

complaint

Mr G complains about a fixed sum loan he entered into with Caledonian Consumer Finance Ltd for a course he has never received. Mr G would like a full refund.

background

Mr G said a representative of a training provider came to his home in summer 2012. He persuaded him to enter into an agreement to pay for an electrical training course. He felt there was a lot of pressure and he signed up. He was told this was not an offer he could accept later, if he didn't sign he would lose this opportunity completely and there was no other way to sign up to the course. He said he believed there was no time limit within which he had to complete the course and he wasn't told it had to be done within 36 months. He also said that he'd later seen a television programme suggesting the supplier was not accredited to deliver the course. He felt there was a misrepresentation made to him. He said under section 75 of the Consumer Credit Act 1974, Caledonian were jointly liable and should refund him his fee. However the supplier said he was too late to take the course and wasn't entitled to a refund.

Caledonian confirmed Mr G had completed the repayments of the loan and the last payment was made in February 2016. It said Mr G initially complained about the supplier's ability to supply the course. In relation to timescales to complete the course it referred to point 3 of the enrolment form and clause 15 of the terms and conditions. It said the contract provided the course should be completed within 36 months of enrolment and the contract expired in July 2015.

It said that in September 2012 another entity took over from the original contracted supplier on an identical basis. Both entities were fully accredited to deliver the training in question. It said based on its enquiries the course was fully available to Mr G and it couldn't uphold the complaint and no refund was due. It said no notice of assignment to the new supplier was given to Mr G.

my provisional decision

I issued a provisional decision in this case. In summary my provisional decision says that Mr G entered into a fixed sum loan agreement with Caledonian in mid 2012 for nearly £6,000. The loan was to cover the cost of an electrical training course and was repayable over 42 months.

I've seen a copy of the agreement which is stated to be a fixed sum loan agreement regulated by the Consumer Credit Act 1974. It is between Caledonian, Mr G and a credit intermediary who is the supplier. I am satisfied this shows there was a debtor, creditor, supplier agreement in place and that section 75 and section 56 of the Consumer Credit Act is applicable to this agreement.

Section 75 provides in effect that if Mr G has a claim against the course supplier for breach of contract or misrepresentation he shall also have a like claim against Caledonian. Section 56 provides that any antecedent negotiations with Mr G conducted by the supplier shall in effect be deemed to be conducted by the negotiator as agent of the creditor, in this case Caledonian.

It is clear that I can consider whether statements made to Mr G at the time he entered into the agreement amounted to misrepresentations and whether there has been any breach of

contract.

Mr G says he was under the impression there was no time limit for completion of the course. He says he believed the course was flexible and it was up to him how quickly and when he could complete it. He said that due to work and other issues he wasn't able to start the course. He only became aware there might be a time limit when he was asked for feedback when he completed the loan repayments.

I haven't seen any evidence to suggest the detail of time limits was discussed or drawn to Mr G's attention at the time he signed up. The notes completed by the representative focus instead on the nature of the loan.

Given the time elapsed it is difficult to be certain what was said at the time. In those circumstances I need to decide what was most likely to have happened. In the light of the evidence I don't think the time limit can have been explained. I say that because Mr G made no haste to start the course and continued to make and completed repayment of the loan in full and on time. This was a loan of a significant size compared to his annual income stated on the form.

It seems to me very unlikely that anyone would complete payments on a loan for a course which by the time of the final year of payments, he isn't able to undertake. I think Mr G's behaviour supports his statement that he was unaware of any such time limit. Had he been aware I think he would've taken steps to contact the supplier to discuss the delay and to seek an extension.

I have considered the enrolment form and the terms and conditions which Caledonian refers to and that Mr G should've read the contract at the time he signed. But it's clear this was a high pressure situation. Even if he had read the terms I don't think he would've concluded there was a time limit. I say that because while the enrolment form says the course "may" take 12 to 36 months" to complete it does not in my view make clear that it must be completed by no later than 36 months from enrolment.

I think it is reasonable to infer the statement is giving an indication of the typical time periods that people take to complete the course. The statements about the flexibility of the course and the supplier won't chase simply reinforce this. The law would require that the contract is interpreted in favour of the party that didn't draft it, so in Mr G's favour. I would also expect a term that is so important to be made very clear on the face of the contract and by the representative at the time. If the contract was clear it wouldn't require complex interpretation by reference to several other clauses to reach a conclusion that there was a time limit for completion.

I have considered whether there was a misrepresentation at the time the contract was entered into. I have concluded that no statement was made to warn Mr G about a time limit for the course. In effect there was a misrepresentation by silence. As a general rule silence does not usually create legal liability. However in a situation such as this I think there was a duty to disclose something as material as a time limit for supply. I have concluded that I don't think any such statement was made and that the contract isn't clear about any time limit and therefore Mr G should get the benefit of interpretation in the manner he stated. Even if I am wrong in my analysis, I think it would be grossly unfair for Mr G to spend 42 months paying a significant amount for a course that was only available for a fixed period that he was unaware of and where the supplier made no attempt at any point to point out time was running out.

Given that Mr G has tried to start the course and been refused, I think the supplier is in breach of contract. In the light of section 75 I think that Mr G can reasonably require Caledonian to repay the loan in full.

I proposed to uphold this complaint and direct that Caledonian Consumer Finance Ltd should repay the loan in full.

Mr G agreed with my proposed decision. He said the reason he hadn't started the course was due to health and work problems.

Caledonian said:-

- The complaint shouldn't have been reopened as Mr G missed a deadline
- There was no high pressure situation
- The terms and conditions and contract make clear the course must be completed in 36 months
- The course was available to him during those 36 months
- The provider tried to contact Mr G 54 time during the course term and he didn't reply.

It didn't think the proposed direction was fair and reasonable. It also said that the case should not be considered by this service as Mr G missed the deadline for escalation. It said Mr G failed to reply to the outcome of the adjudicator's investigation in the original timescale. It had been told the case was closed. Some two months later it was reopened and referred to an ombudsman. Without a good explanation for the exception to the rules it thought the case should remain closed on the basis of the adjudicator's original finding. It said it had been strictly bound to meet the deadlines set out by this service, but it appeared that Mr G wasn't. It questioned the fairness and impartiality of this approach.

It also said there was no evidence that Mr G was subjected to a high pressure situation and the terms and conditions were made clear from the outset. Mr G contacted the supplier and a member of the sales team then arranged to visit. The college tried to contact Mr G re progress on 54 occasions to encourage participation between 2012 and 2015. He was supplied with the course curriculum that confirmed it should be completed within 36 months. He also had a cooling off period to carefully consider the contract. Given the cost of the course it thought Mr G would make this a priority.

Mr G became aware of the time limit in April 2016 but didn't contact the college until July 2017. The original complaint didn't mention misrepresentation re course duration. His complaint was originally about something he'd seen on television and some 4 years after he signed up. It would've expected a complaint sooner. The matter wasn't referred to this service until just before the time limit expired. It felt Mr G never processed matters within what it felt was reasonable time frames so his failure to contact the college wasn't unusual or out of character for him.

It disputed who had contacted Mr G for feedback on the course.

It said the 36 month duration was clear in the terms and conditions and course curriculum. With respect to the change in the party delivering the course this made no difference to the service provided to Mr G and wasn't relevant.

While the wording on timeframe made clear the course was flexible it didn't imply the time frame for completion was open ended. Instead it made clear there was a minimum of 12 months and maximum of 36.

It referred to clause 15 of the terms and conditions. It didn't think it required complex interpretation and said it was clear the course had a maximum duration, the specific course maximum was in the course curriculum and the student can complete within the timeframe allowed or apply for extension. The course curriculum said the average duration was 24 months but if there are multiple subjects it may take up to 36 months to complete the course.

However in order to resolve matters it was prepared to offer a course extension free of charge for up to 24 months but Mr G rejected this. It was disappointed the offer was rejected. It said the complaint appeared to be entirely centred around the expiry of time to do the course, and the offer was logical, fair and reasonable. Mr G's refusal to accept suggested that disappointment regarding completing the course wasn't his primary motivation for the complaint.

my findings

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

I have seen the correspondence re the closure of the case following the decision of the adjudicator in spring 2018. I note the letter to Caledonian makes clear the file may be reopened if the Mr G asked this service to do so. That is exactly what happened. The deadlines for responding to adjudicator decisions are set for good management purposes and don't affect whether the case can be looked at again and the letter made that clear. So the pattern of events doesn't prevent this case being considered by me.

I have considered the issue of timescales for reply. I can see that Mr G was given until 10 May to reply to the adjudicator's view. He called back a few days before the deadline and asked to see the evidence provided by Caledonian so that he could draft a reply. He also sent some copy papers but didn't initially explain why he disagreed with the view. He then left a voicemail after the deadline but in the meantime the adjudicator had closed the file. The matter was later reopened in July. I can understand this is frustrating for Caledonian but given this is a valid complaint I don't think it would be fair or reasonable to exclude the complaint from proceeding because of an over hastiness in issuing a closure letter that warned the case might be reopened.

I consider that by issuing a provisional decision I have provided Caledonian with fair and reasonable opportunities to make representations about the complaint and that it is fair for me to proceed to issue a final decision in the light of those representations.

Caledonian say the complaint we are considering isn't the same as the original complaint made to it. When a complaint is made by a consumer it isn't uncommon that it may not be well explained at the outset. That is why when a case is first referred to this service we contact the business to set out our understanding of the complaint and to ask it to say if it disagrees about the nature of complaint. This is what happened in this case. In particular our

first letter to Caledonian issued in early 2018 said that Mr G wasn't told about the need to complete the course in 36 months and that he wanted a full refund. Caledonian was asked if it disagreed. This was discussed in a telephone call with Caledonian and it was agreed that if it wasn't covered by their FRL we would include the issue of time and this was agreed. It then responded to the issue specifically by referring to contractual provisions. So I think the nature of the complaint was clear from the outset of the involvement of this service, was agreed and Caledonian has been provided with fair opportunities to respond and provide whatever argument and evidence it wished.

I have considered the arguments about the interpretation of the contractual provisions and that time to do the course wouldn't be open ended. For the reasons already given I haven't changed my mind. In particular there is no one clear statement in the contract that it must be completed within 36 months. Reaching such a conclusion requires reading several clauses and drawing a particular conclusion. While this may not require "complex" interpretation it requires interpretation rather than a simple clear statement about the time limit. As I have explained other conclusions interpreting those times are possible such as that there is no time limit or that the times mentioned are indicative. As I pointed out the law would seek to interpret the contract in favour of the party that didn't draft it so that it what I have done.

I have considered that Mr G was sent many standard chasing text messages re the course. Mr G confirms that he received these. He said none of the messages made any reference to running out of time. He said this reinforced the fact they had a correct contact number, but failed to contact him to tell him time was running out. So I don't think this makes any difference to my provisional conclusions as the message didn't tell Mr G time was running out and he remained unaware of this.

Caledonian denies there was any high pressure sale. Even if they are right my decision doesn't rely on this. Its conclusions are based on an interpretation of the contract and absence of any clear warnings about the time limit for the course.

Caledonian also refers to Mr G's pattern of taking action in the past and the delay between becoming aware in April 2016 and complaining in 2017. But that doesn't make a difference the fact remains Mr G wasn't aware of the deadline and when he asked to do the course he was rejected on the basis he was out of time. So whether or not he had a pattern of time passing before action he wasn't on notice that could mean he couldn't take the course at all.

I have considered the offer that Caledonian made to Mr G to allow him to take the course for free within a limited time period. However Mr G has rejected this offer as he'd already asked and been rejected. He said the time had passed for this. Caledonian seems to imply that Mr G's motivation has always been to get a refund and not to do the course. But I also need to consider Mr G's view. I can see that offering to provide the course could seem a reasonable solution to this dispute, but Mr G is indicating that while he could've done it when he asked the window of opportunity has now passed. I have considered the time that has elapsed and Mr G's view that time for him to do this has moved on. I have decided that on balance in the specific circumstances of this complaint it isn't a fair and reasonable resolution to this complaint.

I have therefore decided to uphold this complaint and direct that Caledonian should repay Mr G the amount of the loan plus 8% simple interest from the date of original payment by Mr G to the date of repayment to him. The application of 8% simple interest wasn't mentioned in my provisional decision but Caledonian has been advised that this would be applied and

haven't made any further comment but confirmed they didn't want to make further submissions.

my final decision

I uphold this complaint.

I direct that Caledonian Consumer Finance Ltd should repay Mr G the full amount of the loan plus 8% a year simple from the date of payment by Mr G to the date of my final decision.

Caledonian Consumer Finance Ltd must pay the compensation within 28 days of the date on which we tell it Mr G accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

If Caledonian Consumer Finance Ltd considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr G how much it's taken off. It should also give Mr G a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 21 February 2019.

Colette Bewley
ombudsman