

## **complaint**

Mr W complains that Carnegie Consumer Finance Limited won't give him a refund and cancel a loan he took out. The loan was taken out to finance a training course which he says was misrepresented to him.

Mr W is represented by his relative. But for clarity I will refer only to Mr W throughout.

## **background**

In March 2015, Mr W approached a course provider as he was interested in starting a training course in a specific trade. The course provider sent a sales person to visit Mr W at his home to discuss the details of the course. The sales person arranged for Mr W to take out a loan with Carnegie to pay for the training course. It was repayable in 44 months at £150 per month.

In late 2017, Mr W complained to the course provider and to Carnegie saying the course was misrepresented to him. He said the sales person told him a number of things which turned out to be untrue, including:

- There was no time limit to complete the course;
- The course provider would find him employment;
- The course provided everything in order to complete it;
- The practical part of the course would be at venues close to home; and
- The practical parts would accommodate his availability outside of his day job and holidays.

Mr W said that if he'd been given the correct information about these things at the point of sale, then he wouldn't have signed up for the course. He asked Carnegie for a refund as he considered they were jointly responsible for the misrepresentation under Sections 56 and 75 of the Consumer Credit Act 1974 ("CCA").

Carnegie didn't think there had been any misrepresentation. They said they couldn't verify what the sales person told Mr W verbally. But they said the credit agreement he signed and the supporting paperwork he was given set out clearly what he could expect from the course and the course provider. They said these documents contained no false information and Mr W had 14 days in which to withdraw from the agreement if he didn't agree with what was written in them.

Our investigator didn't recommend the complaint be upheld. He wasn't persuaded there had been a misrepresentation. He said even if some false statements had been made verbally, the correct information was made available in writing which Mr W had the time to review after the discussions took place. And he didn't think Mr W would have acted any differently even if the correct information had been given to him verbally.

Mr W disagreed. In summary he said:

- Due consideration hadn't been given to S56 and S75 of the CCA.
- His situation isn't unique as there are numerous negative reviews and forum posts about the course provider on the internet.
- The written contract doesn't override the verbal contract or verbal statements made by the sales person.

- It isn't fair or relevant for the investigator to have speculated on what he may or may not have done had the correct information been given to him by the salesperson.
- He asked very specific questions of the salesperson and it was only on the strength of the responses did he agree to enter into the contract. Had the true information been given, he wouldn't have signed up.

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.

The general effect of S75 is that if Mr W has a claim for misrepresentation or breach of contract against the course provider, he can bring a like against Carnegie. But my role isn't to decide whether or not S75 applies in this case. Instead, I'm required to decide what - if anything – Carnegie should do to resolve Mr W's complaint. To do that, I must decide what's fair and reasonable, which includes (amongst other things) taking account of any relevant law. The relevant law in this case includes S75 of the CCA.

Mr W has also mentioned S56 of the CCA, and whilst I've taken that into consideration, the effect of S56 is largely irrelevant here. This is because by virtue of S75, Mr W can bring his claim about misrepresentation against Carnegie in any event.

A misrepresentation is a false statement of fact which causes someone to enter into a contract when they otherwise wouldn't have. Mr W has listed several false statements he says the sales person made before he signed up to the course. So I need to decide whether I think it's likely these statements were made, whether they were false, and whether they made any material difference to Mr W's decision about entering into the contract with the course provider and Carnegie.

Mr W's recollection of events has been quite detailed and consistent throughout the course of the complaint he's made to Carnegie and this service. However, the actions he took after entering into the contract and statements he made to the course provider, don't support his assertions that false statements were made. Nor do they support that any of the alleged false statements made a difference to him entering into the contract. So this means I'm not persuaded that there has been a misrepresentation. I'll explain why.

Mr W says the salesperson told him he could complete the course in his own time and that there wasn't a limit for how long he could take. Mr W said this was crucial to his decision to enter into the contract. This was because at the time he was working a lot so wouldn't be likely to complete the course quickly. He says he later found out the course had to be completed in 36 months – and he'd have to pay a fee to have that time limit extended.

I've seen that Mr W called the course provider around two months after entering into the contract. He asked about how long it takes on average to complete the course. He was told about the three year limit, and the possibility of extending beyond that. If he'd been told there was no time limit by the salesperson, and that this was a key factor in his decision to enter into the contract, I would have expected him to have complained as soon as he learned of the 36 month timeframe in that call. Because he didn't, I'm not persuaded this made a difference to his decision and therefore wasn't a false statement which induced him into the contract.

This is further supported by a message he sent the course provider in 2017 where he said: *"At present, I am over 2 years into the course and below 50% completion. I understand that at the 36 month point it is up to the discretion of the college as to whether or not I am able to continue."* And *"The reason for the slower progress than I would have liked is due to the fact that since starting the course I have been suffering from a serious medical condition"*.

This message contradicts what Mr W says he knew about the terms of the course. And it also suggests that his intention was always to try and finish the course within 36 months, but due to a change in circumstances he wasn't able to. He also didn't complain about the time limits at that time despite clearly being aware of them. For all these reasons, I don't think there was a misrepresentation about the course length, the terms for extending it or any associated fees.

Mr W's complaint appears to originate from him discovering negative online reviews about the course provider. It wasn't because of something specific that happened to him during his relationship with the course provider or Carnegie. And some of the false statements he says were made don't appear to have made any material difference to him (location of practical courses for example).

I'm not disputing that there appears to have been other people who have had bad experiences with this particular course provider. And although that helps to give me some indication of similar situations and might support what Mr W says, I'm not persuaded that in this particular case they add much weight to Mr W's argument.

This is because Mr W appears to have been happy with the course, and progressed through it reasonably well for over two years. He passed several exams, and used the support from tutors that was available to him. He also continued to try and sit further exams almost two months after raising initial concerns about the online reviews. And it doesn't appear to be until he failed those exams that he's raised his complaint about the course. The issues he's raising are similar in content to some of the other complaints online. But some of those things he now says he was told by the salesperson in 2015 don't match up with what he said to the course provider in 2017.

So although I don't doubt Mr W has given us his honest recollections, memories can fade over time. Because there are fairly significant contradictions in what he says he was told, this means I can't now attach as much weight to the remainder of Mr W's recollection of the discussions that took place in 2015. Further, I've not seen anything else persuasive that would support what Mr W says he was told at the time.

I've also considered that the written contract and paperwork he signed in 2015 were clear and made no false statements. To be clear, I agree with Mr W that the written contract doesn't necessarily override any verbal representations. But in this particular case, I've found the written contract to be more persuasive than Mr W's recollections of the discussions that took place, for the reasons I've given above. Because of this and the other wider circumstances, I'm not persuaded, on balance, that there was a misrepresentation. For that reason I don't think Carnegie needs to do anything more to resolve the complaint.

**my final decision**

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 October 2018.

Tero Hiltunen  
**ombudsman**