

The complaint

Mr B complains PrePay Technologies Limited charged him inactivity fees.

What happened

Mr B took out a reloadable electronic money card with a travel agent, in July 2013. Mr B used the card, and the last transaction was in August 2016.

Mr B was going on a trip in 2022 and found the card. Mr B didn't know what the balance was, so he contacted PrePay. Mr B's balance was lower than he thought it would be, he'd been charged an inactivity fee of €3 a month since December 2017.

Mr B was able to take 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 15 months.

PrePay also said the card had been withdrawn in April 2020 and it wrote to Mr B about how to redeem the balance on his card. PrePay didn't agree to refund any of the fees.

Mr B brought his complaint to this service and an investigator looked into things but didn't think Mr B's complaint should be upheld.

The investigator thought PrePay had acted in line with the terms of the account. There was some confusion with the terms, but the investigator was satisfied they had the right terms and PrePay had charged fees according to them.

The investigator could see PrePay had refunded a fee in May 2016, but didn't comment on any previous fees as they thought it was reasonable PrePay had no records past six years.

Mr B disagreed and said the correct terms for his card included a termination clause, triggered by the expiry of his card. Mr B asked for an ombudsman to decide things.

My Provisional decision

I thought Mr B's complaint should be upheld, so I issued a provisional decision:

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

Subject to clause 8.7, this Agreement shall terminate in the event of: (i), the later of either the expiry of your Card or the expiry of any Additional Card; (ii) an event occurring under clauses 8.2, 8.3 or 8.4. The date of such termination under this clause 8.1 shall be deemed the Termination Date.

Clause 8.7 says if a replacement additional card is ordered the agreement terminates at the

expiry of that card.

Clauses 8.2, 8.3 and 8.4 talk about ending the agreement earlier by either Mr B or PrePay.

Neither Mr B or PrePay ended the agreement early, so I think Mr B's agreement was terminated when his card (and the additional card, issued at the same time) expired.

Mr B says his card expired in 2018, five years after it was taken out. Mr B took the card out in July 2013, so I've assumed the card expired in July 2018.

Since the card expired in July 2018, 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.

I've asked for PrePay's comments about the agreement being terminated and it said this clause only applied to the usage of the card.

PrePay said Mr B continued to benefit from fraud protection and the use of different channels to redeem the money on his card. PrePay also said it doesn't agree Mr B isn't bound by the terms any longer as this would mean it isn't bound by the terms either.

Looking at the opening paragraph of the terms it says:

By purchasing 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.

And 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 B 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 fee and/or commission may be charged for redeeming your balance at the Purchase Location or through Card Services.

I think this says Mr B 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 B access to the money on the card even though the agreement was terminated.

I don't think the termination of the agreement means Mr B 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 B used the card again, after the period of inactivity. But Mr B didn't do this, he just redeemed the money on the card, in line with clause 7.3. And PrePay's told Mr B the card had been withdrawn anyway.

I've no 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 B's cards expired.

I also understand PrePay didn't draft the original agreement. This agreement was issued by a previous electronic money provider.

But this doesn't mean PrePay isn't bound by these terms in the same way Mr B is. The terms themselves cover this eventuality as well, clause 14 says:

We may assign any of our rights and obligations under these Terms and Conditions, without your prior consent, to any other person or business, subject to such party continuing the obligations in these Terms and Conditions to you.

PrePay hasn't issued updated terms, so I think PrePay is bound by the terms even though they weren't originally PrePay's.

I don't think it's fair PrePay applied inactivity fees after July 2018, I don't think the agreement was in force following the expiry of Mr B'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 July 2018. Mr B was first charged in December 2017, inclusive to July 2018 this is eight months at €3 a month, so I think PrePay is fair to charge €24.

Mr B has since redeemed the rest of the money on his card, but I think his balance should have been higher.

Had Mr B 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.

If PrePay can show evidence Mr B's card expired at a later date, or Mr B can show the cards expired earlier than July 2018, then I'll consider this before issuing my final decision.

Responses to my provisional decision

Mr B had nothing further to add.

PrePay responded to say Mr B should have been aware of the balance on his card and was sent an email, which PrePay no longer has.

PrePay also said Mr B could have taken the money from his card at any time.

PrePay said it could see the terms don't stipulate the inactivity fees can continue to be charged post termination, so it agreed to refund the fees in good faith and with no admission of liability.

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 think it's fair to respond to PrePay's points, all of which are facts but seem to have missed the point of my provisional decision.

I've not said Mr B wasn't able to redeem the money on his card, my decision is I don't think PrePay is allowed to charge inactivity fees following termination of the contract.

And I don't think Mr B not keeping track of his balance, despite PrePay making it easy to find it out, means PrePay can enforce terms on a terminated contract.

And despite PrePay's offer in good faith, and without an admission of liability, it's still my decision PrePay should refund some of the inactivity fees to Mr B. I think the inactivity fees are unenforceable following the termination, so I don't think PrePay can fairly charge them.

My final decision

My final decision is PrePay Technologies Limited should pay Mr B €162, in Sterling, at the rate he got when he exchanged the money on his card on 23 August 2022.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 18 March 2024.

Chris Russ
Ombudsman