

The complaint

P, a limited company, complains that Retail Merchant Services Limited didn't arrange for services on the terms agreed.

What happened

P met with representatives of RMS in November 2019. It applied for a merchant services contract and signed an agreement setting out the terms. P is unhappy that there was a further agreement in January 2020 which had different charges. And that it didn't receive incentives promised. It wanted charges to be stopped during the pandemic and wasn't happy to be told that there would be cancellation fees if the contract was cancelled.

RMS said that it had adjusted the processing fees from 1 May 2020. It had sent a referral voucher for £200 to the party that introduced P. There was no evidence to support a credit to the account of £20,000 that P said had been agreed. And RMS had made an offer regarding the cancellation of the contract provided P returned the equipment. It expected P to pay charges during the term of the contract but could have offered a payment deferral during the pandemic.

Our investigator recommended that the complaint be upheld in part and P be refunded for the increase in fees charged between the date the agreement went live in January 2020 and 1 May 2020 with simple interest at eight per cent per annum. This would apply to all Merchant IDs for P and all the fees in the original contract.

She said that RMS hadn't been able to explain why there were two agreements. The second had a higher authorisation fee of £0.045 compared to the original of £0.03 and a processing fee of 0.299 per cent on secure debit card transactions compared to the original of 0.288 per cent. So, the lower fees should be applied for all payments. There was no evidence to support a credit of £20,000 to the account having been agreed which would be greater than the contract value. RMS said it had sent any incentive voucher as it had agreed to and it couldn't provide serial numbers. She agreed that P was fairly liable for the costs of the agreement even during the pandemic. RMS had made an offer to end the contract which was fair given that there were cancellation costs in the agreement.

RMS said it agreed with the resolution. P didn't agree and wanted its complaint to be reviewed. It said that it hadn't received proof of what happened and satisfactory answers to its complaint. RMS had misled it over the commission and had no records about the vouchers. It wanted to be compensated for the loss of profit due to the higher commission percentages which it said had been taken unlawfully.

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.

Unfortunately, there is incomplete evidence in this case. And as our investigator has said RMS hasn't been able to explain why there were two agreements – with the latter showing

higher processing rates. P maintains that it only agreed to the lower rates and not to any increases.

RMS agreed in a first final response to P on 15 September 2020 to reduce the processing fees to the lower rates from 1 May 2020. It has now agreed to apply this from the date that the agreement was operative.

RMS says that it sent out any vouchers that had been agreed. And I don't think it can fairly be held responsible for any issues with the postal service. It doesn't have any voucher serial number involved. I have seen an email it sent to P about this dated 25 March 2020 which confirmed dispatch that day following contact from P. I find on balance it's most likely this were sent.

I don't know if the reference by P to an expected credit to the account of £20,000 was a typographical error. But that amount can't have been right or reasonable given the value of the contract to RMS. I don't have anything to support any such credit being due.

P had written to RMS in August 2020 to say that it had got the impression that it was in agreement with waiving charges from 23 March 2020 to 4 July 2020 when it couldn't trade due to the pandemic. RMS didn't agree with that and said that it would have deferred payment of charges on request for a period but that these were still payable. I think that this was reasonable.

On 15 September 2020 RMS agreed to offer P a reduction in cancellation fees on the account less liquidated damages. And it said that this was on the basis that the terminals were collected. On 11 February 2021 it issued a further final response in which it said that *"we will authorise a free of charge closure across all of the Merchant ID's in query, however RMS would not be liable to return any refunds for the charges to date based on the signed agreement forms."* It said that P would need to confirm this with it. I understand that the terminals had been sent back in January 2021.

P was liable for the costs of cancellation set out in the agreement. And so, I don't have a basis to say that the reduction in these costs agreed by RMS was not reasonable. Given this offer I won't be making an award of compensation for inconvenience.

I think that the recommendation of our investigator about how to resolve the complaint is fair and the simple interest reflects any loss of opportunity for P on those fees involved.

My final decision

My decision is that I uphold this complaint in part, and I require Retail Management Services Limited to:

- 1) Recalculate all charges until 1 May 2020 at the lower rates shown in the application form dated 14 November 2019.
- 2) Refund the difference between (1) above and the actual charges applied to P.

- 3) Pay P eight per cent simple interest per annum on the refund in (2) from the date the charges were applied to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 21 July 2022.

Michael Crewe
Ombudsman