

The complaint

Mr M complains PrePay Technologies Limited charged him inactivity fees.

What happened

Mr M took out a reloadable electronic money card, called Cash Passport. Mr M used the card, and the last transaction was in February 2018.

In or around April 2022 Mr M found the card. Mr M didn't know what the balance was, so he checked online and found out that Cash Passport cards had been withdrawn by PrePay. Mr M contacted PrePay and found his balance was lower than he thought it would be and he'd been charged inactivity fees of €3 a month since March 2019.

Mr M was able to withdraw the remaining balance from his card, and he complained to PrePay. PrePay responded to say its terms and conditions allow it to charge the inactivity fee if the card hasn't been used for twelve months.

PrePay also said the card had been withdrawn in April 2021 and it wrote to Mr M about how to redeem the balance on his card. PrePay didn't agree to refund any of the fees. Mr M brought his complaint to this service and an investigator looked into things.

Our investigator felt the complaint should be upheld. The investigator thought PrePay hadn't acted in line with the terms of the account. She also felt the terms were unclear on whether the inactivity fees would continue after the expiry of the card.

Mr M agreed with our investigator but PrePay didn't respond so the complaint has been passed 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.

I've looked carefully at the terms and conditions for Mr M's card, and section 8.1 says:

Subject to clause 8.7, this Agreement shall terminate in the event of the expiry of your Card or any Secondary Card ("Termination Date").

Clause 8.7 says "For the purposes of clause 8.1, the expiry of the Card shall mean the expiry of the initial Card issued to you under this Agreement (including any Replacement Card). In the event your initial Card expires and you have an active Additional Card or Secondary Card, you may request a new Card and Additional or Secondary Card."

Clauses 8.2, 8.3 and 8.4 talk about ending the agreement earlier by either Mr M or PrePay. Neither Mr M or PrePay ended the agreement earlier than the expiry of Mr M's initial card, so I think Mr M's agreement was terminated when his card expired. PrePay has confirmed Mr M's card expired on 31 August 2019.

Since the card expired on 31 August 2019 and there were no Additional or Secondary cards, I also think this event terminated the agreement on that date. And I don't think a terminated agreement is still in force. This means I don't think PrePay can continue to apply its terms after the termination date.

Our investigator asked for PrePay's comments about the agreement being terminated and it said this clause only applied to the usage of the card and once the card expired it would cease to work. PrePay said Mr M continued to benefit from fraud protection and that the inactivity fees are applied as there are associated costs in managing and administering the cardholder's account even when the card isn't being actively used.

Looking at the opening paragraph of the terms it says:

By purchasing the Cash Passport Card (the "Card") you agree that you understand, accept and shall comply with these Terms and Conditions and the Fees and Limits section in the User Guide (together the "Agreement").

I don't think the agreement only applies to card usage. I think the terms clearly state the terms and conditions and fees are both considered the agreement. Clause 8.1 talks about terminating the agreement, which I think is both the terms and the fees.

I think the termination of the agreement meant PrePay was also no longer bound by its terms either. PrePay says this isn't its position, but I don't think that changes the termination.

I might say it would be fair for PrePay to charge fees if, once the agreement was terminated, Mr M no longer had ownership of the money on the card.

But clause 8.6 says clause 7.3 survives the termination of the agreement. Clause 7.3 says:

A cashout fee may be charged for redeeming unspent funds on the Card at the Purchase Location or through Card Services if: (i) you redeem unspent funds on the Card before the Termination Date; or (ii) you redeem unspent funds on the Card after a period of twelve (12) months from the Termination Date.

I think this says Mr M can access any remaining money on the card even if the agreement is terminated.

And I have to consider the electronic money regulations 2011. Section 39 says:

39. An electronic money issuer must—

(a) on receipt of funds, issue without delay electronic money at par value; and

(b) at the request of the electronic money holder, redeem—

(i) at any time; and

(ii) at par value,

the monetary value of the electronic money held.

I don't think PrePay could have terms that run contrary to the electronic money regulations. So even without clause 7.3 in its terms PrePay would, I think, have to allow Mr M access to the money on the card even though the agreement was terminated.

I don't think the termination of the agreement means Mr M loses the money on the card. But I do think the termination of the agreement stops the application of all the other terms (save clause 7.3). And among the terms I don't think PrePay can apply is the inactivity fee.

It might also be fair to charge inactivity fees if Mr M used the card again, after the period of inactivity. But Mr M didn't do this, he just redeemed the money on the card, in line with clause 7.3. And PrePay had told Mr M the card had been withdrawn anyway in April 2021.

I don't doubt PrePay didn't intend the specific clause to be applied the way I think it should be. But PrePay is the one issuing these terms, and if there's any doubt about the wording and application of the terms then they're read in the favour of the consumer. And here I think the terms should be read as the agreement, as a whole, terminating once Mr M's cards expired.

I don't think it's fair PrePay applied inactivity fees after 31 August 2019, I don't think the agreement was in force following the expiry of Mr M's card. And since the agreement was no longer in force PrePay can't rely on any of the terms contained in it (save clause 7.3).

Because of this it follows I think PrePay should refund any inactivity fees it charged after August 2019. Mr M was first charged on 26 March 2019, inclusive to 26 March 2022 this is 36 months at €3 a month, so I think PrePay is fair to charge €18 for six months of inactivity fees from March 2019 to August 2019.

Mr M has since redeemed the rest of the money on his card, but I think his balance should have been higher. Had Mr M not been charged the inactivity fees, he would have redeemed more money, at the same rate he got. So, any refund of inactivity fees should be at the same exchange rate.

Putting things right

To put things right PrePay should:

- Refund Mr M 30 months of inactivity fees at €3 per month – a total of €90.
- The refund of €90 should be paid in Sterling at the rate he got when he exchanged the money on his card on 13 April 2022

My final decision

For the reasons mentioned above, I uphold Mr M's complaint about PrePay Technologies Limited.

PrePay Technologies Limited should pay Mr M €90, in Sterling, at the rate he got when he exchanged the money on his card on 13 April 2022.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 March 2024.

Jag Dhuphar
Ombudsman