

complaint

Mr M complains about a training course he paid for using a Fixed Sum Loan provided by Carnegie Consumer Finance Limited.

background

Mr M looked online for a work-related course. He set up a meeting with a course provider and enrolled on a course in September 2017. Having secured funding through Carnegie, he was supplied with the necessary course materials by a representative of the course provider. In May 2018, Mr M says he discovered the course was not suitable and decided to cancel it. He says the sales representative had told him he was free to leave the course at any time and was led to believe this meant the course was paid for on a rolling basis, so he'd not have to pay any more if he chose to leave.

Mr M complained to Carnegie and said the course was mis-sold for a number of reasons. He said (in summary):

- English isn't his first language but he wasn't given any additional explanation of the terms of the agreement.
- The course content wasn't explained adequately at the point of sale; he says he wasn't told the course would be completely online. He tells us that he tried to contact the course provider for assistance several times before deciding to cancel the course. He says there's been a breach of contract by the training provider.
- He was in minimum wage temporary employment and lived with his partner (who didn't work) and their young daughter. He says a proper affordability assessment wasn't carried out for the loan and the assessment didn't meet the requirements of CONC 5.3.1.
- Carnegie have harassed him with phone calls for repayment of the loan.

Carnegie looked into his concerns. They said they'd seen no evidence of any misrepresentation of the course or breach of contract by the provider. But said they'd look again if he could provide evidence of attempting to get help from the course provider that wasn't acknowledged. They said Mr M had signed a declaration to confirm he'd discussed the affordability of the loan with the advisor and confirmed he could afford the repayments as he had a disposable income of £610. Carnegie reviewed their communications with Mr M and said they didn't think their contact with him had been excessive. They didn't uphold his complaint.

As Mr M remained unhappy, he referred his complaint to us and one of our adjudicators looked into it. He said Mr M had been given the chance to review the course information and was given 14 days to cancel the agreement if he'd been unhappy with it. But that period had passed by the time he raised his concerns. He said the paperwork Mr M had been given about the course had set out what he could expect. There was nothing to suggest Mr M had been misled when he entered the agreement.

The adjudicator said he'd seen evidence of the affordability check being carried out. He said based on the income and expenditure document Mr M had signed, there was enough disposable income to meet the repayments. He didn't feel Carnegie had been wrong to lend

to Mr M based on the information he'd given them. He also said he'd seen no evidence of harassment by Carnegie since Mr M had cancelled the course.

The adjudicator gave Mr M the chance to provide further information regarding any of the points he'd raised in the complaint, but Mr M didn't do so. Instead, he asked for a review of the complaint by an ombudsman, so it 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.

Mr M's claim for breach of contract and misrepresentation fits with the provisions of Section 75 of the Consumer Credit Act 1974. This says that in some circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services. I'm satisfied the required circumstances for Mr M to make a claim are present here.

My role isn't to decide whether Mr M has a valid claim under section 75, as that is for a court. Instead, I'm required to decide what's fair and reasonable in the circumstances of this complaint. In doing so, I've taken account of what the law says, including section 75.

What I need to consider is whether there was a misrepresentation of the course or a breach of contract by the provider. That is to say did they give false information that induced Mr M into accepting the contract that he wouldn't have if he'd been given the correct information, or have they not fulfilled part of the contract.

I understand that Mr M's first language isn't English, but I wouldn't necessarily expect the course provider or Carnegie to provide all the documentation in his first language. But I would expect them to support him to ensure he has time to understand what he's signing up for. While I can't say for sure what was said at the time, Mr M did meet face to face with an adviser to discuss the course and the finance, and he had the chance to question anything he was unsure of. He was given 14 days to review everything (and seek advice if needed) and could cancel the course and the finance agreement if he was unhappy with it.

I've seen the paperwork provided and think it is clear about what can be expected from the course. It sets out that in addition to paper-based learning, it also has *'the unique benefit and support of the latest computer based technology in the form of e-learning and virtual reality scenario simulation'*. The literature also sets out how the course works and the support available. So I'm satisfied that it's clear there would be online work to be done and I've not seen anything that shows it was misrepresented to Mr M.

Mr M says there's been a breach of contract because he wasn't given the support he needed despite asking for it. Carnegie have said the course provider told them there's no record of Mr M ever telling them he was struggling with the course or asking for additional support. I note that Carnegie and our adjudicator each offered to look again at this point if Mr M could provide evidence that he'd tried to contact the provider, but he's not provided any.

The literature and welcome letter provided by the course provider give details of how to contact them for help, so I'm satisfied that Mr M will have known how to contact them if needed. But I've not seen anything to show he asked for help, although he has been given the chance provide that evidence on more than one occasion. So on balance, I'm not

persuaded that the course provider failed to respond to his enquiries. It follows that I don't think there's been a breach of contract by the course provider.

Mr M says there was no proper affordability assessment carried out for the loan that *'meets the requirements of an 'affordability assessment' as per the FCA's CONC 5.3.1.'* 'CONC' is the Consumer Credit Sourcebook which forms part of the Financial Conduct Authority's handbook. The handbook says that *'the purpose of CONC is to set out the detailed obligations that are specific to credit-related regulated activities and activities connected to those activities carried on by firms'*.

Section 5.3 of CONC was in place when Mr M signed up for the Fixed Sum Loan but was deleted in November 2018. It set out that a business was required to assess the *'creditworthiness'* of an applicant and refers to CONC 5.2 for *how* that should be assessed.

At the time, CONC 5.2.1(2) and (3) said:

- '(2) A firm carrying out the assessment required in (1) must consider:*
 - (a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and*
 - (b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement...*
- (3) A creditworthiness assessment must be based on sufficient information obtained from:*
 - (a) the customer, where appropriate; and*
 - (b) a credit reference agency, where necessary.'*

CONC 5.3.1 (4)(b) went on to say *'it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure, on a statement of those matters made by the customer'*.

Carnegie say they reached their decision using the income and expenditure form, the application form and the results of a credit check. They say Mr M confirmed the information was true and accurate. The application form includes details of Mr M's employment, salary, living arrangements and shows he has two dependents. The credit check Carnegie carried out, captures the details from the application form and includes £610 as the *'affordable amount'*. That information then gave a score which allowed the application to be accepted.

I need to decide if I think Carnegie completed reasonable and proportionate checks as required by CONC to ensure the borrowing was affordable and sustainable for Mr M. If they did, was their lending decision fair? If I don't think they completed sufficient checks, would such checks have been likely shown Mr M could afford the borrowing?

The income and expenditure form completed shows Mr M had a monthly income of £1,100 and expenses of £490, leaving £610 *'available for training'*. The repayments for the loan were £165 per month. The form was signed by Mr M along with an *'affordability declaration'* confirming the course advisor had discussed *'the question of affordability and I confirm I can afford to undertake the training programme'*. He confirmed he'd shown a salary slip and that the income and expenditure statement showed £610 per month available to fund the course.

But it does seem unlikely that someone cohabiting and earning £1,100 per month would have £610 disposable income. I note that Mr M says his partner wasn't working and he had a young child to support. Looking at the income and expenditure statement completed as part of the affordability assessment, several of the expenses are lower than I'd expect. For example, it lists £100 per month for food for three people.

So, while the form showed there was over £400 unaccounted for in his budget *after* payment for the course was deducted, I think further questions should have been asked to ensure it was accurate. I've asked Carnegie to provide a copy of the salary slip they say they saw at the time and what further steps they took in reaching their decision to lend. They've said at the time, they didn't keep copies of salary slips so they're unable to provide that. They tell me they relied on the information provided by Mr M to assess the affordability and the £610 'excess income' gave them '*sufficient comfort*' that the loan was affordable.

I don't think I can say that Carnegie completed reasonable and proportionate checks prior to lending to Mr M. I say this because the income and expenditure form appears unrealistic in several areas and Carnegie don't appear to have taken any steps to verify the information. They appear to have simply accepted what Mr M told them and input that in their credit score system. So, I think they've failed to comply with CONC 5.3.1 (4)(b) as I think it's evident that they've relied solely on what Mr M told them and it's unlikely he'd have had a disposable income of £610 per month.

While I can't say whether that would have led to a different outcome in the decision to lend, I think Carnegie should have made more effort to check what Mr M had told them. So I need to think about whether reasonable and proportionate checks would have shown Mr M could afford the borrowing.

I've asked Mr M several times to provide more information about his circumstances so I can see what Carnegie may have found if they'd carried out reasonable and proportionate checks. Unfortunately, Mr M hasn't responded to any of my requests. I can't therefore, say it's likely Carnegie would have found the loan to be unaffordable as I don't know what information would have been available to them. So I can't reasonably conclude that Carnegie acted unfairly in providing the finance for the course.

Mr M also complains that Carnegie have '*harassed*' him since May 2018. He refers to CONC 7.3 which sets out how businesses should treat customers in default or arrears. He says he was contacted 10 times in one day in June 2018.

In his assessment of the complaint, our adjudicator said the contact notes provided by Carnegie didn't show this level of contact, and not more than once a day. He asked Mr M to provide evidence of the calls he feels show harassment and he'd look into it again. Mr M has provided no further evidence, so I've looked at the complaint based on the evidence we have.

I've looked carefully at the contact notes Carnegie have provided. They show when they've tried to contact Mr M. They have tried to do so on lots of occasions via phone, text and in writing, but I've not seen anything showing the level of contact Mr M has stated. It is also evident that on many occasions, Carnegie have not been able to get hold of Mr M to discuss the situation. I don't think the level of contact I've seen could be considered harassment and I've seen nothing that demonstrates a breach of CONC 7.3.

Mr M says he is unable to afford repayments on the loan. I'd encourage him to speak to Carnegie about his situation. And I'd remind Carnegie of their obligations to treat consumer's in financial difficulty fairly.

my final decision

My final decision is that I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 30 December 2020.

Richard Hale
ombudsman