

The complaint

Mr C complains that Creation Financial Services Limited suddenly started charging him a monthly fee for a credit card he'd had for some years. He said he hadn't been properly notified that this was part of his terms and conditions, so he didn't think he should pay.

What happened

Mr C said he's held a store branded credit card, issued by Creation, for a few years. In December 2019, without warning, Creation started charging him £3 per month to hold this card. He said Creation had told him he should've been charged from the outset for the card. But he still had the leaflet that came with the card, and it made no mention of any monthly fee. The only mention was buried in the terms and conditions. He didn't think it was fair to be charged, based on the small print found only in the terms.

Creation said it should always have been charging him for this card. Because it had made a mistake, it wouldn't ask him to repay now the old fees he hadn't been asked for. But going forward, it wouldn't waive the fee.

Our investigator didn't think this complaint should be upheld. He said that Creation didn't have to send Mr C a notice of variation, because he should always have been paying £3 per month to hold this card. The terms hadn't changed, it was just that Creation had made a mistake, and not applied the charge to Mr C's card.

Our investigator thought it would've been better if Creation had told Mr C about the mistake, not just started to take the money from him. But, although this charge wasn't mentioned in the leaflet Mr C sent us, it was in the terms that Mr C had agreed to. So our investigator thought that Creation hadn't done anything wrong. And it didn't have to pay back the charges it had applied to Mr C's account since December 2019.

Mr C didn't agree with that. He said that terms like this should be drawn to a customer's attention, and it hadn't been. So he wanted an ombudsman to consider this complaint.

My provisional decision

I issued a provisional decision on this complaint and explained why I did not propose to uphold it. This is what I said then:

When this case came to me, I asked Creation for some more information. I wanted to know if the £3 monthly fee was brought to Mr C's attention before he applied for the card. Creation sent us promotional materials from the time. Those set out that there were two types of store branded credit card available at the time Mr C applied. The ordinary card carried no fee, and paid 1% cashback. But the cashback plus credit card carried a £3 fee, and paid 2% cashback.

We only have the online promotional materials. But I think it's likely that any other promotional materials were in very similar terms.

I'm satisfied that the promotional material I've seen was clear about the fee which applied to this card. So I do think this was brought to Mr C's attention before he applied. I don't think that the requirement to pay £3 per month was only found in the small print of some terms that Mr C was sent after his application. And, for that reason, I don't think it's unreasonable or unfair of Creation to apply this term now.

Like our investigator, I do think it would've been better if Creation had written to Mr C and told him about the fee, rather than just started charging. But I don't think this was a contractual variation, for the reasons I've explained. So I don't think Creation was obliged to do that. I think this is a lapse in service, rather than a breach of regulatory requirements. But I also note that Mr C has benefitted from 2% cashback for some years, without paying the fee for that. And Creation has waived the previous three years of fees on this card. I think that provides a fair and reasonable outcome to this complaint. I won't ask it to do any more.

I know Mr C will be disappointed, but I don't think this complaint should be upheld.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Creation said it had nothing to add. Mr C replied to object.

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.

Mr C said that he didn't understand why the fee was hidden in the small print. He thought that consumer law decreed that any onerous terms had to be clearly brought to the consumer's attention.

I reached my decision on this case on the basis of the promotional materials which Creation sent us, from the time. Those are very clear that there is an annual fee for the card Mr C took. The advertisement offers two cashback cards, they're both summarised next to each other, on the same page.

There are three bull points for the ordinary credit card, which say -

- 1% cashback on all [supermarket] spend
- 0.5% cashback on all other purchases
- No annual fee

And right next to that, is the information for the card Mr C took out, which also has three bull points. Those say –

- 2% cashback on all [supermarket] spend
- 1% cashback on all other purchases
- Just £3 a month

So I'm satisfied that this term was brought to Mr C's attention before he took out this card. The requirement to pay a monthly fee was also included in the terms of the card, as I would expect, but that wasn't the only place it could be found.

For that reason, I still don't think this complaint should be upheld.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 January 2021.

Esther Absalom-Gough

Ombudsman