

The complaint

Mr U complains about the sale of a home learning package financed with a loan from 3J Finance Limited.

What happened

The background facts are well known to the parties here – so I won't be covering those in detail here. Instead I will summarise the information and focus on giving reasons for my decision.

Mr U purchased a home learning package ('the package') on finance for his children. Mr U said that during the sale things were not properly explained – for example that he would be signing up to a finance agreement and that the course would not involve a tutor regularly coming to the house to give 1-2-1 lessons to his children.

Mr U says the deal he was signing up to was misrepresented and complained to the credit broker and also 3J Finance about it.

3J Finance did not uphold Mr U's complaint so this service looked into things. Our investigator looked at the complaint taking into account the relevant law - however she was not persuaded the actions of the supplier (which also acted as a credit broker) meant that 3J Finance should fairly refund Mr U for the package he signed up to.

The matter was passed to me to make a final decision on. I asked for more information about certain things and noted that in the course of his complaint Mr U had explained the financial impact on him of signing up to the deal.

Our investigator then looked at the affordability of the finance agreement but did not uphold this aspect. She also considered the new information that had been obtained following further investigation (such as a promotional leaflet for the package) and said it did not change her view on the matter.

The case has now come back to me for a final decision at Mr U's request.

What I've decided – and why

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

I have considered the evidence submitted by the parties but I will not be commenting on all of it – only the matters I consider central to the complaint. This is not intended as a discourtesy but reflects my role resolving disputes informally.

In order to decide what is fair and reasonable I consider relevant law and good practice. It is worth noting here that I am only looking at the actions of 3J Finance here in its capacity as a finance provider and not the actions of the supplier of the package (except where 3J Finance might reasonably be responsible for said actions in accordance with relevant law).

Here I think Section 75 of the Consumer Credit Act 1974 ('Section 75') is particularly relevant. This can make 3J Finance responsible for a '*like claim*' for breach of contract or misrepresentation by a supplier of goods and services financed by its loan. I consider the particular criteria for a valid Section 75 claim are met here (in relation to the contracting parties and financial limits) so I have gone on to consider whether there is a breach of contract or misrepresentation by the supplier here.

Section 56 of the Consumer Credit Act 1974 ('Section 56') is also relevant here as it can make 3J Finance responsible for information given to Mr U by the supplier in its role as credit broker during 'antecedent negotiations' in arranging the finance deal.

I have broken down what I believe to be the key aspects of the complaint here as follows:

The sale of the package

Mr U's main complaint point appears to be that he was mis-led by the supplier about the fundamental nature of the package. He has explained that he thought it was a tutor led course where a tutor would regularly visit and teach his children the learning materials. However, he says he later found out that the course did not include a tutor and involved self-directed online learning materials which could be accessed in the home.

I am satisfied from looking at the course information that it doesn't include in person tuition and that it is an online resource (with a degree of telephone support). So in not providing in person tuition I don't consider that there has been a breach of contract by the supplier. However, I have thought about whether there has been a misrepresentation here.

In order to uphold this complaint I would need to be persuaded it was more likely than not Mr U was given false information about the package he was signing up to by the supplier. And that this false information led him to sign up to something he otherwise would not have.

From what I can see I think it likely the salesperson said he could come around initially and demonstrate the online learning system to Mr U's family once they had signed up – because from his testimony this is what appears to have occurred once Mr U agreed to the package. But overall I am not persuaded this means the package was misrepresented - in that Mr U was falsely told by the salesperson that the package included ongoing weekly in person tuition in academic topics for his children.

I have seen the promotional leaflet which I am persuaded Mr U was likely given to express interest in the package and arrange a home visit. And I note that leaflet is clear that the service is online and support with the system is available over the phone - it says nothing about in person tutors. Mr U has been shown this leaflet and has not denied receiving it – his initial contact also refers to being given a leaflet in an educational setting about the package. So it seems that the nature of the service would have been reasonably clear from the outset before the salesperson visit was arranged.

I also note none of the sales documents say anything about in person tuition and make it reasonably clear that the package is an online resource for use in the home. Mr U says he didn't get these while 3J Finance says that these were sent to him shortly after he agreed the package and has sent system notes to show this. There is of course a possibility that Mr U didn't get these documents and might not have been given a lot of time to fully read through them on the day of sale. However, this in itself does not mean he was given false information about the service, and although I do appreciate that to Mr U this was a financial commitment overall the cost of the service being less than £50 a month would have reasonably indicated that it was unlikely to include twice weekly in person tuition for his children as Mr U claims he was led to believe.

I note Mr U has indicated that because someone came to his house to sell the package this indicated to him that it involved in person tuition. He questions if this was an online only service why it is not sold online. I appreciate Mr U's comments and the impression he appears to have had from a salesperson coming to his home— however, I don't think the fact the package was sold in person persuades me that Mr U was likely told that the package itself included in person tuition.

While I have carefully thought about Mr U's testimony, in factoring in the leaflet he appears to have received, the monthly cost of the service offered and the materials the salesperson had to use to sell the package it seems less likely than not that in person tuition was falsely promised as a part of the package. Considering the testimony he has provided I think Mr U might have misunderstood the situation - however I am not persuaded that is enough here to say the package was actively misrepresented by the supplier.

The sale of the finance agreement

Mr U says he was not aware he was signing up to a finance agreement to pay for the package.

My starting point here is that Mr U signed a loan agreement and that 3J Finance has sent system information to show that it sent a copy of this to Mr U shortly after he signed it. I am not sure why Mr U did not receive this – but on face value it appears 3J Finance made Mr U reasonably aware he was signing up to a loan agreement.

I accept there is a possible question mark over how much Mr U was able to read of the paperwork during the sale here because although the salesperson apparently spent some time with Mr U (across two visits) it appears the documents were all electronically signed in close proximity. However, even if I were to accept this I note in any event:

- from his testimony about the sale Mr U appears to have at least been aware that he was signing up to a 5 year commitment and the price of the monthly commitment;
- the testimony indicates that flexible or ongoing cancellation wasn't something Mr U appears to have had any discussions or assurances about from the salesperson at the time;
- he has not been clearly disadvantaged by signing up to a finance agreement as there is no interest payable on it; and
- by the time Mr U complained to the supplier (around the middle of 2021) about the package he was outside any withdrawal or cancellation period associated with said agreement.

In summary, there is evidence to suggest that Mr U would have been reasonably aware that the package was being funded via a 5 year finance agreement. However, overall even if things could have been clearer I don't think this has caused Mr U a financial loss here in any event.

Affordability of the finance agreement

Mr U has mentioned the impact of the monthly payment commitment on him and his family. Which I am sorry to hear about. As a result of what Mr U said this service used its inquisitorial remit to explore if the finance the supplier (acting as credit broker) sold to him was affordable in the first instance.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr U's complaint.

Having thought carefully about everything here I consider there to be certain questions to answer in order to decide Mr U's complaint fairly and reasonably. These are:

- Did 3J Finance complete proportionate checks to satisfy itself that Mr U would be able to meet his obligations under the finance agreement in a sustainable way?
- If so did it fairly conclude that Mr U could sustainably make his repayments?
- If not, would such checks have shown that Mr U would have been able to do so?

In making my decision here I will also consider if there was some other way in which 3J Finance acted unfairly or unreasonably.

If I determine that 3J Finance didn't act fairly and reasonably towards Mr U and that he lost out as a result I will go on to consider what fair compensation is due. In doing so I note the finance was interest free – however, there might be some other detriment Mr U has suffered in respect of signing up to the course he now says he is not benefiting from.

In considering whether 3J Finance carried out reasonable and proportionate checks to satisfy itself that Mr U was able to sustainably repay the agreement I note that the monthly commitment is relatively low – after a deposit of £55 the payments are around £47 a month. However, I also note that the commitment is over 5 years here – which is not a short amount of time. The overall commitment is not insignificant so 3J Finance should have looked carefully at information to indicate Mr U could sustainably repay this.

3J Finance has explained that it carried out a credit reference agency check and that Mr U signed a letter of affordability. I note that 3J Finance doesn't have a copy of the check it carried out. Furthermore, I don't think Mr U signing a letter of affordability shows that 3J Finance carried out appropriate borrower focused checks here. So my starting point is that I am not persuaded that 3J Finance carried out appropriate affordability checks.

However, even though 3J Finance has not persuaded me it carried out appropriate checks here I need to consider what appropriate checks would likely have shown it in any event. To do so our investigator has gathered information to show Mr U's financial situation at the time the loan was taken out leading up to the agreement start date in February 2020.

After looking at Mr U's income and benefits received it appears he was averaging around £1,325 per month. It appears there were no existing credit commitments at the time but a monthly direct debit of £2.99 for an insurance product.

Looking at Mr U's outgoings at the time is less clear because he pays for lots of things with cash. However, our investigator has looked at the cash withdrawals to build a picture of what appears to be Mr U's average monthly outgoings at the time. It appears this was around £1,106 a month. So on the face of it the monthly commitment to 3J Finance was not unaffordable at the time he took out the finance.

I appreciate that Mr U is very distressed at paying this each month now – and that his financial position might have changed since when he signed up for the product. However, that doesn't mean the lending was unaffordable at the start. If Mr U is now experiencing financial difficulties due to the repayments then 3J Finance should work with him in a positive and sympathetic way regarding what he owes it and any suitable repayment plans. If

it does not then Mr U might be able to complain about this in future.

In summary, I don't consider that 3J Finance acted unfairly or unreasonably towards Mr U in granting him credit in February 2020, Furthermore, taking into account the overall circumstances here and my earlier findings in respect of its liability under Section 75 or Section 56 I do not consider it acted unfairly or unreasonably towards him in some other way. This means I am not upholding Mr U's complaint.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 02 September 2023.

Mark Lancod
Ombudsman