

## **complaint**

Mr S is unhappy that Creation Financial Services Limited ('Creation') charged him a cash advance fee when he used his credit card to buy some gift vouchers.

## **background**

In December 2016, Mr S bought a £100 gift card with his credit card. On receipt of his credit card statement he discovered he'd been charged a £5 handling fee. When he raised this with Creation, it told him the gift card was a 'cash advance' and so it incurred an additional handling fee and potentially a higher rate of interest. Mr S was not happy about this but paid off the balance including the £5 charge (plus a further £5 to cover any additional interest as he was concerned that he might incur further costs).

Mr S says that the credit card terms and conditions that refer to cash advances aren't clear.

One of our investigators looked into this. And she agreed that the definition of cash advance didn't make it clear enough that gift cards would be treated as a cash advances. So she thought it wasn't fair for Creation to apply the extra charges to the gift card transaction.

Creation doesn't accept this view and has asked for an ombudsman to review the complaint. And so the case has been passed to me.

## **my findings**

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

At the heart of this case is whether the credit card terms and conditions enable Creation to charge a cash handling fee for the purchase of the gift voucher. That, in turn, depends on the interpretation of the definition of cash advance. The definition is as follows:

*"Cash Advance" means an advance of monies made to you or on your behalf, or to an Additional Cardholder or on the Additional Cardholder's behalf, including but not limited to cash, Cash Advance Cheque, 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;*

In essence, Mr S says that the term wasn't clear enough to cover gift cards. Creation says that the reference to "cash related transactions" should be interpreted as covering gift cards/vouchers.

Mr S, in taking out his credit card, entered into a consumer credit agreement with Creation. Such agreements are governed by certain statutory and common law rules, including the Consumer Rights Act 2015 and/or its predecessor legislation (e.g. the Unfair Terms in Consumer Contracts Regulations 1999). In this case, it's not entirely clear when the credit card was taken out such that I can say which specific rules or statutory provisions apply. But, in any event, the legal principles have been broadly the same for many years, namely that written terms in consumer contracts must be in plain and intelligible language. And if there's any ambiguity then the interpretation most favourable to the consumer should prevail.

I've carefully considered the above term relating to cash advances. It makes no express mention of gift vouchers or similar financial instruments. I appreciate the above term refers to

“cash related transactions”; but all the examples that directly follow concern some form of gambling transaction. There are no examples that are reasonably comparable to gift vouchers or the like.

With that in mind, I don't think this term would've been clear enough to a reasonable consumer – or to Mr S in particular – such that he would've appreciated that gift vouchers would be treated as cash and incur additional charges. In my judgment, it's not necessarily obvious to the ordinary consumer that gift cards/vouchers, a fairly common purchase, would be regarded as a cash advance. So I think this should've been prominently and clearly highlighted both in the terms and conditions and any pre-contract promotional materials. The failure to do so denied Mr S the opportunity of using an alternative, cheaper payment method.

Overall, I think the term is unclear and ambiguous, so should be interpreted in Mr S's favour as not covering gift vouchers. So I'm satisfied it was unfair of Creation to charge the handling fee in reliance on this term.

### **my final decision**

For the reasons set out above, I uphold this complaint and require Creation Financial Services Limited to put Mr S into the position he'd be in if the gift card hadn't been treated as a cash advance. So it should refund the £5 handling fee along with any interest accrued. And it should also refund Mr S the additional £5 paid towards his account to cover the additional interest he thought he might be charged.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 April 2017.

Anthony Harrison  
**ombudsman**