

## **The complaint**

Mr B complains that a subscription service to which he signed up was misrepresented to him and that it is now no longer available. Because he used his credit card, issued by Sainsbury's Bank Plc, to pay for the service, he says that he can bring a claim against it in the same way as against the seller.

Mr B has brought his complaint through a claims management business, so where I refer to his submissions, I include those made on his behalf.

## **What happened**

In February 2016 Mr B and his wife bought from Eze Europe Ltd a subscription to what was described as the "Eze Europe Concierge Leisure and Lifestyle System". Of the total price of £6,075, Mr B paid £2,500 using his Sainsbury's Bank credit card.

The Subscriber's Agreement which Mr and Mrs B signed included a Key Facts document which said that the agreement was for the provision of "Lifestyle and Leisure services", which might include savings, additions to purchases, and free upgrades.

Mr B says that he used the service once, when he was able to obtain a very modest discount on an overseas trip. Otherwise, he has not used it.

In 2018 Eze Europe, along with linked companies, ceased trading. I have seen reports that directors of those companies have been investigated and found guilty of various breaches of consumer protection laws, in particular in connection with timeshare products.

In 2019 Mr B contacted Sainsbury's Bank to make a claim under section 75(1) of the Consumer Credit Act 1974. He said that he had been misled about the benefits of the subscription, and that the services he had bought were no longer available – that is, there was a breach of contract and he could bring a claim in respect of it against the bank.

Sainsbury's Bank sought further information about the claim. It did not think that the Subscriber's Agreement and Key Facts document provided enough information for a proper assessment of the claims to be made. It did not receive the information it had requested and so closed its file.

Mr B referred the matter to this service. Sainsbury's Bank said it had acted fairly, because it had not received the information it had asked for on several occasions. Without that information, it had not been in a position to assess Mr B's claim and so could not uphold it.

One of our investigators considered the complaint. In an initial assessment, the investigator concluded that Mr B had shown that Eze Europe had breached its contract with Mr B, because the services he had bought could no longer be provided, and that the bank should make a refund based on the unused portion of the subscription.

Sainsbury's Bank did not accept the investigator's recommendation. It said it had still not seen the contract with Eze Europe and so was not in a position to assess Mr B's claims. The investigator sent the bank a copy of the terms (which we had received in connection with another complaint), but the bank took the view that this made no difference to its response. It asked that an ombudsman review the case.

I did that and, because I took a different view from that of the investigator, issued a provisional decision, in which I said:

*Mr B's complaint is that Sainsbury's Bank didn't handle his claim under section 75 of the Consumer Credit Act fairly. That complaint is about the actions of the bank, but it arises primarily from the actions of Eze Europe at the time of sale and subsequently.*

*I have no power to consider a complaint about Eze Europe. In some circumstances, however, a credit provider (which includes the issuer of a credit card) can be responsible for the acts and omissions of a seller.*

Section 75(1) of the Consumer Credit Act says:

*"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor."*

Section 12(b) says:

*"A debtor-creditor-supplier agreement is a regulated consumer credit agreement being—*

*...*

*(b) a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier ..."*

And section 11(1)(b) says:

*"(1) A restricted-use credit agreement is a regulated consumer credit agreement—*

*...(b) to finance a transaction between the debtor and a person (the "supplier") other than the creditor*

*..."*

*Mr B's agreement in this case was with Eze Europe Ltd. His credit card statement however says that the card payment was made to "Regency Shores Los Cristiano". That appears to be a reference to Regency Shores SL, a different company from Eze Europe. So the card payment was not made under arrangements with the supplier (Eze Europe), but with a different company.*

*Section 75 can however apply if the payment is made under arrangements between the credit provider and an associate of the supplier (defined in section 184). Broadly speaking, one company is an associate of another if they are controlled by the same person or by people who are associates of each other; one person is an associate of another if they are direct relations. Press reports record that the director of Eze Europe and the director of Regency Shores at the time of the sale are closely related. I am satisfied therefore that the*

two companies are associates and that the necessary relationships were present for section 75 to apply.

*I have therefore considered what Mr B has said about the actions of Eze Europe. Mr B has said that he and his wife felt pressured into agreeing to enter into the Subscriber's Agreement and that they were given assurances about the services they were buying. He has however provided little detail about either of those matters. And I note that the Key Facts document, which Mr and Mrs B signed, included a statement that the written contract made up the entire agreement between the parties. In the circumstances, I do not believe I can fairly conclude that they were promised anything which was not included in the written terms; even if they were, I think that statement made it clear that they would not be able to rely on it.*

*I turn then to the question of breach of contract. I agree with Sainsbury's Bank that, in order to establish whether Eze Europe going out of business meant it was in breach of its contract with Mr and Mrs B, I need to consider the effect on the contract itself. Could Mr and Mrs B still use the services they had bought. I have seen nothing to suggest that a different company has taken over Eze Europe's business, and I am satisfied that Mr B can no longer access the services he paid for. I must therefore consider what those services were. There was very little in the Subscriber's Agreement or the Key Facts document to explain exactly what Mr B bought in 2016. As I have indicated, the agreement referred to "Lifestyle and Leisure Services". The Key Facts document also said that Eze Europe did not sell timeshare products or any services relating to the sale of timeshares. Mr B says that a Spanish court has concluded that there was no underlying product of any note.*

*Having reviewed those documents and the full terms and conditions, I agree that it is difficult to identify what exactly Eze Europe had agreed to provide. The terms and conditions included:*

*"2.6 The Eze Europe Limited service is a Concierge Lifestyle & Leisure service. A comprehensive description of our products and services can be seen at [www.ezegroup.com](http://www.ezegroup.com).*

*2.7 As part of your Eze Europe Limited subscription you will be able to book and arrange a wide variety of products and services through Eze Europe Limited's preferred suppliers. Concessionary rebates and/or additional benefits are passed directly onto Eze Europe Limited Client/s.*

*2.8 As an Eze Europe Limited Client you acknowledge the broad spectrum of lifestyle & leisure services available to you."*

*Clause 3.2 said that the suppliers of benefits and the benefits were subject to availability and may change from time to time.*

*The website referred to in clause 2.6 is no longer available.*

*The terms also included sections covering restaurant bookings and event tickets. On the face of it, therefore, Mr B bought access to a website and a service which could introduce him to services which he could then purchase from suppliers. He might receive discounts or other benefits, but they were not guaranteed. Nor was there any guarantee that any of the services which were available at the time of purchase would remain available.*

*As I have noted, Mr B says that a Spanish court found that Eze Europe provided no underlying product of any note. That's consistent with his own experience; he says he was able to use Eze Europe's services on one occasion, but he received only a very small discount from what he could have paid through other channels.*

*Given that the services which Mr B bought were so ill-defined in the contract itself, it is in my view very difficult for him to show that they have not been provided. If, as appears to be the case, he bought a subscription to a booking portal to products and services which he could buy elsewhere in any event, I think it is difficult for Mr B to show that the removal of that portal amounts to a breach of contract.*

*In order to bring a claim for breach of contract against Eze Europe, Mr B would have had to show that he suffered loss as a result of that breach. And the usual way to assess damages for breach of contract is to put the parties in the position they would have been in if the contract had been performed; it is not to treat the innocent party as if the contract had never been agreed.*

*If the contract had been performed, Mr B would still have access to Eze Europe's website and services portal and would still be able to book goods and services through them – subject to availability and Eze Europe's apparent right to change the services available. But he said that those services were of little or no value, and a Spanish court has said much the same.*

*For these reasons, I am not persuaded that, even if the removal of services did amount to a breach of contract, Mr B has suffered any financial loss as a result. His position after Eze Europe went out of business is, in truth, no different from what it was when that company was still trading.*

*I accept of course that the subscription which Mr and Mrs B purchased was, at best, of questionable value. It is not obvious that it gave them access to any goods or services they could not have bought elsewhere on very similar terms. But the sale of goods or services which are poor value for money (or even of no discernible monetary value) does not give rise to a claim for breach of contract.*

*It is not for me to say whether Mr B would have been able to bring a claim against Eze Europe or whether, under section 75 of the Consumer Credit Act, he could bring a "like claim" against Sainsbury's Bank. They are however matters which I must take into account in deciding what's fair and reasonable in all the circumstances. In my view, however, the bank's response to Mr B's claims was fair and reasonable.*

I indicated that I would consider any further evidence or arguments before issuing a final decision, and I gave the parties until 15 November 2023 to provide me with any such evidence and arguments. Neither has sent me any more information.

### **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.

As neither Mr B nor Sainsbury's Bank has sent me any further evidence or arguments, I see no reason to change my view in this case. I have however considered everything in full before reaching that conclusion.

### **My final decision**

For these reasons, my final decision is that I do not uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 13 March 2024.

Mike Ingram

**Ombudsman**