

## complaint

Mr M complains about a course he bought on finance with TTR PT Limited (TTR).

## background

In February 2019, Mr M bought a training course from TTR using a fixed sum loan agreement. TTR provided both the course and the finance for it. A few days later, Mr M entered the training portal and quickly realised he'd be unable to complete it as his first language isn't English and his language skills weren't strong enough. He wrote to TTR to exercise his right to cancel the course and finance agreement.

TTR said he couldn't cancel as he'd accessed the training portal. They said the terms and conditions of the contract said once he'd been into the portal, he'd be unable to cancel. They acknowledged that he'd only accessed the course and hadn't completed any of the work. TTR issued their final response to Mr M at the end of February 2019, explaining that the point of sale call with Mr M and another with his wife, included a discussion around cancellation rights and Mr M had said that language wasn't a concern. They said the salesman gave his opinion that the course would be suitable for Mr M based on discussions they'd had. TTR said their course tutor can assist students for whom English isn't their first language. While he could cancel the finance, he'd remain liable for the course fees.

As Mr M didn't agree, he referred his complaint to us and one of our investigators looked into it. She acknowledged the terms and conditions of the agreement said that the course couldn't be cancelled once the online learning platform had been accessed. But Mr M had asked how he could know whether the course was suitable for him without doing so. Our investigator said the law generally allows a 14 day cooling off period for 'distance sales' except for online digital content or an agreement to provide a service and the service is completed during the cancellation period.

In the case of online digital content, our investigator explained the regulations say if a consumer will lose their right to cancel, they must consent and acknowledge the fact. There must be some '*positive action*' by them to do so, and the trader should confirm and acknowledge that action. TTR said that consumers are told during the registration call of a 14 day cooling off period and to read the terms and conditions. They said cancellation clauses are set out in the financial agreements, but they don't have any input into the information provided on the online training platform as it's provided by a third party.

Our investigator said it isn't clear whether the contract in dispute here is related to digital content or a service. Either way, she felt Mr M had the right to cancel as he didn't take any positive action to acknowledge that he'd lose his rights to do so, when he accessed the platform.

She recommended that TTR should:

- End the agreement with nothing further to pay
- Refund any repayments made plus 8% from the date paid to the date of settlement
- Remove the agreement from his credit file
- £100 compensation

Mr M accepted the investigator's opinion but TTR didn't. They said (in summary) Mr M had accepted the contract based on the terms and conditions which said he'd lose his right to

cancel if he accessed the online learning platform before the 14 days expired. They said Mr M was aware that English wasn't his first language so shouldn't have signed up for the course if he felt this would be a barrier to him completing it. As there was no agreement, the complaint has been passed to me for 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. Having done so I've reached the same view as our investigator and for the same reasons.

The Consumer Contracts Regulations 2013 (CCR) which implements the European Consumer Rights Directive, contain regulations on distance sales. They're clear that if a consumer is to lose their cancellation rights, they must have to take some positive action which should be confirmed and acknowledged by the trader.

TTR have argued that Mr M shouldn't have signed up for the course if he felt his language skills wouldn't be strong enough to complete it and I acknowledge that point. But clearly Mr M was able to speak English well enough (the TTR representative thought the course would be suitable for him following their conversation), and it wouldn't have been until he accessed the online portal that it would have been clear to Mr M that it wasn't suitable for him. And although the terms and conditions say that accessing the portal ends the cancellation period, the law says the trader needs to do more when selling at a distance.

It seems clear that Mr M had some concerns about how easily he'd be able to access the course as this formed part of the discussion he had with TTR at the point of sale – TTR have acknowledged that. So I think it's likely that if Mr M had needed to take positive action to waive his cancellation rights – as required by the law - he'd not have gone so far as accessing the portal and so would have been able to cancel the course and finance agreement.

Bearing in mind what the law says about distant sales and all the circumstances in this case, I think, for the reasons set out above, TTR should allow Mr M to cancel the course and the credit agreement with which he paid for it.

The CCR allows businesses in certain circumstances to retain some costs for information accessed by a consumer when they cancel a contract. But in this instance, both parties have agreed Mr M hasn't used the course content as it quickly became apparent that he couldn't use it. So I think it would be reasonable for him to receive a full refund of anything he's paid.

If Mr M had been allowed to cancel the course, the credit agreement would also have been cancelled and should be treated as if it never existed. So it wouldn't have shown on his credit file and should be removed from his file completely.

Mr M told TTR he's suffered stress and sleepless nights as a result of being asked to continue to pay for a course he's had no benefit from and ought to have been able to cancel. I think TTR should pay him some compensation for that stress and inconvenience.

### **my final decision**

My final decision is that I uphold Mr M's complaint. TTR PT Limited should:

- End the agreement with nothing further to pay
- Refund any repayments made plus 8% simple interest per year from the date paid to the date of settlement. If TTR PT Limited consider they are required by HM Revenue & Customs to withhold income tax from the interest, they should tell Mr M how much they've taken off. They should also give him a tax deduction certificate if he asks for one so that he can reclaim the tax if appropriate.
- Remove the agreement from Mr M's credit file
- Pay Mr M £100 compensation for the trouble this has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 May 2020

Richard Hale  
**ombudsman**