

## **The complaint**

Miss T complains about a fixed sum loan with etika Finance UK Limited trading as Paybreak, which she says she didn't agree to.

## **What happened**

In April 2019, Miss T says she spoke to a representative of a college, who I'll call 'A', while she was walking through a local shopping centre. Miss T says that she agreed to talk further with A about the educational courses the college could offer, so made an appointment to do so.

Once at the appointment, Miss T says A started an enquiry form on the college's computer system. She says A asked her for her bank account card, so they could spell her name correctly and generate a price for the course they had spoken about. Miss T says once A had told her about the cost, she told them she wasn't interested and left the appointment.

On the same day, etika sent an email to Miss T to say that she had been approved for a loan to pay for the course she had discussed with A.

Around a month later, Miss T says she received an enrolment email from the collage and a request for payment. Miss T says she quickly visited the college, who told her the email was sent in error and her enrolment would be cancelled.

However, later in May 2019, etika sent Miss T an email to say they had set up a direct debit to repay the fixed sum loan. After receiving the email, Miss T says she told her bank account provider what had happened and reiterated to the collage that she didn't enrol onto a course. Miss T also called etika and told them to cancel the loan agreement and says she thought the matter had been resolved.

In May 2020, etika sent Miss T an email and told her the final payment under the fixed sum loan agreement had been made. Miss T says it was at this point she realised that payments had been made from her account, every month over the previous year. So, Miss T raised a dispute with her bankers, who successfully reclaimed all the repayments from etika. Miss T also raised a complaint with etika for setting up the loan without her authorisation.

In their final response to Miss T complaint, etika explained that Miss T tried to cancel the loan after the 14 day cooling of period, set out in the terms and conditions of her enrolment on the course. They also said Miss T hadn't told them about a fraudulent application previously and that she had provided A with all the information necessary for the loan application. etika also said Miss T had made repayments to the loan for the previous year.

Miss T didn't accept etika's response and brought her complaint to us. One of our investigators looked into Miss T's case and found she had raised concerns about a fraudulent application in May 2019. He also said there were reasons why Miss T thought the repayments from her bank account were for something else and that she may have missed etika's welcome email in April 2019.

The investigator concluded that etika hadn't treated Miss T fairly and that they should end the fixed sum loan agreement. He said etika should remove any adverse information from Miss T's credit file and pay Miss T interest for the time the repayments were taken from her bank account. He also said etika should pay Miss T £150 for the distress and inconvenience she experienced, when they asked a debt recovery agency to pursue Miss T for the balance of the loan.

Miss T accepted the investigator's conclusions, but etika didn't agree with the findings. They said it was unlikely Miss T wouldn't have noticed where the repayments were going to and that she didn't respond to their email in April 2019. They also said they were unaware of Miss T's claim of a fraudulent application, so shouldn't be held responsible for any distress caused to Miss T, by the debt recovery activity.

The investigator didn't change his conclusions, so Miss T's case has been passed to me to make a final decision.

### **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.

#### *The Consumer Credit Act 1974*

Miss T was given the educational course through a fixed sum loan agreement with etika. Section 56 of the Consumer Credit Act 1974 (CCA) has the effect of making A the agent of etika during the "antecedent negotiations".

These negotiations were in the lead up to the signing of the loan agreement, starting from when Miss T first spoke to A. But essentially, this means etika are responsible for the acts or omissions of A in relation to the sale of the course to Miss T. In other words, etika are responsible for the things the advisor said, did, didn't say, or didn't do during the sales process.

#### *The loan application*

Miss T has explained that she approached A, when walking through a shopping centre. She has given a detailed description about what happened at this first meeting, and when she subsequently met A, to talk more about the educational course she had shown interest in. Meanwhile, etika have said that A didn't advertise in shopping centres.

I acknowledge what etika have told us. But, I have considered all the details Miss T has provided and I think she has been consistent in what she says. I think her version of events is credible, given the surrounding evidence of the emails she sent to A in May 2019. So, on balance, I think it's likely Miss T met with A, when she saw their educational courses advertised, and agreed to a follow up meeting on 5 April 2019.

While at the subsequent meeting with A, Miss T says A gave her some details about the content of the course, the costs involved and the discount they were able to offer. She says she was told that A needed to see her debit card, to spell her name correctly on an enquiry form. And she says A told her an enquiry form was needed, to generate additional discounts and the actual cost of the course. So, she handed her debit card to the advisor. After A told Miss T the cost of the course, she says she decided not to go ahead, and the meeting ended.

I think it's reasonable that Miss T handed A her debit card, after being told it was needed to

make sure her name was spelt correctly on the enquiry form. Miss T was attending a meeting specifically to discuss an educational course, so I think it follows that she could have expected to hand over some personal details.

I've concluded that Miss T met with A to discuss the course. And that it was likely she handed her debit card to A at some point during that meeting. But, Miss T says she didn't agree to the loan application at the meeting with A. So, I've gone on to consider the emails Miss T sent to etika and A, when she says she realised what had happened.

#### *The emails from Miss T in May 2019*

I can see from Miss T's records that A sent her an email on 8 May 2019, which summarises the start dates of the course. Her records show that she replied to this email to say she wanted to speak with A to '*clear the dates*' of the course, before it starts and is paid for.

The records from etika show they sent Miss T a direct debit reminder, via email on 21 May 2019. I can see that Miss T called etika and A twice, on the same day to try and cancel the agreement. Within that correspondence Miss T told A she wasn't aware of any financing options and didn't authorise a direct debit instruction.

I can also see that Miss T visited A on 24 May 2019, where she says A told her the course and loan agreement would be cancelled. And Miss T sent A another email on 29 May 2019 mentioning that meeting and to make sure everything was ended.

Having considered all the evidence, I think Miss T responded very quickly to both A's email about the start dates of the course and etika's email about the direct debit. On balance, I think Miss T explained to A that she hadn't known about the loan, or authorised a direct debit in May 2019. I also think Miss T made it clear to etika that she wanted to cancel the loan agreement.

Throughout this complaint etika have told us Miss T didn't cancel the course or the fixed sum loan within the fourteen day cooling off period, explained in the terms and conditions. I accept in the circumstances that Miss T had simply changed her mind, the cooling off period becomes very relevant.

But, Miss T says she didn't sign or authorise the loan agreement. So, I've considered and placed more weight on the evidence around Miss T's actions when she says she became aware, rather than the term etika have relied upon.

I've further considered etika's argument that Miss T didn't tell them she didn't authorise the loan, until a year after it was taken out. I agree Miss T may not have expressly said to them that a third party had taken the loan out in her name. However, I think it's reasonable to consider that English isn't Miss T's first language, and her correspondence with A, did suggest the course and finance was agreed to without her knowledge.

#### *The welcome email from etika and the repayments made by Miss T*

Within etika's records, I can see they sent a welcome email to Miss T on 5 April 2019. They say this email made Miss T aware that the loan had been agreed to pay for the course supplied by A. And that Miss T didn't respond, or tell them she didn't apply for the loan until nearly two months later.

I've considered the content of etika's email of 5 April 2019, which told Miss T her application had been approved. The email also speaks about other steps Miss T could take, once she verifies her email address.

There's no record of Miss T verifying her email address or contacting either etika or A until early May 2019. So, I agree with the investigator here, in that on balance, Miss T may have missed or overlooked etika's email of 5 April 2019. I don't think it means Miss T accepted the loan had been agreed, just because she didn't respond to etika's welcome email.

I've also considered the monthly loan repayments made from Miss T's bank account from June 2019 until May 2020. I acknowledge and understand etika's argument, in that it is reasonable for Miss T to have noticed payments of £250 leaving her bank account every month for a year. Miss T says she thought the payments were going to her savings account and has provided evidence that she regularly transfers funds into that facility.

Having thought very carefully about all the evidence, on balance, I think it was reasonable to Miss T to have thought the repayments for the loan, may have been transfers to her savings account. I agree that she thought the loan had been cancelled with A, given the emails she sent to them in May 2019.

Rather than the repayments themselves, I think the steps Miss T took, when she became reasonably aware that the loan account was active, show that she didn't agree to it. I also think the evidence shows Miss T didn't ever start the course, sign into the loan account online or attend any training sessions. And I think this supports what she says, in that she didn't authorise the loan application.

Furthermore, I cannot see that etika or A carried out an income and expenditure exercise with Miss T, or took details of her employer, position or salary.

In all the circumstances, I don't think Miss T authorised the fixed sum loan agreement provided by etika, or the educational course supplied by A. Under section 56 of the CCA, I think etika are responsible for the actions of A, when the loan was applied for in Miss T's name. So, I think etika are responsible for providing Miss T with a remedy.

#### *Miss T's responsibility towards the repayments*

I've found that Miss T didn't authorise the opening of the fixed sum loan agreement. To put matters right, I think it's fair that etika should allow Miss T to exit the agreement at no further cost to her. In other words, I think etika should treat the loan as if the application wasn't ever started by A and that Miss T wasn't ever responsible for the repayments.

Miss T was without the use of the funds taken by direct debit by etika. I think etika should put Miss T back in the position she would have been in, had the fixed sum loan not been opened. So, I think it's fair for etika to pay interest, at a rate of 8% simple, on each repayment from the date they were paid by Miss T, to the date they were paid back to her, under the direct debit indemnity claim.

The documents given to us by etika and Miss T show that a debt collection agency has been in touch with her about the repayment of the loan account. Overall, I've concluded that Miss T didn't authorise the opening of the fixed sum loan. So, I think it's fair that etika should remove any records about the loan, including any arrears or missed payments from the information held with credit reference agencies.

Miss T has been pursued for the balance of the fixed sum loan, since the repayments were recalled by her bankers in May 2020. Additionally Miss T was told by etika that any information related to the arrears owing to the loan account, will be passed to credit reference agencies.

Having considered everything, I think Miss T experienced distress and inconvenience when

etika asked her to repay a loan which she told them she didn't authorise, a month after it was taken out in her name. So, I think it's fair for etika to pay Miss T £150 in recognition of the distress and inconvenience she has suffered.

### **Putting things right**

etika should:

- allow Miss T exit the fixed sum loan agreement with nothing further to pay.
- pay Miss T interest at an annual rate of 8% simple on each of the loan repayments she made, from the date they were paid, to the date of the direct debit indemnity claim refund;
- pay Miss T £150 for the distress and inconvenience caused; and
- remove any information about the fixed sum loan agreement, from the records held about Miss T with credit reference agencies.

Additionally, etika must pay these amounts within 28 days of the date on which we tell them Miss T accepts my final decision. If they pay later than this, they must also pay interest on the settlement amount from the date of final decision to the date of payment at 8% a year simple.

If etika deducts tax from any interest they pay to Miss T, they should provide her with a tax deduction certificate if she asks for one, so she can reclaim the tax from the tax authorities if appropriate.

### **My final decision**

For these reasons, my final decision is that I uphold this complaint and etika Finance UK Limited trading as Paybreak should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 26 April 2022.

Sam Wedderburn  
**Ombudsman**