

The complaint

Ms S feels that Etika Finance UK Limited has treated her unfairly in relation some cosmetic goods and services she purchased from a salon with a finance agreement.

What happened

In October 2018 Ms S entered into a contract for some cosmetic goods and cosmetic services. These goods and services were supplied by a salon and paid for through credit provided by Etika. This credit was a fixed sum loan agreement for a total repayable amount of £2500 to be repaid over twenty-four monthly repayments. She signed the agreement electronically.

Ms S says that she attended the salon on three occasions in November and December 2018 for treatments and during the last treatment her skin was damaged. So she wanted to get out of the agreement. But she soon discovered the salon which she got them from had closed. So she spoke to Etika who acknowledged there had been a breach of contract offered her a financial settlement. Ms S feels not only should she pay nothing further but also that she should be refunded what she has paid. So she complained to this service.

Our investigator felt that the settlement should be calculated differently to Etika's method, but that Ms S should still pay a significant reduced amount bearing in mind the goods and services she has received. But Ms S doesn't agree. So, this complaint comes to me to decide.

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.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Ms S raised her complaint under section 75 of the Consumer Credit Act 1974. The Consumer Rights Act 2015 is also relevant in this complaint as it covers contracts where goods and/or services are provided. However it must be remembered that although this legislation places obligations on Etika, it is a different entity to the salon. And my decision here is whether or not Etika has treated Ms S fairly in relation to those obligations and duties Etika must adhere to. It is not a decision about what the salon did or didn't do, as I cannot decide on that as the salon isn't in existence anymore or within my remit. I hope this key issue is clear.

The general effect of Section 75 is that if Ms S has a claim for material misrepresentation or breach of contract against a supplier of goods or services, she can also bring that claim against the credit provider (Etika here) provided certain conditions are met. Etika says Ms S

should receive a significant reduction in what she owes in light of the acknowledged breach of contract.

To gain protection under Section 75 there are certain conditions that have to be met before even considering whether there has been a breach of contract or material misrepresentation. I think it likely this transaction falls within the financial limits required by the Act. There also needs to be the required three-party contractual relationship-debtor, creditor and supplier; often referred to as the 'DCS relationship'. I think this is made out here also.

Bearing in mind Etika has acknowledged that the entire course of treatments hasn't been provided and thus a breach of contract has occurred, I need to consider how this matter should be resolved fairly between the parties.

I've considered the invoice from the salon dated October 2018. I can see its personalised with Ms S's name and it says "*Client signed invoice and collected products and device*". I can see it sets out that the agreement is for nine treatments, three diagnostics and three product areas for a total cost of £2800. It notes that £300 has been paid direct by Ms S and that £2500 is being paid for through Etika.

Ms S has described how she had three of the nine treatments (in November and December) and I can see from the invoice she left with some of the products but then the salon ceased trading before she could complete the course of treatments. So I think Etika's approach of accepting that there has been a breach of contract and offering a settlement is broadly fair, albeit I think the calculation should be done differently.

Ms S has made the point that this was a course of treatments and without completing the course the full benefit of the course isn't achieved. But clearly some benefit must be achieved by each treatment otherwise there wouldn't be a need for a course of treatment. Similarly the amount of benefit received from treatments, products and diagnostics differs not only between them but in their respective impacts on different customers. And as Ms S points out there are a number of people who find themselves in similar positions to Ms S in not having received their whole course of treatment.

Accordingly it is important that this service not only tries to fulfil its duty to be fast, fair and impartial but also that it applies a consistent approach. In this instance the Investigator has chosen to see the contract as being for fifteen items (as I've described) and to treat them equally. I consider this to be fair. Furthermore I think it fair that Ms S pays for the goods and services she did receive and doesn't pay for those that she didn't receive.

The total price was £2,800 (including the deposit Ms S paid). This divided by the fifteen equal parts of the contract means the value of each element is £186.66. Ms S has confirmed what she didn't and didn't receive and I've no persuasive reason to doubt her comments on this. I therefore feel Ms S should receive a price reduction of £1,679.94 (9 x £186.66). The total price was £2,800 and this therefore means the total amount Ms S is liable for on this agreement is £1,120.06. Ms S paid up front £300 deposit and then two payments of £104.17 toward the loan repayment. So I think those amounts should be removed from the total amount Ms S is liable for, leaving £611.72 for her to pay.

Ms S has said that the treatment affected her skin negatively. Both Etika and this service has asked Ms S to provide any medical evidence to support what she says, and she has provided photographs of her skin, but no medical evidence.

The Consumer Rights Act states that goods provided must be of a satisfactory quality. It also says services must be provided with reasonable skill and care. It is clear Ms S received both goods and services here in relation to her skin. It is also clear that Ms S had two treatments

before having the third treatment which is when she says there was pain and damage suffered. The photos she's provided support what Ms S says is her current skin condition. However they don't demonstrate her skin before the treatments and it's clear she took the treatments and products in order to improve her skin. So without medical evidence to the contrary I don't think I can say Etika has treated Ms S unfairly on this issue. I should add for clarity that even if Ms S's arguments had been made out here this service cannot award for loss of amenity. So if she feels she has suffered such a loss then she should get independent medical evidence of it and take independent legal advice on that specific matter.

Ms S has made many arguments as to why she shouldn't have to pay for anything received from the salon and I shall now address those key outstanding arguments here.

She says Etika didn't do enough with regard to the salon and should have known it was a scam. But this service hasn't seen persuasive evidence that this salon was a scam. After all it is clear that goods and services were provided over a period of time by the salon. Furthermore it must be remembered that although the law does place Etika in 'the same shoes' as the salon for the purposes of the Act in situations such as these, Etika is not one and the same as the salon. It had a relationship with the salon and provided finance to its customers, but they are separate legal entities. So Etika's liability here isn't endless.

Ms S points to licencing issues between the salon and some of the products used here. But I've seen no persuasive evidence that the products used weren't genuine. So there is no misrepresentation about that. And I've not seen persuasive evidence that there were failings in the treatments Ms S received in this case. So I'm not persuaded the training level of those administering the treatments makes a difference here.

Ms S has argued that she was forced, "bullied" 'under pressure of hard sales' techniques, didn't have opportunity to read the documentation and other arguments about not having a free choice at the time of entering the agreement. In situations where I see these aggressive techniques in other cases, consumers are very aware of it at the time and normally react strongly at or near the time in order to complain and get out of what they've agreed under duress.

In this case Ms S signed the agreement, and it and the invoice clearly state the significant sums involved here. She didn't complain to Etika but rather returned to the salon two weeks later and had her first treatment, she then returned a further two weeks later for her second treatment and then went almost a month before attending for her third treatment.

She also provided significant details about herself which are evidenced on the fixed sum loan agreement. She also provided her bank details and direct debits paid on a monthly basis were taken on two occasions. She also signed an invoice to say she'd taken possession of the products listed. Taking all we know into account I'm not persuaded Ms S didn't have free choice in agreeing to what she agreed to here. So I don't think Etika has treated her unfairly in expecting her to pay a fair amount under the agreement for the goods and services she did receive.

Ms S has also provided comment on the Consumer Protection (Amendment) Regulations 2014. Firstly I should add that these regulations set out consumer rights on misleading or aggressive selling. It also provides guidance on what action consumers may be able to take against businesses through their own private actions in the civil courts. And if Ms S wishes to take this matter to Court she can reject my decision and investigate that option for herself. Secondly the rules under which I operate mean that although I am bound to consider the law I'm not bound to follow it as my overarching obligation is to come to a fair and reasonable

outcome. And thirdly for the reasons given I'm not persuaded Ms S suffered aggressive selling here.

Ms S also points to other instances where people in similar situations have managed to extricate themselves fully from obligations under similar loan agreements. This may be so. But I am obliged to come to a fair and reasonable decision on the facts of this particular case. And I think it fair Ms S pays for the goods and services she received here. Just because other businesses may have done something different doesn't make Etika's position unfair.

Summary

In short, I've considered everything that Ms S has said. I appreciate how Ms S feels about the whole situation. However, I don't think what Etika has done with regard to the Section 75 claim has meant that Ms S has been treated unfairly by it. I think Etika's decision to acknowledge the breach of contract and offer a financial solution is broadly fair, except for our approach to methodology which has led to a broadly similar net position. And on balance I'm not persuaded that the goods supplied were of an unsatisfactory quality or that the services provided were not carried out without reasonable skill and care. So Etika can ask Ms S to repay the outstanding £611.72 as I've described above. Accordingly I do not uphold this complaint.

My final decision

For the reasons I have explained, my final decision is that I do not uphold this complaint about Etika Finance UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 2 March 2021.

Rod Glyn-Thomas
Ombudsman