complaint

S is a limited company and its complaint is brought by its representative Mr M. Mr M complains that Intelligent Merchant Services Limited ("IMS") failed to keep to an agreement to match the charges applied by another merchant services provider.

background

S has merchant services facilities with IMS, to enable it to accept plastic card payments. Mr M says that IMS agreed to match the rate offered by another merchant services provider – but that this was never put into effect.

Mr M would like IMS to backdate the change so that S receives the agreed rate. IMS says that, when the agreement to match the charges was made, it sent Mr M a new schedule of charges to accept and send back to it. As it did not receive this back, it did not change the rate charged to S.

IMS offered a new rate and also said it would pay Mr M £100. Mr M did not feel that this went far enough and brought his complaint to this service where an adjudicator investigated it.

From the evidence, the adjudicator found that IMS should pay S £266.68 (representing the overpayment of charges and Mr M's call costs) together with the £100 already offered. IMS did not agree with the adjudicator and said that S had been charged in accordance with the original agreement. But it confirmed that its offer to pay £100 remained open.

Mr M broadly agreed with the adjudicator's views, but pointed out that the amount of the difference in charges had since increased through the passage of time. Mr M subsequently terminated the agreement with IMS.

my findings

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

I am satisfied that, following an email exchange between Mr M and IMS, IMS specifically agreed to match the rates that were offered to Mr M by another provider. This agreement was not expressed as conditional and I am not persuaded that Mr M was made aware that the reduction was dependent on his taking any additional action. So I don't think it is right (either in law or in fairness) for IMS to insist that S must pay the rates set out in its original agreement.

I find that IMS should refund the charges made over and above those that would have been incurred if the agreed reduction had been implemented in October 2012. I note that IMS has offered an inconvenience payment of £100 which I consider should also be paid.

my final decision

My final decision is that I uphold this complaint and I direct Intelligent Merchant Services Limited to pay S:

- the difference between the charges applied from October 2012 to the point the contract was terminated, and those that would have been applied if it had implemented the agreed reduction in October 2012; *and*

- £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M (on behalf of S) to accept or reject my decision before 8 February 2016.

Jane Hingston
ombudsman