

The complaint

Mr A complains that ETIKA FINANCE UK LIMITED were unreasonable to reject a claim he made to them.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

Mr A has been represented throughout this complaint but for ease I will refer only to him in the decision that follows. I mean no disrespect to his representative when doing so.

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 know it will disappoint Mr A, but I agree with the investigator's view. Please let me explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made with this type of credit, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier. Etika didn't refer to this legislation when they provided their response to Mr A's claim. but I think that was the appropriate legislation under which such a claim for breach of contract could be advanced.

I'm not determining the outcome of any legal claim Mr A may have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint, but I don't have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations (2013) are relevant. This was a "distance contract" and those Regulations say that where

that is the case the consumer has 14 days, from the day the contract is entered into, in which to cancel it.

Etika has demonstrated that Mr A was given a welcome pack in which those cancellation rights were set out. I've not seen sufficient evidence to suggest Mr A asked to cancel within 14 days or that he provided the requisite medical information that would be required to cancel outside of that period. For those reasons I don't think a court would think there had been a breach of contract here and I don't, therefore, think Etika were unreasonable not to uphold Mr A's section 75 claim.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 1 February 2024.

Phillip McMahon
Ombudsman