

complaint

Mr L complains that Creation Financial Services Limited (“CFSL”) did not set up a direct debit on his credit card account and as a result he missed a payment and incurred a late payment charge and interest.

background

Mr L had a store branded credit card, this account was supplied by a third party credit card operator. Mr L says he was informed that the store had changed its credit card operator to CFSL. He says that he was told his existing account would be closed and he would need to apply for a new credit card with CFSL. He applied for the new account online.

As part of the application process Mr L provided his bank details and says that he assumed that this was to set up a direct debit. He says he had always paid his old credit card account on this basis.

Mr L says that no direct debit was set up and he was notified that he had incurred a late payment charge and interest on the outstanding balance.

CFSL says that it requests bank account details solely as a method of customer verification. It says that at no time did it confirm that the details would be used to set up a direct debit. It says that this was not an account merger where Mr L should have been advised that a new payment method is required. It says that the previous account had been closed and Mr L had completed a new application to obtain a new account.

our adjudicator’s opinion

Our adjudicator was of the opinion that Mr L’s complaint should be upheld. He believed that an account migration had occurred and it was good practice for a business to provide written instruction about how it would collect payments and to confirm that existing payment schemes had been cancelled. He felt that as CFSL could not provide evidence that it had written to confirm this to Mr L, his complaint should be upheld.

my provisional decision

I issued a provisional decision that I was not minded to uphold Mr L’s complaint. I summarise my findings:

- Mr L acknowledged that when he completed the application form for a credit card agreement with CFSL it was to open a new account. I agreed and found that it was a new account and not a migrated account.
- The application form did not include a direct debit instruction. Mr L did not say that he completed a direct debit instruction merely that he thought providing his bank details, was sufficient to set up a direct debit.
- I found that no letter was sent to Mr L confirming that a direct debit had been set up. The first statement sent to Mr L confirmed the minimum payment required but did not confirm that payment would be collected by direct debit. As a result when a payment was not made, the next statement confirmed that a late payment fee had been incurred together with interest.

- I accepted that Mr L genuinely believed he had a direct debit set up on the account. But, I was not persuaded on the evidence that CFSL had made an error.

I proposed that Mr L's complaint was not upheld and I did not require CFSL to do anything further.

In response CFSL has made no further comment. Mr L does not agree with my provisional finding. In summary, he says:

- CFSL told him it hopes to automatically send out direct debit instructions in the future and this proves there is an error in its current procedure.
- It was not made clear to Mr L that his bank details would only be used for customer verification. It was reasonable for him to assume that a direct debit instruction had been set up in the absence of information to the contrary and that it is good practice to provide written instructions about how payments will be collected.
- The absence of a confirmatory letter or lack of confirmation on the statements did not notify Mr L that a direct debit had not been set up.
- That when Mr L received his March statement confirming that a payment would be taken by direct debit in April, a payment had already been taken by CFSL in March. This indicates that the statements are not conclusive about how and when payments are to be made.
- My provisional decision ignores an admission by CFSL that Mr L was given conflicting information about balances and when it should be paid.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – that is, what I consider is most likely to have happened in light of the available evidence and the wider surrounding circumstances. Having done so, I have reached the same overall conclusions as my provisional decision, and for much the same reasons.

I find that CSFL made no error in not sending Mr L a direct debit instruction. Mr L is free to decide the method of payment he wishes to use and no request was made by Mr L for a direct debit instruction. CSFL may decide to automatically send out direct debit instructions in the future but it is not required to do so. I also find that CSFL did not have to write to Mr L to confirm how payments would be collected as this was a new account and not a migrated account

I understand that Mr L believed that the provision of bank details in the application form amounted to a direct debit instruction, but it does not. A written direct debit instruction must contain mandatory information including the direct debit logo, the heading 'Instruction to your bank or building society to pay by Direct Debit' and the direct debit guarantee. The application form completed by Mr L did not contain any of this information and did not amount to a direct debit instruction to his bank to make payments.

The Lending Code sets out standards of good practice and there are specific pieces of information which should be included on every credit card statement. There should be sufficient details to enable customers to pay on time. I find that the statements sent to Mr L included the minimum payment required and the date by which the payment should be made. The absence of details of a direct debit payment indicates that no direct debit was in force when the statement was sent.

Mr L subsequently set up a paperless direct debit instruction during a telephone call with CFSL in January. He also made a payment to clear his January balance. Mr L says that he was told that no payment needed to be made for February. In a later telephone call with CFSL in February he was told that a payment was due for later that month. Mr L failed to make any payment for February. Mr L had been sent a statement for February and on balance I find it was reasonable for him to expect that a further payment was due.

CFSL accepts that Mr L was given conflicting information about the outstanding balance and also incorrect information about when the direct debit would commence. As a gesture of goodwill it refunded the interest charged for February. I find that this was fair and reasonable in the circumstances.

I find the statement for payment in March did not make reference to a direct debit as it was sent out prior to the direct debit being set up. CFSL confirmed in writing after the statement had been sent that the direct debit was set up and clarified that it would be used for the March payment and Mr L has confirmed in his response to my provisional decision that this occurred. I find no error on the statements.

my final decision

My decision is that I do not uphold Mr L's complaint.

Geraldine O'Donnell
ombudsman