give him any refund of what he'd paid. Lastly, it asked Mr D to fill in an income and expenditure form so that it could assess how it could help him with his financial difficulties.

I sent Mr D and Caledonian my provisional decision on 9 December 2019. I explained that I thought the loan was unaffordable to Mr D and the complaint should therefore be upheld. An extract of my reasoning is set out below.

*In considering whether Caledonian acted fairly in granting the loan, I've taken into account the rules and guidance in the Consumer Credit Sourcebook (CONC).*

*CONC says Caledonian was required to carry out a proportionate assessment of Mr D's ability to sustainably repay the borrowing. This is sometimes referred to as an 'affordability check'. This check needed to be 'borrower-focussed', which means it wasn't good enough for Caledonian just to consider how likely Mr D was to repay the borrowing – or in other words, its credit risk. Instead it needed to be satisfied Mr D could afford the monthly repayments without causing him undue difficulty or needing to borrow further to meet the repayments.*

*There aren't set things Caledonian had to do or ask when doing the check. But CONC says the check it carried out needed to be proportionate to the circumstances. What's considered proportionate will depend on a number of things such as (but not limited to) the size of the loan, the size of the repayments, the term and the consumer's individual circumstances.*

*The loan was for around £7,000 and over 43 months. So I think this was a significant commitment for Mr D to make. As part of the application Mr D was asked to fill in an income and expenditure form. This showed that he had approximately £170 in disposable income each month. As the loan repayments were £165 per month, Caledonian considered it to be affordable. But I have significant concerns about the information Caledonian relied on.*

*The income and expenditure form details most normal living expenses but the most significant omission is other credit commitments. So in determining Mr D's disposable income, it appears Caledonian had no consideration for any other borrowing Mr D might have already committed to (apart from his mortgage). On a separate part of the application form Mr D declared that he held four credit card accounts. But his payments towards these cards weren't included in his expenditure calculation.*

*After the loan was taken into consideration (and if Mr D's self-declared expenditure was accurate), he would only have £5 each month to use to pay all four credit cards. He would therefore be unable to maintain his existing commitments without having to borrow further. It follows that this loan was not affordable or sustainable. The fact Mr D eventually had to contact the course provider and Caledonian about no longer being able to keep up with his repayments also supports this point.*

*Caledonian also carried out a credit check at the point of application. This showed that as well as the mortgage, Mr D had around £11,000 outstanding on unsecured loans and around a further £7,200 in credit card debt. And it could see he was using almost his entire available credit on those credit cards. This means sustainable monthly repayments on those credit cards were likely to be quite significant, and certainly much more than £5 per month. Although there was no adverse data recorded against any of these debts, Caledonian ought to have realised that taking out a further loan was likely to be unaffordable and unsustainable for Mr D.*

*From everything Mr D had declared on his income and expenditure form it ought to have been clear this new loan would make him overcommitted each month. While Mr D did manage to maintain payments against this loan for over a year, it doesn't automatically follow that the lending was therefore affordable and sustainable.*

*So taking into account what Caledonian already knew, I don't think it made a responsible lending decision. Mr D wasn't in a position to be able to afford to sustainably repay the loan and Caledonian ought to have been aware of this from the information it had gathered.*

I then explained that to put things right Caledonian should cancel the loan and refund everything Mr D had paid towards the course, adding 8% simple interest per year to each payment he'd made. This is because Mr D was unable to meaningfully benefit from any of the learning he had completed under the course so far. I also said Caledonian should remove any adverse information about this loan from his credit file.

Mr D accepted my provisional decision. Caledonian had nothing further to add.

### **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As neither party has provided any further comments or evidence, I see no reason to depart from the conclusion I reached in my provisional decision. So for the same reasons I've given above, I don't think Caledonian made a reasonable lending decision when granting this loan to Mr D.

### **my final decision**

For the reasons given above, I uphold this complaint and direct Caledonian Consumer Finance Ltd to:

- Cancel the agreement with nothing further to pay.
- Remove any charges that have been applied to the agreement.
- Remove any adverse information in relation to the loan from Mr D's credit file.
- Refund all payments Mr D has made towards the agreement, including any deposit or registration fee, adding 8% simple interest per year from the date of each payment to the date of settlement.

If Caledonian considers tax should be deducted from the interest part of my award then it should provide Mr D with a tax deduction certificate showing how much it's taken off. This is so that Mr D can reclaim the tax if he is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 6 February 2020.

Tero Hiltunen  
**ombudsman**