

## **complaint**

Mr and Mrs D complain that Paymentsense Limited has unfairly refused to pay the cancellation charges incurred with their previous merchant services provider.

## **background**

Mr and Mrs D moved their merchant services arrangements from their old provider to Paymentsense. They say that, prior to signing up with Paymentsense, the representative had assured them that there would be no cost to them as Paymentsense would cover all cancellation charges from their previous provider.

Mr and Mrs D paid for Cancellation Protection at a cost of £50, and moved their accounts to Paymentsense.

When Mr and Mrs D received the final invoice from their previous provider, including the cancellation charges, they say that the Paymentsense representative initially tried to negotiate a reduction before telling them they would need to provide proof of payment of the charges which Paymentsense would then cover.

After Mr and Mrs D paid the charges and asked for their refund, they received an email from Paymentsense telling them that Paymentsense would not cover the cancellation charges. The email also said, incorrectly, that Mr and Mrs D had not taken Cancellation Protection.

Mr and Mrs D say they were given specific confirmation, at several stages, that all their cancellations fees would be covered by Paymentsense. They say there was no mention of any limits, or that certain providers were not covered by Cancellation Protection – and so they should now receive what they understood they had paid for.

Paymentsense says that Mr and Mrs D's previous provider was an affiliate of Paymentsense, and so was not covered under the Cancellation Protection scheme. It says that Mr and Mrs D should not have been signed up for Cancellation Protection in the circumstances, and that only cancellation charges up to £400 excluding vat would have been covered in any event.

Paymentsense offered to pay a total of £600 towards Mr and Mrs D's cancellation charges. It also gave them a month's free rental and a billing credit of £20.40. Mr and Mrs D did not feel this went far enough, as it did not cover the cancellation charges they had paid to their previous provider. They brought their complaint to this service, where one of our adjudicators investigated it.

From the evidence, the adjudicator concluded that Mr and Mrs D had not been made aware of the restrictions and limits on the cancellation charges offer until after they had signed up with Paymentsense, paid their fee for the Cancellation Protection and incurred the cancellation charges with their previous provider.

The adjudicator recommended that the fairest way of resolving the dispute was for Paymentsense to cover the balance of the money that Mr and Mrs D had paid in cancellation charges to their previous provider (less the vat, which they may claim back through their vat registration). The adjudicator also recommended that Mr and Mrs D should receive some interest on that money, and a small compensation payment.

Paymentsense did not agree and said, in summary:

- The adjudicator has taken more account of Mr and Mrs D's oral testimony than of the legally binding terms and conditions.
- Mr and Mrs D agreed to be bound by the terms and conditions when they signed their agreement with Paymentsense. Paymentsense has to assume that Mr and Mrs D carried out due diligence and read the agreements before signing.
- They did not query the position concerning Cancellation Protection at the time, or ask to upgrade it to a higher level.
- Paymentsense has already offered a reasonable settlement, which was more than Mr and Mrs D were entitled to under the terms of the Cancellation Protection, and cannot reasonably be expected to cover any additional loss.
- The ombudsman service has investigated previous complaints about similar products. This case should be investigated in the same way, for a fair outcome to be reached.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

From my review of this complaint, I am satisfied that it has been investigated fairly and that we have taken into account all the factors that our rules require us to have regard to. In every case, the outcome from the investigation will depend on the individual merits of the complaint.

Paymentsense accepts that Mr and Mrs D should not have been sold the Cancellation Protection in the first place, as it says their previous provider was excluded from cover for that product.

So it's evident that the representative who sold the product either did not know about that very basic requirement, or took no steps to satisfy himself that the previous provider was covered before signing up Mr and Mrs D. In either case, this indicates to me that the representative did not take sufficient care over the sale.

By contrast, I have found Mr and Mrs D's account of events consistent and plausible. I find (on a balance of probabilities) that they were given specific assurances, before agreeing to sign up with Paymentsense and take the Cancellation Protection product, that Paymentsense would cover all their cancellation charges from their previous provider.

I have considered whether, in spite of that, Mr and Mrs D should have recognised (from the documentation that they had been given) that the specific assurances they had received from the Paymentsense representative were wrong.

Given that the relevant terms do not mention the exclusion of some providers, I am satisfied Mr and Mrs D could not have known about that. And Paymentsense could not, in any event, rely on a term that did not actually appear in the agreement.

Overall, I am satisfied that in this particular case Mr and Mrs D were entitled to rely on what they had been personally told by the representative who signed them up. I also note that, although some limits on the amount of charges that are covered are mentioned within the Cancellation Protection terms, the information is open to more than one interpretation.

In particular, the wording says that the protection will apply once to each merchant ID – which can be interpreted as meaning that Mr and Mrs D would be entitled to more than one payment.

So I do not consider that Mr and Mrs D can reasonably be said – either in law or in fairness – to be bound by onerous terms that were (variously) missing, misrepresented or open to more than one interpretation.

When arriving at the recommended outcome, the adjudicator considered a number of potential remedies before choosing what she considered fair in the particular circumstances of this case. Taking everything into account, I agree that the redress recommended by the adjudicator represents a fair settlement here.

### **my final decision**

My final decision is that I uphold this complaint and I direct Paymentsense Limited to pay Mr and Mrs D:

- £994.65 ; *and*
- simple interest on that amount calculated at 8% a year from 16 March 2016 to the date of settlement; and
- £50.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 19 October 2016.

Jane Hingston  
**ombudsman**