

complaint

Mrs S complains that Creation Consumer Finance Ltd charged her cash handling fees on her credit card when she used it to purchase gift cards.

background

In March and April 2018 Mrs S used her Creation credit card to purchase three gift cards from the same retailer. One was for £2,000 and the other two were for £3,000 each. Creation added a 3% cash handling fee to each purchase (totalling £240). It also charged her £19.84 interest on those purchases.

Mrs S didn't think this was fair. She said she'd bought other gift cards (from different retailers) in early March 2018 and no cash handling fee was applied then. She didn't think this was consistent and even if the fee was right she should have been warned about it before making the purchase.

Creation said the retailer had put the transactions through under a specific processing code meaning it came under the definition of a cash advance (which incur a 3% fee). It also said gift cards are considered cash purchases. For these reasons Creation said it was right to charge the cash handling fee in line with the terms and conditions of her credit card.

I sent Mrs S and Creation my provisional decision on 25 September 2018. I explained why I thought the complaint should be upheld. I said:

Creation says it considers gift cards to be cash and therefore falls within its definition of cash advances. But I don't agree with their interpretation, nor do I think it's fair. The relevant term says:

"Cash Advance means an advance of monies made to you.....including but not limited to cash, foreign currency, travellers cheques, prepayment of mobile telephone airtime through an ATM or cash related transactions such as gaming chips, on-line gambling and other forms of betting or lottery;"

The terms do set out this isn't an exhaustive list of what can be considered a cash advance but none of the examples are similar to a gift card. So Mrs S or any consumer couldn't have reasonably known a gift card purchase might incur an additional fee. These are fairly common purchases so I'd expect Creation to have made this clear in their terms if the intention was for these to be treated as cash advances.

I don't think the intention behind the terms was to consider gift cards as a cash advance. A gift card can't be used in the same way as cash (unlike the other examples provided for in the terms). By this I mean that you're limited to using it in only one retailer and for limited types of purchases. It is essentially a pre-payment for specific goods or services. It also has no direct cash value – as it can't be transferred back into cash. This again is different to the other examples provided.

The only part of the term that might have been relevant was 'cash related transactions'. But the terms specifically define what Creation means by this which only concern gambling transactions – so that too isn't relevant to gift cards. I've also considered that Creation didn't charge a cash handling fee for the other gift cards Mrs S purchased only a few weeks

before. So it clearly doesn't consider gift cards to be cash advances, or it would have applied a fee for those purchases.

For clarity, I'm not suggesting Creation could never treat gift cards as a cash advance. But I don't think it's fair that it does so currently given that its terms aren't explicit enough to say this is how it will treat these types of purchases.

Creation says the reason it applied the fee was because the retailer used a processing code which said it was a cash transaction. And although I agree it didn't do anything wrong in relying on those codes in the first instance, it should have changed its stance when Mrs S complained. I'll explain why.

The transaction processing codes that Creation has referred to are set by the card scheme provider – in this case that's MasterCard. The processing codes are used to determine what type of retail establishment the transaction has taken place in – it doesn't necessarily define what the transaction was. They are used to help the credit card provider determine what the transaction was likely to be and take appropriate action. The most common example of this is being able to recognise cash advances – which is the crux of the dispute here.

The processing code used by the retailer in Mrs S' complaint suggested that the establishment dealt with foreign currency, money orders and travellers cheques. And this retailer does do that. But crucially it also sells goods and services – which include gift cards to use in their store. Unfortunately for Mrs S, the specific merchant terminal that was used to purchase the gift cards occurred at the terminal reserved for foreign currency transactions. Had a different terminal been used, it's likely a different processing code would have been sent to Creation which would have resulted in no cash handling fee being charged.

The MasterCard processing rules for the code that was used say they should only be used for foreign currency, money orders or travellers cheques. Clearly, a gift card purchase is none of those things. That isn't Creation's fault however as it couldn't have known about the error at the time of processing. But it did know when Mrs S complained and could have reviewed the position when it realised a processing code was used that didn't apply.

It's not fair for Mrs S to incur a fee from Creation due to a mistake by the retailer that she had no control over. And had it been processed differently (as it arguably should have been) no fee would have been charged. So for all these reasons I don't think it's fair for Creation to treat the gift card purchase as a cash advance - and by extension apply a cash handling fee or charge interest as if it were one.

To put things right Creation should refund the fees and interest it applied to the transactions. And as Mrs S pays her credit card in full every month she has paid money she shouldn't have. Creation should therefore also add interest to the refund at 8% simple per year to account for her being deprived of using that money. The interest should be calculated from the date Mrs S notified Creation of the charges to the date of settlement. This is because Creation wouldn't have known there was a problem until Mrs S first raised it.

Both Mrs S and Creation accepted my provisional decision and had no further comments to make.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As neither party had any additional comments to make, I see no reason to change the conclusion I reached in my provisional decision.

my final decision

For the reasons given above, I uphold this complaint and direct Creation Consumer Finance Ltd to:

- Refund the £240 cash handling fees.
- Refund the cash interest of £19.84.
- Pay 8% simple interest per year on the above refunds from the date Mrs S complained to the date of settlement.

If Creation considers tax should be deducted from the interest element of my award, it should provide Mrs S with a tax deduction certificate so that she can reclaim that amount, if she is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 26 November 2018.

Tero Hiltunen
ombudsman