

## Complaint

Mr C complains that Premium Credit Limited charged him a late payment fee of £27.50 when the amount should have been £20 as per the terms and conditions.

## background

Mr C took out an insurance policy with a company I'll refer to as P. His insurance premiums were financed by Premium Credit Limited (PCL) through a credit agreement. Mr C says PCL charged him a default fee of £27.50 when he missed a direct debit payment rather than the £20 fee stated in his terms and conditions.

PCL didn't uphold his complaint. It says it charged the fees in accordance with the terms and conditions of his account and that it notified customers that the default fee would increase to £27.50.

Unhappy with PCL's response Mr C referred his complaint to our service.

Our investigator didn't think Mr C's complaint should be upheld. He noted that the terms and conditions of the credit agreement allow PCL to charge £20 *"each time you miss a payment or a Direct Debit from your bank account is returned unpaid for any reason"*. He also explained that PCL had provided information to suggest it'd sent Mr C an email about the increase of the fee to £27.50.

Mr C says he didn't receive PCL's email about the increase to the fee, but our investigator thought it was likely PCL sent this to him based on the information provided by PCL. Our investigator was satisfied that PCL had given enough notice of the new default charge before this was charged to Mr C.

Mr C disagrees with the investigator's view and he's asked for an ombudsman's decision. He says he never received an email notifying him of the increase in the default fee and he's unhappy that PCL can't provide proof of this. He's also unhappy that PCL has deleted copies of the letters it sent to customers. And he thinks the charge is excessive and unfair and PCL hasn't justified the increase. He thinks such increases unfairly target the poor and the charge has caused him financial hardship because he receives benefits and he has rent arrears.

## my findings

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

Mr C applied to pay his insurance premiums by instalments and he entered into a credit agreement. The credit agreement set out the applicable terms and conditions. B3.2 says: "You must pay a Default Charge each time you miss a payment or a Direct Debit from your bank account is returned unpaid for any reason."

The Credit Agreement also allows PCL to vary the charges. B4.5 allows PCL to *"vary any of the other fees or charges that you may have to pay (under clause B.3) by giving you 30 days' notice (see clause C22)". And C22 says "We may from time to time vary this Agreement, including, but not limited to, the charges set out in Schedule B"*.

PCL told us that it sent a letter to its customers by email notifying them of the increase in the default fee to £27.50 in June 2018. It said it used a third party to do this and it provided a template of the letter that was sent. However, it hasn't been able to provide a copy of the actual letter sent to Mr C because the third party it used has since deleted the customer letters it sent for data protection reasons.

Mr C is concerned that deletion of these letters is in breach of data protection laws but under the rules that govern our service we don't have the power to determine whether or not there has been a breach of data protection laws – that's a matter for the Information Commissioner's Office to decide. But I can, and have looked at whether this impacted on Mr C.

PCL hasn't been able to provide a copy of the letter it sent to Mr C informing him of the increase in fees. In situations where I don't have all the information I'd ideally like I make my decision based on the information available to me and on the wider circumstances to decide what is more likely than not to have happened.

PCL gave details to us of the email address it used for Mr C and it provided confirmation that the email was received on 25 June 2018. Based on this and the template letter it provided, I think it's more likely than not it was sent and I'm sorry to hear Mr C never received it.

Under the credit agreement Mr C was required to make his "repayments *monthly on the date they are due for payment*". PCL provided information to show it attempted to collect Mr C's direct debit in March 2019 and April 2019 but in both cases his direct debits were returned unpaid. This resulted in PCL applying two late payment fees of £27.50 in accordance with the updated terms and conditions.

I've explained above that I think it was more likely than not that Mr C was sent an email in June 2018 advising him of the increase in the default fee and I'm satisfied that PCL gave him 30 days' notice before it applied the revised default fee to his account.

I've also thought about Mr C's concerns that the default fee applied by PLC was excessive and unfair. I must explain that under the rules that govern our service I can't make a finding about whether or not the default fee is unfair under consumer laws – as that would be a matter for a court to decide. But I can have regard to the law in deciding whether PCL treated him fairly in charging the default fees it did.

I've explained above that the credit agreement required Mr C to make the required payments on time. In the event that a customer fails to do so, the terms and conditions allow PCL to charge a fee to reflect the extra costs it incurs due to a direct debit not being paid when due.

The Consumer Rights Act 2015 provides that a term may be unfair if it requires a customer "*who fails to fulfil his obligations under the contract to pay a disproportionately high sum in compensation*". PCL explained in its final response letter that it made the decision to increase its default fee to £27.50 taking into account its costs of trying to recover unpaid direct debit transactions. It explained that those costs include administration fees and fees for stationery, postage, telephony systems, and maintaining its Contact Centre so it could take payments by alternative means.

Based on PCL's explanation, I don't think the default fee it charged was manifestly disproportionate taking into account PCL's legitimate interest in wanting to ensure its customers made their contractual payments on time. It follows that I find that PCL treated

Mr C fairly in applying the default fees because the terms and conditions allowed it to do so.

I can also see that when PCL informed its customers of the increase in the default fee, the template letter said: "if you are unhappy with this change you may end your Credit Agreement at any time by repaying any outstanding balance". I think PCL treated Mr C fairly here because he wasn't obliged to continue with his credit agreement if he wasn't happy with the change.

Mr C also says the fees have caused him financial difficulties. However, I haven't seen anything to suggest Mr C raised this issue as part of his complaint to PCL at the time so I'm unable to consider this part of his complaint. Mr C will need to raise this issue separately with PCL and give it the chance to respond first before we can investigate this part of his complaint.

### **my final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 May 2020.

Michelle Hayward  
**ombudsman**