

The complaint

Mr H complains ETIKA FINANCE UK LIMITED (“Etika”) has failed to deal fairly with a claim he brought under section 75 of the Consumer Credit Act 1974 (“CCA”) in relation to incomplete dental work.

What happened

I have issued two provisional decisions on this complaint, the second of which is appended to, and should be taken as forming a part of, this final decision. A summary of the background to the complaint, and my most recent findings on it, can be found in that second provisional decision.

My most recent set of findings differed in some respects from my initial provisional decision, as further evidence had been submitted around the cost of putting things right. Full details can be found in the appended second provisional decision, but Mr H had provided an updated quotation for the necessary works to complete the dental implants he’d originally financed via a point of sale loan from Etika. Etika had agreed, in principle, to pay for these works and had based this agreement on a previous quotation Mr H had provided.

The quotation was significantly more expensive than one which had been produced by the same clinic about nine months earlier, and didn’t appear to be “like for like”. Questions put to the clinic about this resulted in answers which were unsatisfactory, and in the end I said I was minded to conclude Etika should pay the original quote plus an uplift based on the Consumer Prices Index (CPI), along with a significant compensation payment it had already agreed to pay Mr H.

Specifically, I said I thought it would be fair and reasonable for Etika to take the following actions to settle Mr H’s complaint:

- *Pay Mr H £1,500 compensation in respect of his non-financial losses, as it has already offered to do.*
- *Pay Mr H an amount equal to the March 2023 remedial works quote (£7,680), plus 4.2% (to reflect the estimated price inflation since that quote was produced, in line with the CPI). This comes to £8,002.56.*

Both Mr H and Etika responded to say they would accept the second provisional decision and had no further submissions to make. The case has now been returned 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.

Because neither party to the complaint has made any further submissions, I see no reason to depart from the findings and conclusions I made in my second provisional decision. It

follows that I will be upholding Mr H's complaint for the reasons summarised in that second provisional decision, and directing Etika to take the same actions.

Putting things right

Etika must take the following actions to resolve Mr H's complaint:

- Pay Mr H £1,500 compensation in respect of his non-financial losses.
- Pay Mr H an amount equal to the March 2023 remedial works quote (£7,680), plus 4.2% (to reflect the estimated price inflation since that quote was produced, in line with the CPI). This comes to £8,002.56.

My final decision

For the reasons explained above, and in my appended second provisional decision, I uphold Mr H's complaint and direct ETIKA FINANCE UK LIMITED to take the actions outlined in the "putting things right" section of this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 10 April 2024.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint following my previous provisional decision in November 2023, including new information and arguments submitted by both parties.

Having done so, I intend to make some changes to the redress I'm minded to direct be provided to Mr H, meaning that it has been necessary for me to take the unusual step of issuing a second provisional decision.

I'll look at any more comments and evidence that I get by 20 March 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mr H complains ETIKA FINANCE UK LIMITED ("Etika") has failed to deal fairly with a claim he brought under section 75 of the Consumer Credit Act 1974 ("CCA") in relation to incomplete dental work.

What happened

I set out the background to the complaint in my provisional decision of 17 November 2023 so it's not necessary for me to do so again here. I'll focus on what has happened since that provisional decision. However, in short summary:

- Etika financed dental implant treatment which Mr H agreed with a company I'll call "F", in mid-2016, for a cost of £6,350.
- The treatment progressed very slowly and had not been completed by the end of 2019, when F ceased trading. Mr H was meant to have had a number of dental implants but only the initial stage of the implants had been installed in his jaw.
- Mr H approached Etika for help in early 2020. This had developed into a complaint by September 2021, to which a final response was sent in December 2021. Mr H referred the matter to this service in May 2022.
- Because no agreement could be reached between the parties and our investigator, the case was passed to me to review in September 2023. After sharing some initial thoughts with Etika, Etika said it was going to offer £1,500 compensation to Mr H and £7,800 towards the cost of completing his treatment. Mr H rejected this offer on the basis the compensation figure didn't adequately reflect the impact on him of what had happened.
- I issued a first provisional decision on the complaint on 17 November 2023.

The first provisional decision

In my first provisional decision there were a number of key issues I had to address. I noted firstly however, that both parties appeared now to accept that it was reasonable that Etika cover the cost of remedial or completion works, and that the question of compensation was the main area of dispute.

Having reviewed various historic invoices and treatment plans, along with an x-ray from November 2021, I concluded Mr H and F had agreed that six implants would be installed, and that preparatory work such as bone grafts would be carried out as well. This was the contract Etika had financed. The contract had been breached by F because it had only completed the preparatory work and the initial stage of the implants – the abutments and crowns had never been fitted. Etika, due to its connected lender liability under section 75 of the CCA, could be held liable for F's breach of contract.

I concluded Etika's offer to cover the cost of remedial work was fair in principle, as it would put Mr H in the position he'd have been in, had there not been a breach of contract by F.

I went on to consider the matter of compensation for Mr H's non-financial loss. I referred to section 229 of the Financial Services and Markets Act 2000 ("FSMA"), alongside the FCA's DISP rules, section 3.7.2, noting that "loss of amenity" was not a head of loss which the Financial Ombudsman Service had the power to award compensation in respect of.

I considered significant parts of the losses Mr H had described fell under the heading of loss of amenity, such as feeling unable to attend family and other social events, staying indoors, being unable to find a suitable job and having his freedom curtailed. I reiterated something I had already mentioned to Mr H, which was that a court could consider these losses and therefore potentially award significantly greater compensation than I could, and that he may wish to seek legal advice.

I concluded that although no evidence had been provided to show Mr H had experienced more physical pain than would have been the case had F completed the implants as agreed, he had experienced significant and ongoing distress, as well as the inconvenience of having to deal with the consequences of what had happened, over a long period of time, including much back and forth with various parties. I thought some of this could have been avoided, had Etika's handling of the situation been better to begin with.

I think it's worth quoting the relevant section of my first provisional decision in full on this point:

"Etika accepts that it did not handle Mr H's claim well, albeit it argues there were mitigating factors. In particular, it cites the coronavirus pandemic as something which limited its ability to deal with the claim effectively early on. It also says Mr H didn't share the important x-ray with them late in 2021, which showed he had only had the first stage of his implants. It suggests it would have reached a different view on Mr H's claim had it received this evidence.

While Etika may not have had dental expertise, it was aware when Mr H contacted it early in 2020 to make a section 75 claim, that he had incomplete dental work. In the circumstances, I'd have expected Etika to treat his claim as a priority. It is common for lenders like Etika to step in when a supplier fails, and source a replacement supplier. There's some evidence this is what Etika intended to do originally, and I can accept that it likely found this impossible in the early months of the pandemic. After all, dentists were closed at this time. However, it doesn't explain why Etika appears not to have made any progress with the claim between March 2020 and June 2021.

Etika did begin considering Mr H's claim over the months following June 2021. It suggests it ultimately would have been likely to come to a fair outcome had Mr H provided it with the x-ray showing the six incomplete implants. Mr H says he recalls having a conversation where he offered to provide the x-ray to Etika, but he was told it was unnecessary. I've not been supplied with evidence from the time of what was actually said, but I'm not convinced in any event that Etika would have come to the conclusions it has now, had it received the x-ray

back in November 2021. I say this because Etika wanted to Mr H to provide a report from a suitably qualified professional due to its own lack of relevant expertise. Based on what it has said now, and what it was saying to Mr H at the time, I don't think it would have accepted the x-ray without an accompanying opinion from an expert."

Concluding, I thought the circumstances had provided only limited mitigation for Etika, but that the offer of £1,500 it had made was fair and reasonable taking into account the kind of losses I was able to consider.

I said I was minded to uphold Mr H's complaint and direct Etika to, upon receipt of an up-to-date invoice for the completion of the six implants make arrangements for the invoice to be paid, and pay the £1,500 compensation it had already offered in respect of Mr H's non-financial losses.

Events following the provisional decision

Initially, both parties accepted the provisional decision. Mr H did so expressly, while Etika simply said it had no further comment.

It then turned out that the dentist who had provided the quote for remedial works on which Etika's offer of £7,800 had been based had moved on, and a new quote would need to be sought. Etika said it would be happy to consider a new quote, "within reason", but that it was unlikely to accept a figure which was much higher than the original quote.

Mr H was able to obtain a new quote in December 2023 from the same clinic but a different dentist, and the price had risen to £11,170. I had questions about the new quote as it did not appear to be "like for like" with the previous quote. In particular, the crowns appeared to be of a more expensive type (zirconia instead of PFM) and a "prosthetic kit"¹ had been quoted for which cost £1,800. I also noted the cost of the abutments appeared to have increased by 27%.

I asked Mr H to obtain some clarification from the dental clinic on these issues. Initially a member of staff at the clinic explained that a prosthetic kit was required if Mr H's partially-completed implants were of a type which they didn't normally work with. They said that they believed Mr H's implants were from a company called "NB", which they had the correct tools for, and the prosthetic kit had been added to the quote as a precaution and may not be required. They said prices went up each year and this explained other increases.

Later, the clinic issued a further clarification. They said that they'd originally assumed Mr H's implants were from NB because that was the brand F normally used and Mr H had no paperwork to confirm what implants had been fitted. They said the original quote had been prepared on this basis. However, when Mr H had gone for a recent follow-up for the second quote, they had found their NB prosthetic kit had been unable to unscrew the "healing abutments"², and the only tool which had been able to do so was compatible with implants from a company I'll call "O", which they had in their "universal kit". They explained that to complete Mr H's implants they would need to buy the full set of tools for "O" implants, which is why it was on the second quote.

I outlined these developments to Etika, which complained that ongoing delays in resolving the case were causing costs to rise. Etika also questioned the new quote, asking why Mr H couldn't go to a dentist which had the necessary tools to work on his implants, avoiding the need for the expense of purchasing a prosthetic kit. Etika said it understood FD had used a

¹ A set of tools used to extract, fit and manipulate dental implants.

² A type of cap which goes over the implant while the mouth heals from the implant procedure.

specific brand of NB implants, and asked why Mr H's were apparently from a different manufacturer. Etika also repeated a concern it had expressed previously, which was that Mr H had had six implants when the FD quote had been for five.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide again, provisionally, what's fair and reasonable in the circumstances of this complaint.

There are various aspects of my first provisional decision which I do not need to repeat, such as the basis of Etika's potential liability to Mr H, so I will not do so in this second provisional decision. I'll focus on the key remaining point of dispute: the cost of remedial works.

There are several aspects of the updated quote which do not appear to be "like for like" with the ones on which my first provisional decision was based:

- The inclusion of the "prosthetic kit" for £1,800.
- The crowns quoted for being of a more expensive material – zirconium – than the first remedial quote, which quoted for PFM³ crowns.
- The inclusion of periodontic cleaning and root planing, which did not appear on the earlier quote.

There was also an increase in the price of the abutments, as previously noted.

Overall I would describe the explanations given for the differences as unsatisfactory. Indeed, no explanation has been given for the inclusion of root planing and periodontic cleaning, nor for the substitution of a more expensive type of crown. And while it may be the case that Mr H's partially-completed implants are of a brand the clinic doesn't have the tools to work with, I think the fact the explanation for the inclusion of the prosthetic kit has changed, is troubling. It's also concerning that the clinic appears not to be sure if Mr H's implants are indeed manufactured by O – they say only that the implants "may" be O.

It would be unreasonable in any event to expect Etika to pay for a new prosthetic kit for the clinic. This goes beyond compensating Mr H for his losses and confers a commercial benefit on the clinic. The clinic will be able to use these tools to treat other patients and increase the potential number of patients it can treat.

I also don't think it would be reasonable to include the root planing and periodontic cleaning, as no explanation has been provided for why this was included in the second quote and not the first. I note this was also not something which was included in the original FD estimate, nor any of the other estimates or quotations Mr H received prior to him originally starting treatment.

I accept that inflation is likely to have increased prices between March 2023 and December 2023. This does not however explain the increase in price of 27% for the abutments over that period of time. The Consumer Prices Index shows inflation of 4.2% between January 2023 and January 2024.

Having considered the available information carefully, and considering the fact it appears unlikely that a "perfect" resolution can be achieved here, I think it would be fair and reasonable for Etika to take the following actions to settle Mr H's complaint, bearing in mind

³ Porcelain fused to metal.

its liabilities under section 75 of the CCA:

- Pay Mr H £1,500 compensation in respect of his non-financial losses, as it has already offered to do.
- Pay Mr H an amount equal to the March 2023 remedial works quote (£7,680), plus 4.2% (to reflect the estimated price inflation since that quote was produced, in line with the CPI). This comes to £8,002.56.

I appreciate this falls short of the redress Mr H has hoped to achieve and I am very aware that he still has incomplete dental work, and that what I am minded to award does not cover the cost of the most recent quote he's received to put things right.

I note it remains open to Mr H to decide to pursue his claim via other avenues, such as the courts, instead of via the Financial Ombudsman Service. I've previously outlined the limitations of using this service for a complicated case of this nature, compared to alternatives such as the courts, and highlighted that it may be desirable for Mr H to obtain legal advice if he is considering accepting a settlement through this service.

My provisional decision

For the reasons explained above, and in my first provisional decision, I intend to uphold Mr H's complaint and direct ETIKA FINANCE UK LIMITED to take the actions set out in the bullet points above.

I now invite both parties to the complaint to let me have any new submissions they would like me to consider, by 20 March 2024. I will then review all the information again before making a further decision.

Will Culley
Ombudsman