

The complaint

Mr B complains about the balance owed under a fixed sum loan taken out with etika Finance UK Limited.

What happened

In March 2023, Mr B took out a fixed sum loan with etika to pay for a brand new smart watch device. The watch was ordered through an online retailer, who I'll refer to as 'X'.

After the application for the loan was approved, etika say they sent a copy of the agreement and the loan repayment schedule to Mr B's email address. They also say X arranged for the delivery of the device, which was sent to Mr B's home address shortly after the application.

However, in early June 2023, Mr B says he hadn't received any follow up information about the loan and hadn't taken delivery of the device. So, he assumed the application hadn't been successful. Mr B says he tried to apply for a loan a second time through X, but the application wasn't approved.

Mr B also says that shortly after the second application, a close family member passed away. He says he wasn't able to deal with much in the months that followed. But, in late 2023, Mr B contacted both etika and X again, to find out what was happening.

Following further contact from Mr B in March 2024, etika responded to Mr B's concerns. They apologised for not looking into things sooner and said the device was delivered to Mr B's home address and subsequently activated. However, etika said X no longer had any documents to prove the delivery was made.

But, etika went on to say Mr B had made payments towards the loan for nearly a year. So, they continued to hold Mr B responsible for the outstanding balance of the fixed sum loan agreement. Mr B didn't accept etika's response and brought his complaint to us.

One of our investigators looked into Mr B's case and concluded that etika had treated Mr B unfairly. She found Mr B credible and consistent in what he had told us and couldn't see any evidence to say the device was delivered to Mr B's home address. The investigator said that etika should close the loan, refund the deposit and all the payments Mr B had made towards it, with interest added. The investigator also found that etika should remove the loan from Mr B's credit file.

Mr B accepted the investigator's conclusions, but etika didn't. They said their evidence shows that Mr B has used the device they sent to him. The investigator didn't change her findings and said the etika's evidence was from a different device owned by Mr B. So, Mr B's complaint has now been referred 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.

This case is about a fixed sum loan agreement with etika in Mr B's name, used to buy a smart watch device. This type of loan is a regulated financial product. As such, we are able to consider complaints about it.

I should first point out that 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.

The records of the application and delivery

Both etika and Mr B agree that an application for a fixed sum loan was made in March 2023 in Mr B's name. Each party also accepts that the loan was approved and the relevant documents were sent to confirm the repayment schedule. But, Mr B disputes that he received the device financed by the loan. So, I've looked at the evidence of the delivery to help me decide Mr B's case.

During our investigation, etika explained where X had told them that their courier delivered the device successfully to Mr B on 4 April 2023. In a separate note, etika said that the device was delivered to Mr B on 11 April 2023. So, I can see that etika have given us conflicting information about the delivery date.

Neither etika nor X have provided further evidence of the delivery. By further evidence, I refer to information from the courier's notes showing the delivery address, the delivery time and who took delivery of the device. Furthermore, the courier may have taken a photograph of the device being handed to Mr B.

Although we have asked etika for further evidence, they have told us it isn't available. They say both X and the courier have since deleted information about the delivery of the device. I agree that it's generally good practice to dispose of information, by adhering to the relevant rules and guidelines around data protection.

But, Mr B first contacted X about his concerns in June 2023. And etika's records show he raised his concerns again about the delivery in December 2023. So, I think both etika and X were aware of a problem surrounding the delivery of the device, within six months of when etika say the device was delivered to Mr B's home address. Overall, I think it would have been useful for etika's and X's records of the delivery to have been available in the months following the application for the fixed sum loan.

While etika have apologised to Mr B for not addressing his concerns sooner, it seems their delay may have added to the lack of evidence we have about the delivery of the device to Mr B. Additionally, I think the inconsistency about the delivery date means what etika have told us becomes less persuasive.

The absence of further evidence of the delivery means I need to consider the other information we have. So, I've thought about the steps taken by Mr B after the application in March 2023.

Mr B actions since the application

Mr B has told us that after the application process was completed, he didn't hear anything from either etika or X about the delivery of the device. So, in May 2023, he says he bought a similar device from a different supplier. Mr B has provided us with information about that purchase, to support what he says here. I've also looked at the email Mr B sent to X in June 2023. Within the email Mr B asks about the application for the loan and explains that he

didn't receive anything.

I think what Mr B says about the purchase of the other device and the time he chose to raise his concerns with X, is persuasive. I say this because etika had yet to take any repayments from Mr B's bank account, so he would not have been alerted sooner about a problem. And by going elsewhere to get another device, I think it shows where Mr B was still keen to get a new smart watch.

I also note that the terms and conditions of Mr B's agreement with etika, says:

"Your first payment is £6.50 and will be due approximately 1 to 6 weeks after your loan is activated. In usual circumstances, the loan is activated upon confirmation of delivery of goods and/or services being received."

In their correspondence with us, etika say the delivery was confirmed in early April 2023. But, etika have also said they didn't start to ask for payments from Mr B until July 2023, some 12 weeks afterwards. So, I think this adds weight to what Mr B says, in that he assumed there was a problem with the order, when he contacted X in June 2023.

etika have questioned the six month gap between Mr B contacting X and then raising his concerns again in December 2023. I've considered Mr B's personal circumstances at the time, together with the cost of the repayment and the type of product involved. Having done so, I find it reasonable that Mr B may have prioritised his personal circumstances, over his concerns about the delivery of the device. So, I don't think the six month gap between correspondence, reduces the strength of Mr B's evidence.

Finally, I've thought about the exercise activity records from X, which etika says is proof Mr B has used the device. I've looked at those records and I cannot see that they are personalised to Mr B, or that they relate to any device in particular. Additionally, Mr B says his application for the device was simply an upgrade on an existing smart watch he owned. And it was this device and then his subsequent purchase in May 2023, that is registered with X, to track exercise activity.

Having thought carefully about all the evidence here, I'm persuaded by what Mr B says. I think etika's records only show activity, rather than the specific device being used, and that Mr B has given a reasonable and convincing explanation about his account with X.

Summary

In all the circumstances, I think Mr B has been consistent and credible throughout complaining to etika and during our investigation. On balance, I'm not persuaded the evidence shows the device was delivered to Mr B. So, I don't think it's fair for etika to hold Mr B responsible for the repayments due under the fixed sum loan agreement.

It follows that I think etika should take steps to remedy the situation for Mr B. I think it's fair that etika allows Mr B to exit the fixed sum loan agreement at no further cost to him. I also think it's fair for etika to refund all the repayments Mr B has made towards the agreement. This includes the deposit of £185 that Mr B paid to etika in March 2023.

Mr B hasn't had the use of the funds he has paid to etika since the start of the agreement. So, I think it's fair for etika to also add interest at 8% a year simple, to the deposit amount and each repayment. This should be calculated from the date each payment was made, to the date of settlement of this complaint.

I've not seen where etika may have recorded adverse information on Mr B's credit file. But,

I'm aware Mr B is worried about that and has tried to prevent it from happening, by keeping up with repayments. In any event, I've concluded that I don't think Mr B received the device. So, I think it's fair for etika to remove all information about the fixed sum loan agreement, that they may have passed on to credit reference agencies.

Putting things right

For these reasons, etika Finance UK Limited should:

1. Allow Mr B to exit the fixed sum loan agreement and cancel it, at no additional cost to him;
2. Remove all information about Mr B's fixed sum loan, from the details held with credit reference agencies;
3. Refund the deposit of £185 to Mr B;
4. Refund all the repayments to Mr B that he has made under the fixed sum loan agreement, from the start of the agreement, to the date of settlement of this complaint; and
5. Add interest at a rate of 8% a year simple to parts four and five of this settlement, from the dates the payments were made, to the date of settlement of this complaint.

etika must pay these amounts within 28 days of the date on which we tell them Mr B 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 Mr B, they should provide Mr B with a tax deduction certificate if he asks for one, so he can reclaim the tax from the tax authorities if appropriate.

My final decision

My final decision is that I uphold this complaint and require etika Finance UK Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 May 2025.

Sam Wedderburn
Ombudsman