

complaint

Mr O complains that Carnegie Consumer Finance Limited ("Carnegie") won't allow him to end a credit agreement he has with them. He says he was pressured into taking the agreement out and it was misrepresented to him and he also says the course quality has not been of an acceptable standard.

background

Mr O's first language is not English. He signed up for an electricians training course in June 2016 with a company I'll call "T". He said he was told he could cancel the agreement at any time and that he wasn't told it was being funded through a fixed sum loan with Carnegie. He also explained that the salesperson pressured him into signing up. So he told Carnegie he wanted to withdraw from the course.

But Carnegie wouldn't let him. They said he hadn't withdrawn within the requisite cooling off period and they noted that he'd accessed the course 53 times and had completed six homework assignments. Whilst they understood he hadn't accessed the course now for 12 months they didn't think this was a reason to cancel the credit agreement. They thought it likely that Mr O had understood he was entering a fixed sum loan agreement and that the terms and cancellation rights would have been explained to him.

So Mr O referred his complaint to this service. He explained that the sales agent had visited his home and told him there were very limited places left on the course and had pressured him to sign up. He insisted he'd been told he could withdraw at any time. Our investigator considered the rules, set by the Financial Conduct Authority (FCA) regarding credit related activities. These suggest the lender may need to consider using alternative methods of communication when the consumer didn't have a good understanding of English. She wasn't persuaded that Carnegie hadn't considered alternative methods so she went on to consider what would have happened if they had and Mr O was in possession of all the information.

She thought that even if that was the case it was most likely that Mr O would've still signed the credit agreement and entered himself on the course. She was satisfied Mr O would have taken the course because she reviewed his statement and it was clear he wanted to take a qualification that would help his career prospects in London. And she noted the credit was provided at 0% APR so she thought it likely it would have been cheaper than obtaining the credit via alternative means, such as a credit card. And it was therefore likely Mr O would've taken out the credit agreement with Carnegie.

The investigator went on to consider Mr O's complaints about the quality of the course. He'd complained that the tutor wasn't always available or took too long to get back to him. But our investigator noted that the agreement didn't guarantee tutor support and she therefore didn't think there was evidence the contract had been breached.

But Mr O disagreed and he asked for a final decision by an ombudsman.

my findings

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

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

The relevant legislation allows Mr O an equal right to claim against the supplier of a service or the provider of credit, if there's been a breach of contract or misrepresentation by the supplier. Here he's making a claim against the provider of credit, Carnegie.

A misrepresentation is an untrue statement of fact that causes a consumer to go ahead with the contract. A breach of contract is where the supplier fails to do what the contract says.

misrepresentation

Mr O has explained that English isn't his first language and in those circumstances I think it would have helped if Carnegie had considered alternative methods of communication. But I therefore need to consider whether Mr O would have signed up for the training course if he had been able to benefit from a clearer explanation of the contract he was entering into.

Mr O has explained he wanted to take a qualification to improve his employment prospects in London. As he's an electrician in his home country I think it's reasonable to suggest he'd be looking to gain a qualification in that area in the UK. So I think the course he signed up for would have been of interest: on completion he would have been fully qualified to train as an electrician in the UK. He wasn't being asked to pay any interest on the loan he obtained so I also think it's likely he would have entered into the fixed sum loan agreement with Carnegie as it was likely he wouldn't have been able to get it any cheaper elsewhere. And it's clear that, at least initially, Mr O engaged with the course. He completed several homework sessions and frequently logged on to the system, so it's clear the course was of interest to him.

For those reasons I think Mr O would have been most likely to have signed up for the course even if more care had been taken to communicate the agreement.

breach of contract

Mr O has complained that the quality of the course wasn't what he expected. He's said he expected the tutor to be more available and he had to wait too long for his assignments to be returned.

But I'm not persuaded there's been a breach of contract. I've not seen evidence to suggest the response rates were unsatisfactory and I can see that Mr O seems to have been recording good scores on his assignments and progressing well. He didn't complain to the college and they were not aware he was dissatisfied until they received a request to cancel his agreement 14 months after inception.

So I don't think Carnegie need to take any further action here.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 11 April 2019.

Phil McMahon
ombudsman