

complaint

Mr L complains about how Creation Financial Services Limited (“Creation”) has dealt with the allocation of hotel chain loyalty points that are earned through spending on its credit card account.

background

Mr L told us that he has a credit card account which is administered by Creation, which is the most recent provider of a reward scheme operated by a large hotel group. Mr L told us that this is the third such card he has held over a period of years since 2009. The card is given out as part of the hotel group’s loyalty scheme. Every so often the group changes provider and Creation is the third provider since he started using this system.

Mr L wanted to complain about how the points under the loyalty scheme are allocated. He said that the present scheme is supposed to provide him with 2 points for every £1 spent, but 4 points for every £1 spent either with the hotel chain, or overseas. He said the former account providers have operated the account on a monthly spend basis. They would add up the monthly spending total, and award points on that. But Creation is operating the account on a different basis. It awards points per transaction. So if a transaction includes some pence, Mr L doesn’t earn any points on those.

Mr L also said that the account seemed to have a floating accounting date. He said it changed every month, and ranged between 21st and 26th of the month. He said that meant that he didn’t know when payments had to be made, and on one occasion had meant that he needed to pay a monthly subscription twice in the same month. He said he’d complained about this, and Creation had just completely failed to deal with that point.

Mr L then wrote again, to say that he wasn’t being awarded the right points for overseas transactions. He said that he had used his card online to make a purchase in euros, and that should accrue 4 points per £1 of spend, but Creation had only allocated 2 per £1 of spend.

Mr L said he wanted Creation to correct the credit of points on his account every month since this started. He wanted the fraud remedied for all of Creation’s other customers too.

Creation has previously awarded Mr L extra points for transactions which were done overseas, but were only allocated 2 points per £1 spent. But in response to a more recent complaint on this, Creation said that what it had done this time was right. Mr L should only get 2 points per £1 of spend. That was because, although the transaction that Mr L was referring to was in euros, it had been made online in the UK. So Creation said it didn’t have to give him the extra points.

Creation said that it was issuing statements on or around the 22nd of each month. It couldn’t always stick to the same date, because of the varying number of days in each month. It said that all the statements had been issued between the 20th and 23rd of each month, except for December when it issued his statement on the 26th. (Creation later sent our service a list of when Mr L’s statements were issued, and that included a date of 24 July.) Creation said that it didn’t put the statement date on the website because that wasn’t the only statement date it had, other customers had different dates. But Mr L’s was around the 22nd.

Creation has also written to Mr L to confirm it calculates points on each individual spend, not on the whole spend across the month. It didn’t think it had made a mistake with that either.

When Creation wrote to our service about this complaint it said that it still thought that it had responded properly to Mr L's complaint about statement dates. But it said that it had taken a long time to respond to one of his complaints about points awarded for an overseas transaction, and it couldn't see that it had dealt with that issue going forward. It said that because of that it would like to pay Mr L £100.

Our adjudicator asked Creation for some more information about Mr L's account, and in response Creation said that Mr L would only earn half the points that he seemed to think he should get, so it would award 2 per £1 of overseas spend. It said that it had got this wrong when it had previously written to Mr L. It also said that Mr L could change his statement date if he would prefer.

Creation also sent us some of Mr L's statements, and what Creation said about the points that Mr L earned didn't seem to match what was on those statements. Our adjudicator asked about this, and Creation then confirmed that it pays Mr L double the amount of some other customers, because he has a premium account which entitles him to double reward points.

Creation also changed its mind about what it should be paying him for foreign currency transactions. It now says that it only pays 2 per £1 spent for any online transaction, whether it was a foreign transaction or a domestic one.

At first our adjudicator didn't uphold this complaint. She said that Creation was able to calculate points on individual transactions. Online payments would only get 2 per £1 spent. And Creation was issuing his statement around the 22nd of each month. It was usual for card account statement dates to vary. Mr L could change that date if he wanted to.

Mr L didn't agree with that. He said that Creation hadn't given us the right information. He said the credit card is run by the hotel group, and this is the third one he's had. He said he only used it for the reward points.

Mr L sent us a statement which set out the points he would receive. He told us that said that he would get 4 hotel group points for every £1 spent abroad. He said that Creation had added an extra provision later to say that he would only get 2 points for every £1 spent in the UK or online, but he said that he was entitled to 4 points for any overseas spending, even if it was online. He thought that was the right legal interpretation of these conditions.

Mr L then wrote again. He said that he was still being deprived of the right amount of points. He'd made another overseas transaction, and only been awarded 2 points per £1 spent even though that wasn't an online transaction.

Creation then said that it wouldn't change how it was calculating points to base this on monthly spend. It said that as the main benefit of the card is to earn points on each spend, it is assumed that the points are calculated per transaction and not monthly.

It also said that it wouldn't change the way that it awards points on foreign transactions. It said that isn't something it was able to honour as the points side of the agreement is managed by the hotel group and this is a business decision. It said that awarding him more points wouldn't be feasible, because it would need to be done manually each month, and it wouldn't be fair to other customers who weren't getting them.

Creation said that Mr L should only be receiving points as set out in the terms and conditions. And it said it could change those terms, but the customer can't. It said that if Mr L wasn't happy with the new terms he could cancel his card. But Creation didn't show us when any change may have happened, or confirm whether or not the terms had actually changed.

Our adjudicator then upheld this complaint. She said that the terms and conditions that she had seen didn't mention that online transactions would only earn 2 points rather than 4 points per £1 spent. So she said that any transactions which were done in a foreign currency should earn 4 points per £1 spent. She said that the terms clearly stated that points are earned per transaction, and for every £1 spent. So she wouldn't ask Creation to calculate Mr L's points on a monthly basis. A transaction of 99p didn't earn a point.

Our adjudicator said that Creation hadn't been able to show that the terms had changed. Unless it could provide evidence that it was initially made clear that online transactions couldn't be considered foreign transactions, or that there had been a change, Creation would need to recalculate Mr L's account balance to award him the right amount of points. And it would need to pay £150 to make up for the inconvenience caused.

Creation then said that it agreed with our adjudicator. It said that it would pay what she suggested, and recalculate Mr L's points. And it said that it was having discussions with its legal and marketing team about rewording its terms and conditions to make this clearer, to ensure the situation didn't repeat itself with other customers.

Mr L didn't agree. He said that he wanted to know if the recalculation of points for foreign transactions was a permanent fix, or if after this decision Creation would just start to calculate points on the basis of its rather different understanding of the terms and conditions.

Mr L also said that he wouldn't accept our adjudicator's findings on the rounding off of transactions and disallowing spending of under £1. He said that the hotel group was really responsible for that. And he'd had a card since 2009. He said that the hotel group was really the controlling body here, Creation was merely its agent. He said that the hotel group was contractually responsible for this.

Mr L also said that he'd never had any terms and conditions about the award of points, except what was set out on his statements. He wasn't even sure that Creation had the right to amend the points award system. He said that the position had been the same across different providers, and he thought that Creation had just inherited a pre-existing contractual position. And he said that statements from previous card providers showed that the points should be awarded on the basis of a monthly spend. He said that hadn't changed, there had been no new terms on this, so he should still be getting what he used to get.

Our adjudicator didn't change her mind. She said that Creation had acknowledged that its terms and conditions weren't clear, and it had agreed to make changes to them. And we could only deal with Mr L's complaint on this. We couldn't make Creation change its previous award for all customers.

Mr L said that he'd raised points that hadn't been fully dealt with. But our adjudicator didn't agree. She said that we aren't able to apply a permanent fix for this problem going forward. Creation was planning to change its terms and conditions about points. Mr L could complain about future allocations if he wished. And although other card providers had calculated points differently, our adjudicator didn't think that Creation had done anything wrong by allocating points per individual spend.

Mr L said that this made things clearer. He said that he thought the main contracting party in this case was the hotel group, not Creation. He said that the contractual relationship for the reward points started when he took out a card with a different provider. He said that the different behaviour of previous providers formed a contractual precedent. He didn't think that Creation could change that without the hotel group's agreement, and even if it did change now, he thought that Creation was contractually bound for previous spending.

Mr L said that he understood that Creation would be changing the terms. He said that until that happened he expected that the outcome of this case would continue (so that he would still get 4 points per £1 of foreign currency transaction, even if that transaction was done online).

Mr L also said that it was very unsatisfactory that our service only dealt with individual complaints, and he was surprised that we didn't have a responsibility to contact the Financial Conduct Authority when something that affected many customers was uncovered. He asked whether he should do that.

Our adjudicator said that we were satisfied that the complaint had been set up against the right business. Creation had liaised with the hotel group to provide responses to the complaint. And she said that our resolution was for the complaint raised, anything in future would have to be raised with Creation. She said that Mr L could tell the FCA about this issue if he wished to. This case was then passed to me for a final decision.

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've reached the same overall conclusion on this complaint as our adjudicator.

Mr L has queried whether this complaint should be set up against a different business. The hotel group that Mr L refers to is regulated as a financial business, but it's a credit broker, so it introduced Mr L to Creation. And Creation then offered him credit. It's Creation that provides the card account. The contract that Mr L has for this card account is with Creation. I think this complaint is set up against the right business.

Creation might not actually decide what the rewards scheme offers. It's suggested that it isn't in control of that. But I do think that it is responsible, as far as the relationship with Mr L goes, for how that scheme is administered.

Mr L states that he has had a similar card, provided by different providers, since 2009. He's also told us that the terms have changed over this time. There was apparently an improvement in the number of points he could accrue when the previous provider started to operate a reward card for this hotel chain.

I think that what Mr L has had is a series of separate, although perhaps largely similar, contracts with different providers. I don't think that it would be fair and reasonable for me to conclude that Creation is bound to follow what previous providers have done.

Mr L argues that Creation should award points on the basis of monthly spend, not individual transactions. I can't see anything in the terms of Mr L's card which requires this. What I have seen seems to me to be equally compatible, if not more, with calculating awards on the basis

of individual transactions. Previous providers may have been more generous, but I've explained I don't think I could reasonably make Creation do the same because of that. So I don't think it's unfair or unreasonable for Creation to work on the basis of individual transactions. I don't think it's promised Mr L that it's going to do anything different to that.

Mr L also argues that the date of his monthly statements fluctuates. It clearly does, to a modest extent. I know that Mr L says that other providers don't do this, and it causes him difficulty. But I'm sorry to have to say that just because other providers might stick more closely to one date, doesn't mean I can require Creation to do the same. I can see why Mr L doesn't think what Creation is doing is ideal. But I don't think it's unfair or unreasonable, so I don't think I can fairly tell Creation to change this. It has offered to amend his statement date, if he'd like. I think that's the right thing to do to resolve this part of Mr L's complaint.

Mr L also raises a question about what points he should be awarded for foreign transactions, including transactions which are done in a foreign currency, but done online. He says that the only terms he has ever seen about the points awards on his card are those set out on his statements. And he thinks those entitle him to 4 points per £1 of foreign currency transaction, even if that transaction was done online.

I think that the terms of Mr L's reward scheme are likely to be those set out on his statement. I say that because the only other things I've seen which could be terms, seem to be promotional materials which either set out the provisions in the same format or in less detail. I haven't seen any more detailed terms on the card's reward points system.

Those terms used to say that Mr L was entitled to
"double points when you spend at [the hotel chain's properties] within and outside of the UK, and also when you spend abroad"
and
"2 [hotel chain] Rewards Club points for every £1 spent on all other purchases in the UK"

I think that the more natural reading of this is that Creation will allocate 4 points per £1 of foreign currency transaction spending, even if that transaction was done online.

Mr L has been honest enough to point out that this then changed slightly. He said that the second statement he got from Creation said that he would earn
*"4 [hotel chain] Rewards Club points for every £1 spent abroad
4 [hotel chain] Rewards Club points for every £1 spent in any [hotel from the chain]
2 [hotel chain] Rewards Club points for every £1 spent on all other purchases in the UK and online"*

Mr L reads this in the same way as the previous text, as entitling him to 4 points per £1 of foreign currency transactions, whether online or not. Creation hasn't sent us statements which include this, but I've no reason to think that Mr L has misrepresented this text.

I think that Mr L's interpretation is a reasonable reading of the text here, and in the light of the previous version, and the fact that Creation hasn't been able to confirm that this was intended to change the terms of Mr L's account, I think that Mr L's is the better reading of this provision. So I think, on balance, that Creation did say to Mr L that it would award him 4 points per £1 of foreign currency transactions. For that reason, I think Creation should reassess all the foreign currency transactions Mr L has made, up to the date of my decision, to make sure it awarded that amount. Where it hasn't, it will need to make up the shortfall. It should also pay him £150 for the inconvenience that this complaint has caused him.

Mr L also wanted us to fix this issue going forward, and he wanted us to fix it for other customers of Creation too. But I can't do either of those things. I'll explain why not.

Our service is an informal dispute resolution service. It doesn't have the powers to make awards which affect all a business's customers. Mr L has said he may raise this case with the regulator, and he's welcome to do so.

Similarly, I don't have the power to tell Creation how to deal with Mr L's card, going forward. I can only look at the issues in a complaint that Mr L has raised with Creation. If no changes are made to Mr L's terms and conditions, and he thinks the points still fall short, then he can raise this with Creation again.

But what Creation says suggests that the way that Mr L, and I, have interpreted the terms of the reward scheme isn't what it meant. It only meant to give 2 points for any online spend. And it's told us that it's going to amend those terms in future. Mr L, on the other hand, has said that he's not sure that Creation actually has the power to make changes to those terms.

I don't have the information to make any decision on whether Creation can or can't make changes to the reward scheme terms. And I've nothing to suggest that it has tried to do this yet. So I make no finding on this point.

my final decision

My final decision is that Creation Financial Services Limited must recalculate Mr L's allocation of reward points, to ensure that he has been granted 4 points per £1 of spending for all the foreign currency transactions he has made up to the date of this decision. It must also pay Mr L £150 for the inconvenience that this complaint has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 16 February 2019.

Esther Absalom-Gough
ombudsman