

## **The complaint**

Mrs B complains about the refund that etika Finance UK Limited, trading as Paybreak, has made to her for a package of beauty treatments and products that she didn't receive.

## **What happened**

Mrs B entered in to a loan agreement with Paybreak in June 2018 to pay £1,500 for a package of beauty treatments and products – she also paid a deposit of £200 by other means. She received the products and three of the twelve treatments before the supplier stopped trading in January 2019.

She claimed a refund from Paybreak under section 75 of the Consumer Credit Act 1974. It calculated that the value of the unredeemed treatments was £994.11 and the balance on Mrs B's account was £187.50 so the refund due to her was £806.61. It then realised that it had made a mistake in its calculations and the value of the unredeemed treatments should have been £900 and the refund due to should have been £712.50 - but it refunded to Mrs B the higher amount of £806.61, with interest of £38.93.

Mrs B wasn't satisfied with the way that the refund had been calculated so complained to this service. Our investigator didn't recommend that her complaint should be upheld. He thought that the refund made by Paybreak was a fair and reasonable outcome.

Mrs B has asked for her complaint to be considered by an ombudsman. She has responded in details and says, in summary, that:

- the products were provided free of charge if she recommended them to friends – which she did - so shouldn't be included in the calculation;
- she should have been notified by Paybreak when the supplier stopped trading; and
- it continued to collect direct debits from her and she was told that if she failed to pay she would have been charged a default late payment fee of £12 and it would have negatively impacted her credit score.

She's also provided an appointment card for two of her appointments and says that it refers to the offer for recommending friends.

## **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.

Having done so, I agree with the conclusions reached by the investigator for these reasons:

- Mrs B used credit in the form of the loan agreement with Paybreak to pay for the package of beauty treatments and products;
- in certain circumstances, section 75 of the Consumer Credit Act 1974 gives a consumer an equal right to claim against the supplier of goods or services or the

provider of credit if there's been a breach of contract or misrepresentation by the supplier;

- to be able to uphold Mrs B's complaint about Paybreak, I must be satisfied that there's been a breach of contract or misrepresentation by the supplier and that Paybreak's response to her claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of Mrs B's claim under section 75 as only a court would be able to do that;
- there's clearly been a breach of contract by the supplier because it stopped trading before Mrs B had received all of the beauty treatments that it had agreed to provide her – and Paybreak has refunded £806.61 to Mrs B, plus interest, because of that breach of contract;
- Mrs B says that the way that it has calculated the refund is unfair and that she should only be paying for the three treatments that she received so the refund should be for £1,087.50;
- the refund has been calculated by dividing the total cost of the package of £1,700 by the number of treatments and products that were to be received – and I consider that to be a fair and reasonable basis on which to make the calculation;
- the calculation made by Paybreak was incorrect but the refund that it made to Mrs B was higher than it should have been – and it has honoured the higher, incorrect, refund;
- the supplier's invoice shows that Mrs B received five free products – which had a value of £1,720 – and that the price of the twelve treatments was reduced from £2,200 to £1,700;
- Mrs B says that the free products were for recommending friends and that the supplier's appointment card says: *"If you recommend 10 friends you will receive a complimentary gift on us"*;
- I don't consider it to be likely that the complimentary gift would have been products with a price of £1,720 and I consider it to be more likely than not that Mrs B received the five free products and the £500 discount on the price of the treatments because she was buying a package of products and treatments;
- Mrs B received the five products and three treatments and I'm not persuaded that it would be fair or reasonable in these circumstances for her to only pay for the three treatments;
- I sympathise with Mrs B for the difficulties that she's been caused by these events, including Paybreak not notifying her that the supplier had stopped trading and its delay in offering her a refund – but I'm not persuaded that there's enough evidence to show that it has acted incorrectly in its dealings with her, and the monthly loan repayments that she made to Paybreak have been accounted for in the calculation of the refund that was made to her;
- I consider that Paybreak has responded to Mrs B's complaint fairly and reasonably in these circumstances; and
- I find that it wouldn't be fair or reasonable for me to require Paybreak to refund to Mrs B any more of the amount that she's paid for the package of beauty treatments and products, to pay her any other compensation or to take any other action in response to her complaint.

## **My final decision**

My decision is that I don't uphold Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 22 June 2021.

Jarrold Hastings

**Ombudsman**