

complaint

Mr B complains that Carnegie Consumer Finance Limited won't let him cancel his loan agreement.

background

In July 2015 Mr B enrolled on a college course, which he paid for with a loan from Carnegie. Under the loan agreement he had to repay £150 a month for 44 months. In late August he asked the course provider if he could cancel the course, but this request was refused because it was made after the cooling off period had expired.

Mr B made no repayments towards the loan. Carnegie sent him arrears letters in September, a default notice in November, and a formal demand in December. Soon afterwards, Carnegie instructed a debt collection agency.

In November 2015 Mr B instructed a solicitor, who wrote to Carnegie to dispute that Mr B owed anything under the loan agreement. He said that the course provider had breached its contract with Mr B, and that Carnegie was liable for the breach under section 75 of the Consumer Credit Act 1974. He said that as Mr B had terminated his contract with the course provider, this had also brought the loan agreement to an end, and so he was no longer liable to make any payments.

Carnegie said that when Mr B had asked to cancel the course, he hadn't mentioned any breach of contract. He'd simply said that he had lost interest in it. His subsequent email about a breach of contract had been sent to the wrong email address. The course provider had no record of Mr B having made any earlier complaint.

In 2017 Mr B brought a complaint to our Service about Carnegie. He is represented in this complaint by his solicitor.

Our adjudicator did not uphold this complaint. She didn't accept that there had been a breach of contract, or that Carnegie had acted unreasonably in holding him liable for the loan.

Mr B's solicitor said that the course provider had falsified some letters to falsely claim that it had sent Mr B letters which it had never sent, in order to rebut the allegation of breach of contract. So this complaint has been referred to me for an ombudsman's decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I do not uphold it. I will explain why.

Put briefly, the breach of contract alleged by Mr B is that when he submitted his first assessment for marking, his tutor did not mark it, and he was unable to proceed further with the course unless and until his first assessment had been marked. In an email he sent to the course provider in August 2015, he said it was impossible to contact his tutor, and nobody at the course provider was communicating with him. Nor had anyone sent him any information about how to contact his tutor. (He added that he did not earn enough to make the loan payments, and that the person who sold him the course had made it sound "too good to be true.")

Carnegie showed us correspondence which it said the course provider had sent to Mr B, which included the contact details for his tutors. But Mr B's solicitor said that these had been faked in response to this complaint. He submitted alternative letters which he said were the ones Mr B had really received in 2015, and which did not include the contact details. He argued that although the cooling-off period for cancelling the course had expired, the failings of the course provider amounted to such a serious breach that Mr B had been entitled to end his contract. That meant that he had also been entitled to cancel the loan agreement too.

Two days before Mr B sent the email in which he described the problems he was having with the course, he phoned the course provider. I have listened with interest to the call recording. At no point in the call did Mr B ever mention any of the difficulties he has alleged since. Indeed, he never expressed any dissatisfaction with the course at all. Instead he said this:

"I'm just not interested in doing the course any more. And like, between work and trying to do this and paying for it as well, obviously with the loan and the finance and trying to pay for cars and other stuff, it's just, I'm not going to [inaudible] afford it. So the only option is just withdrawal."

The call handler said that Mr B had left it too late to cancel the course. She suggested that he should speak to Carnegie if he couldn't afford the payments, or he could transfer the course to somebody else. Mr B replied:

"It's just not interesting any more. I've been doing the coursework but the past couple of weeks I've just kind of stopped it, put it on hold, er, I just don't really want to do it anymore. I want to try and get into a different career. It's just not what I'm looking for."

The call handler advised him to seek independent advice from the Citizens' Advice Bureau. He thanked her and ended the call.

Mr B has never explained why he didn't mention in that call any of the issues he now says amounted to a breach of contract. But I infer that the explanation is that they are not true, and that he made them up two days later after he realised that he couldn't just cancel the contract at will after the cancellation period had expired.

For that reason, I do not accept that the course provider sent Mr B the letters he says were sent to him, instead of the letters containing the tutors' contact details. And I do not accept that there was any breach of contract by the course provider. It follows that Carnegie was not wrong in 2015, and is not wrong now, to hold Mr B liable to repay the loan in full.

(I also agree that his email was sent to the wrong email address. The correct address begins with "customerservices@" but the last S is missing from the address Mr B sent the email to. There is also another letter missing from the remainder of the address. So it seems that he never notified the course provider about any problems with the course until after it had defaulted him. However, even if I had not found that to be the case, it would not have made a difference to my decision.)

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 February 2018.

Richard Wood
ombudsman