

The complaint

Miss K complains that ETIKA FINANCE UK LIMITED trading as Paybreak ('Paybreak') has been pursuing her for money for services she didn't receive.

What happened

The parties are familiar with the background of this complaint, so I will summarise it briefly. This reflects my role resolving disputes informally.

Paybreak has been pursuing Miss K for payment under a fixed sum loan agreement it says she took out in November 2017 to fund cosmetic treatments from a supplier ('the supplier').

Miss K says she didn't receive the full course of treatment and that a complaint about this matter was resolved through our service. She says she found out more recently that Paybreak had registered a default against her credit file for an outstanding balance that she still owes. Miss K doesn't think she should have to pay anything and wants the default removed from her credit file.

Our investigator noted that in 2019 Paybreak had investigated a complaint about Miss K's claim that she had not received all the treatments from the supplier (effectively a claim under 'Section 75' of the Consumer Credit Act 1974). And that she was out of time to refer this complaint point to this service. However, our investigator said she was able to look at recent events including Paybreak's pursuit of Miss K for payment and it recording adverse information on her credit file.

Miss K maintained she shouldn't be paying for a service she didn't receive. So I issued a jurisdiction decision where I concluded I was not able to look at a complaint about the subject matter of the previous Section 75 claim, as it had been considered by Paybreak and now been referred to this service too late. However, I said I could consider the other elements of her complaint which were dealt with more recently by Paybreak (in 2023).

Therefore, I am now issuing a final decision on the merits of Miss K's complaint that I am able to consider.

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 what information the parties have provided, however, because my role is to resolve matters informally I won't be commenting on everything the parties have said in relation to this complaint – only what I consider key.

A significant aspect of Miss K's recent complaint was that she hadn't received all the services financed by the agreement with Paybreak. So, she says it should not be pursuing her for anything. However, I have already explained that I am not able to look into that aspect of her complaint which was dealt with in 2019. I am simply looking at Paybreak's

pursuit of arrears for a service it financed for her. And whether it fair in the circumstances that it registered a default against her in respect of said arrears. In doing so I might refer to past events for context– but I am not revisiting the outcome of the Section 75 claim specifically.

Although Miss K in her complaint indicated she has no agreement with it I am persuaded that Miss K took out a fixed sum loan agreement with Paybreak in November 2017 where she agreed to repay a total amount to it £2,340.00 over 25 months. And although Miss K appears to have had a separate finance agreement for cosmetic services with a third party I am not persuaded that there are circumstances here which fairly mean any obligation she has to Paybreak should end.

I am satisfied from the information I have seen that Etika Finance UK Limited took over Paybreak and has a right to collect on the loan. I note that Etika Finance UK has said it has been rebranding its Paybreak operations to 'Etika' (which could reasonably have caused Miss K some confusion). However, it has explained this to Miss K and apologised and I don't think this has caused Miss K a loss – so I don't think it needs to do anything more in respect of that. For clarity although I have continued to refer to 'Paybreak' in my decision (as that is the name Miss K would be most familiar with) it is also taken to include use of the name 'Etika' too.

Paybreak has said Miss K has not repaid all of the remaining loan balance she owes it to date and it has provided account statements that show this. From what Miss K has said (that she does not owe anything because of the issues with the supplier) it appears she accepts she has not paid the outstanding balance either as she thinks it should be written off. I have already explained I am not looking at the issue of whether it should be written off in light of Section 75. Furthermore, there is not persuasive evidence to support Miss K's claim that this service told Paybreak that the amount should be written off and that it agreed.

I note Paybreak made Miss K an offer to reduce the balance to reflect services it thought she had not received. But even with this taken into account – Miss K would still owe around £700 to Paybreak.

In all the circumstances here, I am satisfied that Paybreak has not made an error in maintaining a record of and pursuing Miss K for arrears, as even with Paybreak's proposed deduction it appears Miss K still would owe money to it under the credit agreement she signed. And although Miss K has not been specific about this, or made it a key part of her complaint, from what I have seen there is not persuasive evidence that Paybreak or its agents in seeking these funds has harassed her or otherwise acted inappropriately.

I turn to whether it was fair and reasonable in the circumstances for Paybreak to register a default on Miss K's account toward the end of 2020. In order to do so I have considered relevant good practice on registering information on credit files, such as that from the Information Commissioner's Office ('ICO').

The ICO says that a default on a credit file essentially reflects that the borrower/lender relationship has broken down. So I have thought about whether a default is a fair reflection of what has gone on here, and Miss K's willingness or ability to pay the loan as agreed in 2017.

I note here that Miss K's agreement was due to be paid by the start of 2020 yet there was still around over £1,000 outstanding by this point. I can't see any reason Miss K would not have had knowledge of an outstanding amount owed on the agreement. I note the amount she still owed (with or without the proposed reduction) was all set out in the letter Paybreak sent Miss K in 2019 when she complained to it initially. But this remained unpaid up until the

default was registered against her in November 2020. I think this reflects a relationship that has broken down – and that Miss K was either unwilling or unable to pay the balance she owed Paybreak.

I am also persuaded from the system notes I have seen that Paybreak were in contact with Miss K about the outstanding balance and the possibility of a default if she didn't pay it. Miss K has recently said she didn't receive any communication from Paybreak saying it will default her. But Miss K has also indicated she didn't want to read anything it sent her anyway and didn't open emails- which might explain why she doesn't recall any communication about the default. However, even if I were to accept that Paybreak didn't send her anything (which seems unlikely here) I am not persuaded it changes things. I don't think Miss K would likely have paid the outstanding balance in any event as she still maintains that she doesn't owe Paybreak anything.

I'm sorry to hear about Miss K's difficult personal circumstances and understand why adverse information on her credit file is not something she wants. However, I don't think Paybreak has acted unfairly here so I am not going to ask it to remove the default. However, Paybreak (including the actions through its debt collection partner) should be positive and sympathetic to her current circumstances in arranging any repayment plan going forward.

I note Paybreak has offered to remove the default if Miss K settles a reduced balance like the one it offered her in 2019. I leave Miss K and Paybreak to discuss this arrangement further if they wish – but it isn't something I am making a direction on here as I don't think Paybreak has made an error in recording the default.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 8 May 2024.

Mark Lancod
Ombudsman