

The complaint

Mr L complains that Handepay Limited (Handepay) mis-sold him a contract for terminal hire.

What happened

The background to this case is well known to the parties so, I won't repeat it in detail.

Briefly:

Mr L has told us that:

- On 20 March 2023, he signed an agreement (the Agreement) with Handepay for the hire of a card terminal.
- Before signing the Agreement, he had discussions with Handepay's Business Development Manager – who I refer to as Mr M. In those discussions, he told Mr M, that he wanted the Agreement to last a month and afterwards to continue on a rolling month by month basis. However, contrary to his instructions, the Agreement was structured for a 12-month term.
- The Agreement was signed by him on Mr M's phone after Mr M assured him the term was for one month. There was no actual paperwork at the time. And Mr M didn't allow him to see the contents of the Agreement before he signed it.
- He received the Agreement by e-mail later and it was at this point he noticed he'd entered into a 12-month contract. So, he returned the terminal machine and asked Handepay to cancel the Agreement without incurring any costs on the basis he'd been misled about its duration.

Handepay didn't think they'd done anything wrong. They said – in summary:

- The Agreement was intended for a year rather than on a month-by-month basis and Mr L was aware of this.
- The Agreement was sent to Mr L for signing. The monthly rental cost and the length of the Agreement were clearly stated on the first page. Therefore, in signing it, Mr L confirmed he'd read and understood it.
- Mr M provided a statement refuting Mr L's account of the discussions they had about the Agreement. Mr M said he advised Mr L that he was entering into a 12-month rolling contract rather than one that was structured on a month by month basis.

Mr L didn't agree with Handepay's conclusions and referred his case to this service to look into.

Our investigator didn't uphold the complaint. He said Handepay had provided evidence showing when the Agreement was sent to Mr L and furthermore that he signed it after receiving it.

The investigator believed therefore, that Mr L would have had time to read the Agreement to make sure it matched his requirements. So, having signed it, the reasonable assumption must be that he was happy with the terms set out in it. Against that background, the investigator concluded the Agreement was neither mis-leading nor was it mis-sold.

Mr L didn't agree with the investigator and requested a review of his case by an ombudsman. In doing so, he's maintained his position that the Agreement was mis-sold because it was not structured over the term he'd requested and believed he was signing up for.

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.

Where the evidence is incomplete or inconclusive (as indeed 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.

I start by acknowledging Mr L's strength of feeling on this matter. But having looked carefully into his case, I agree with the conclusions reached by the investigator and for broadly the same reasons. I'll explain why.

Mr L's case is that he'd wanted a terminal hire agreement rolling over on a month-by-month basis. He said he made this clear to Handepay and received assurances from Mr M that that's what he'd been given.

But as noted above Mr M denies this. He's provided an opposite account. He said that in his discussion with Mr L, he made clear the Agreement was for a year. So, on this point I find I have conflicting evidence, both of which cannot be right. However, I don't think this evidence is material to the outcome of Mr L's case for the reasons I now come to.

It isn't disputed that Mr L signed the Agreement. Under the sub-heading "Frequency" it is stated clearly that the minimum term is for 12 months and furthermore, the monthly amount Mr L needed to pay is also stated. I am satisfied there was no ambiguity in this regard. Therefore, in the circumstances, regardless of any assurances Mr L may or may not have been given in initial discussions with Mr M, it's not unreasonable to expect Mr L to have read the Agreement and noted before signing it the terms on which it was being offered.

That being said, I've not ignored Mr L's case, which is that he had no opportunity to read the document before signing it because it was presented to him on Mr L's phone for signature.

Handepay denies this and have presented evidence supporting their position. I've considered that evidence. It does not support Mr L's version of events.

The evidence shows in relation to the Agreement that it was:

- Sent: 3/20/2023 2:39:04 PM
- Viewed: 3/20/2023 2:40:52 PM
- Signed: 3/20/2023 2:41:51 PM.

Handepay have also presented further evidence which shows that the Agreement was sent

to Mr L's email address and was opened on a device linked to his own IP address.

Against that background, I'm not persuaded Mr L signed the Agreement in the circumstances he described. In other words that it was signed on Mr M's phone, and he had no opportunity therefore to read and consider its terms.

I do not therefore, find that Handepay misled Mr L and so fairly should, as Mr L requested, cancel the Agreement without him having to incur any charges.

My final decision

My final decision is I do not uphold this complaint.

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

Asher Gordon
Ombudsman