

Complaint

Ms T complains that a fixed sum loan agreement taken through Carnegie Consumer Finance Limited was misrepresented.

Ms T is being represented by a third party.

Background

In February 2018 Ms T took out a fixed sum loan of £7095.00 with Carnegie to fund a third party training course for her son. Ms T says the course was misrepresented and she also didn't agree to take the loan agreement in her name. She says she thought she was just providing a credit check on the property. She also went on to say that the course was unsuitable for her son.

Ms T logged a section 75 misrepresentation claim with Carnegie, but it wasn't upheld. It said Ms T signed a credit agreement in her name, so she was aware that the debt was hers. It went on to say that the misrepresentation of the course can't be investigated by our service, as the agreement is in her name but the course was in her sons. This broke the Debtor-Creditor-Supplier (DCS) link.

As Ms T remained unhappy, she brought a complaint to our service. Our investigator looked into the complaint and firstly didn't think the agreement had been mis sold. He found there was enough evidence to suggest Ms T knew she was taking the agreement in her name. He went on to explain that he agreed with the business when it said the misrepresentation wasn't something our service could look into. He agreed that the DCS link had been broken when the agreement was put into Ms T's name.

As Ms T and her representative didn't agree with the investigators view, the complaints been passed to me to issue a final decision.

my findings

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

There are two elements in this complaint. So I will deal with them in turn.

Mis-sale of agreement

It's important to note that our service can look at things that the credit broker did or said/general mis-brokering during the pre-agreement negotiations under S56 Consumer Credit Act (CCA).

In this complaint Ms T's representative suggests Ms T was asked to sign a blank form and then the information was populated by the sales representative. But I don't find I can put much weight on this – I'll explain why.

An income and expenditure form was filled in detail for Ms T. This is information only Ms T would have access to and Ms T hasn't presented an argument to say this information was not correct. This is also not information that would be needed when running a credit check on a property, as it would have no bearing on past debt or adverse data held against that

address. This persuades me that Ms T was asked for this information to assist a credit check being run on herself and to show her ability to repay the loan.

Ms T's details were also provided to take a deposit for the loan. Her involvement at this point become more than just providing details to run a credit check on her property – as she said she believes she was doing. This further convinces me she was aware of her involvement in the loan.

I don't doubt that there may have been some sort of agreement made between Ms T and her son for him to pay the monthly payments for the loan – but that's not what's in question here. The fact her son had a poor credit history further supports the need for the agreement to be set up in this way.

It's quite possible that the suggestion to set the agreement up in this way came from the sales person – but even if this were to be the case, this doesn't satisfy me that Ms T didn't know what she was entering in to.

Ms T says her son called to cancel the course within the cooling off period – but Carnegie have no record of these calls. It is quite possible the call was made to the supplier rather than Carnegie, if this were the case and Carnegie failed to cancel the course, this would result in a breach of contract and is unfortunately not something our service can look in to, and I'll explain why below.

In June 2018, Ms T called to notify Carnegie that her son could no longer fund the course and wanted to cancel it. However this was outside of the cooling off period, so I can understand why it wasn't cancelled.

In summary, I'm satisfied Ms T knew she was entering a credit agreement.

Misrepresentation-Section 75 claim

Ms T has complained about the course and it's suitability for her son. As a service we would look at complaints of this type under Section 75 of the Consumer Credit Act 1974. This is because Ms T took out a fixed sum loan agreement which is regulated by the Act.

I must decide here what, if anything, Carnegie should do to resolve Ms T's complaint. To do this, I have to decide what I think is fair and reasonable, having regard to (amongst other things) any relevant law. In this case, relevant law includes section 75 of the CCA.

Section 75 of the CCA provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is a breach of contract or misrepresentation by the supplier of goods or services.

But there are certain criteria that also need to be satisfied, which includes establishing a direct relationship between the debtor, the creditor and the supplier.

A debtor is the person buying the goods or services, a creditor is the credit provider who pays the supplier on behalf of the debtor. A supplier is the party that actually provides the goods or services to the debtor.

In this case, this means that there should be an unbroken link between Ms T (debtor), Carnegie Consumer Finance (creditor) and the training course provider (supplier).

I think it's clear that her son was the contracting party with the course provider, and none of the parties involved here have denied this – and we have a registration form to evidence it.

However, because Ms T's son didn't take out the agreement with Carnegie, there is no DCS link here for our service to consider. As I do not think there is a valid debtor-creditor-supplier relationship in these circumstances, I do not think Carnegie has acted unfairly or unreasonably in declining Ms T's section 75 claim.

It's worth noting that any breach of contract by Carnegie would also be bound by the same terms, without a DCS link its not something our service can look in to further.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 22 August 2020.

Tom Wagstaff
ombudsman