

complaint

Mr N complains that he entered into a loan agreement with Carnegie Consumer Finance Limited (“Carnegie”) after relying on a number of misrepresentations by Carnegie’s agent and credit broker.

background

In April 2017, Mr N signed up to a training course leading to a trade qualification. Most of the learning could be done by Mr N at home in his own time with some weekend practical classes. This suited Mr N because he was married and had a full time job. The course was provided by a training organisation which I’ll call T. The cost was £7,145 plus a registration fee of £50.

It seems Mr N had seen an advertisement for the course and expressed interest to T. As a result, T sent one of its advisers to talk to Mr N at his house. Following what the adviser told him, Mr N signed up for the course. To pay for it he also signed a loan agreement with Carnegie under which he agreed to pay the cost by 43 monthly instalments of £165 a month.

Mr N became unhappy that the course arrangements weren’t as the adviser had told him. He complained to T and said he wanted to cancel the course and recover what he had already paid. T said after Mr N signed for the course and the loan agreement he had a three week cooling off period during which he could cancel the course and the loan. But he hadn’t done so. It said he couldn’t now cancel these.

Mr N then complained to Carnegie. He said the adviser had misrepresented a number of matters. He had relied on what the adviser had said, and so had entered into the course agreement and the loan agreement. He now wished to withdraw from both agreements because of these misrepresentations. Briefly, the misrepresentations he complained of were:

- that he would receive details of his personal tutor within 21 days – he hadn’t heard from a personal tutor;
- the adviser told him he could withdraw from the course at any time if it wasn’t what he expected. But when he approached T to do so he was told he had signed up to a loan agreement with Carnegie which he couldn’t withdraw from. He said he didn’t know he was entering into a loan – he thought it was a pay-as-you-go scheme with T that he could withdraw from at any time;
- he says he was told by the adviser that the practical training sessions could be done at the weekend at a local training centre. But when he rang to book these he was told the local centre only did weekday training sessions. For weekend training sessions he would have to travel over 100 miles to another part of the country. In the “Plan of the Course” booklet it said some training also required a full week’s attendance. He said he wouldn’t have signed for the course if he had known he couldn’t do the practical sessions locally at the weekend.

Carnegie didn’t accept his complaint. It said it wasn’t possible to know what was said at Mr N’s meeting with the adviser. So it didn’t accept the course and loan had been misrepresented. It said:

- the loan agreement was clearly a loan, being headed “Fixed Sum Loan Agreement”;

- the “Plan of the Course” handed to Mr N by the adviser contained full details of the number and duration of the practical training sessions and assessments Mr N was required to attend;
- the details needed to contact tutors were sent to Mr N on 20 April 2017, and T had confirmed Mr N had contacted tutors on a number of occasions;
- as regards the location of practical workshops and assessments, Mr N had signed a declaration on his enrolment contract which said:

“4. The location and times of my practical sessions will be agreed and advised at the point in my self-study program where I become eligible and meet the appropriate requirements, as highlighted in the plan of the course”

T’s terms and conditions also said:

“11. Practical sessions will take place at a venue of our choice.”

However T had now offered, as a gesture of goodwill, to pay Mr N £40 per day towards his attendance at weekend courses elsewhere in the country. T had also agreed that the course could be extended if delays occurred due to the location of the training. Mr N didn’t accept this offer and complained to us. He still wanted to cancel the course and his loan.

Our investigator recommended that this complaint should be upheld. The course was specifically set up for practical courses to take place at the weekend. This was important to Mr N because he worked full time and had a family to support. So she thought it more likely than not that the adviser had told Mr N he could attend the practical courses locally.

She thought Mr N wouldn’t have taken the course and the loan if he had been told he would have to travel 100 miles for the practical training, even if offered some financial support. She thought he had relied on what the adviser told him to take the course and the loan. She didn’t think the wording in the documents was sufficiently prominent to displace this in Mr N’s mind.

On the other points Mr N had raised, she thought, in summary:

- Mr N had made contact with tutors and support had been provided;
- the documents provided to Mr N beforehand explained the nature of the course – both theory and practical – sufficiently clearly;
- enough information was provided for Mr N to understand he was taking out a loan to fund the course.

To put things right, the investigator recommended that Carnegie unwind the credit agreement and refund all monthly payments made by Mr N.

Carnegie didn’t accept the investigator’s recommendation. It still didn’t agree there was evidence of any misrepresentation by the adviser sufficient to allow Mr N to cancel the course and the loan.

However, it said T had confirmed that another local training centre was now providing weekend practical training. T had offered, as a gesture of goodwill, to meet reasonable travel costs of Mr N attending this centre, subject to these being agreed in advance and Mr N providing receipts.

The investigator still thought there had been a material misrepresentation - that the weekend practical training would be provided locally. However she thought what Carnegie was now proposing was a reasonable solution in the circumstances. She thought if the location now available had been offered originally Mr N would have signed up for the course.

She thought Carnegie should also pay Mr N compensation of £100 for the trouble and upset Carnegie had caused him, and for this solution not being offered to Mr N earlier. Carnegie accepted the investigator's recommendation. Mr N responded to say, in summary:

- he only signed up for the course because the adviser told him the practical sessions would take place locally and were on weekends only. This would fit his working schedule and would be close to home. The adviser didn't tell him some of the later training required a one week attendance;
- if T had offered the solution it now proposed when he first complained in January 2018, he would have considered accepting it. The theory modules he had learnt would then have been fresh in his mind. It was now more than a year since he had read the course materials, and he would now have to restart the course from the beginning;
- he wouldn't complete the course until two years after he had planned to do so, and his circumstances had changed in the meantime;
- the adviser told him he was signing up to a pay-as-you-go arrangement with T which he could cancel at any time. He wasn't told he was signing up to a loan agreement; and
- he still thought the course had been misrepresented to him by the adviser. He had lost trust in T and wanted to cancel the course and the loan.

my findings

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

Mr N complained in January 2018 that the course was misrepresented to him by Carnegie's adviser, as a result of which he signed up for it in April 2017, some eight months previously. The only evidence for this is what Mr N says the adviser told him. Carnegie disputes that there was any misrepresentation.

Our investigator didn't accept that some of the matters Mr N complained about were misrepresented to him, namely about

- notification of tutors,
- about the nature of the course, and
- about not being aware he was entering into a loan agreement with Carnegie.

I agree with the investigator's conclusions on these matters for the reasons she explained.

However the investigator accepted that it was more likely than not that the adviser did tell Mr N that he could attend weekend practical training at a local training centre. She thought this would have been important to Mr N because he worked full time and was married.

She thought he wouldn't have signed up for the course if he had known that weekend practical training could only be provided at centres more than 100 miles away from his home. She didn't think the written documents provided to Mr N at the time he signed for the

course, including the Plan of the Course document, were sufficient to displace what the adviser had told him.

Carnegie has now confirmed that T can arrange weekend training at another local centre, and will reimburse Mr N's reasonable travelling expenses to this. It has also agreed to pay Mr N compensation of £100 for the distress and inconvenience it has caused him. Like the investigator, I think this is a reasonable solution to Mr N's complaint.

Mr N says the adviser also said only weekend practical training sessions were required. He has since found that he must also attend some week long practical sessions.

I can't say what was said at the meeting with the adviser. However I think the adviser is less likely to have said this because the Plan of the Course document which was handed to Mr N at the meeting with the adviser makes clear that such sessions were required later in the course.

Mr N also had the opportunity to read this document and cancel the course and the loan agreement within the cooling off period of some three weeks if this aspect was unacceptable to him. So I'm not persuaded that the requirement for some week long practical training sessions was misrepresented to Mr N.

I understand that it would have been preferable if the availability of another local training centre had been offered to Mr N when he complained in January 2018, and that to resume his training now will cause him some inconvenience. His completion of the course will now be later than he had originally planned.

I think this is recognised in the compensation of £100 which Carnegie has agreed to pay him, and reimbursement by T of travel expenses. I don't agree it's sufficient for me to say the proposed solution is unreasonable, or that Mr N should now be allowed to cancel the loan and the course.

my final decision

My decision is that I uphold this complaint in part, and order Carnegie Consumer Finance Limited:

1. to arrange for T to reimburse Mr N's reasonable travelling expenses to weekend training at another local centre, subject to these expenses being agreed in advance with T and Mr N providing appropriate receipts to T; and
2. to pay Mr N compensation of £100 for the distress and inconvenience it has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 15 August 2019.

Lennox Towers
ombudsman