

complaint

Mr H complains that a fixed sum loan agreement was mis-sold to him by Carnegie Consumer Finance Limited, that it didn't check that the agreement was affordable for him and that he was pressurised into signing the agreement. He's being helped with his complaint by his mother. He's also made a complaint about the credit broker – but that complaint's being dealt with separately.

background

Mr H signed a fixed sum loan agreement with Carnegie Consumer Finance in July 2015 to finance a training course. He complained to the course provider and then to Carnegie Consumer Finance in November 2016. He says that the finance was mis-sold to him, the course wasn't as described to him, Carnegie Consumer Finance didn't check that the agreement was affordable for him and that he was pressurised into signing the agreement. He wasn't satisfied with Carnegie Consumer Finance's response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. He said that Carnegie Consumer Finance wasn't required to carry out a credit check and that the monthly repayment was well within Mr H's disposable income so wouldn't have raised any alerts about the affordability of the loan. And he said that Mr H made the first 10 monthly payments – which would indicate that the loan was affordable for him. Mr H signed the client compliance confirmation so the adjudicator was persuaded that Mr H was given the relevant information for him to make an informed decision - and he signed the agreement which detailed the terms of the loan so he knew what he was entering into. And he didn't raise any concerns about being pressurised into signing the agreement during the 14 day cooling off period. The adjudicator says that the issues raised by Mr H hadn't affected his ability to complete the course or achieve the advertised qualifications – so he was unable to say that a breach of contract had occurred.

Mr H's mother – on his behalf – has asked for this complaint to be considered by an ombudsman. She says, in summary, that:

- there were too many unfair and misleading acts and concerns about: the companies and their associates - who all have a common interest in offering these courses online (to get the consumer to sign a loan agreement); the procedure in which the credit is provided; and the unfair way that the consumer feels pressured into signing up but then is unable to prove what was said at the time of the sale as it was carried out at the consumer's home;
- both Carnegie Consumer Finance and the credit broker blame each other for many of the issues and neither takes responsibility for the manner in which their representative sold this course (and received a fee of £50 for doing so); and
- a wider picture needs to be taken in relation to the selling of this course and not purely on the basis that the company has got the consumer to sign all of the correct paperwork covering themselves for everything in the event that the consumer makes a complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We offer an informal dispute resolution service. We try to resolve complaints by customers about financial businesses by looking at what we consider to be fair and reasonable in the circumstances. We have no regulatory or

disciplinary role over those businesses. So I'm unable to require any of them to change the way that it conducts its business. And our role isn't to punish a business if it's done something wrong.

Mr H has made a separate complaint about the credit broker – so I'm only able to consider the actions of Carnegie Consumer Finance in this complaint. It's clear that Mr H and his mother believe very strongly that the loan agreement was mis-sold to Mr H and that the course provided wasn't what he signed up for. But it was the credit broker – and not Carnegie Consumer Finance - that was responsible for selling the credit agreement to Mr H.

Mr H signed the fixed sum loan agreement – and I consider that the key terms were clearly set out in the agreement (including the right to withdraw from the agreement in the first 14 days). Immediately above Mr H's signature it says: *"This is a credit agreement. Sign it only if you want to be legally bound by its terms"*. He also signed an affordability declaration and a client compliance confirmation. Mr H had provided information to show that the monthly repayment was affordable for him – so there was no requirement for Carnegie Consumer Finance to conduct a full affordability assessment. And Mr H made the monthly payment for the first ten months – which suggests that the agreement was affordable for him.

I'm not persuaded that there's enough evidence to show that Mr H was unfairly pressurised into signing the agreement. He didn't complain to Carnegie Consumer Finance until more than a year after he signed the agreement – and he didn't exercise his right to withdraw from the agreement. Nor am I persuaded that there's enough evidence to show that the course was misrepresented to Mr H or that there's been a breach of contract by the course provider. So I consider that there's not enough evidence to show that Carnegie Consumer Finance has acted incorrectly. And I find that it wouldn't be fair or reasonable in these circumstances for me to require Carnegie Consumer Finance to cancel the loan agreement – or to take any other action in response to Mr H's complaint.

my final decision

For these reasons, my decision is that I don't uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 June 2017.

Jarrold Hastings
ombudsman