

NOTICE OF UNDERTAKING

PPRO Financial Limited

Summary

PPRO Financial Limited (PPRO) has agreed to make changes to terms in its consumer terms and conditions, dated April 2016. PPRO uses these terms and conditions in contracts with its prepaid card customers (VIABUY Prepaid MasterCard).

PPRO has given us an undertaking, under the Consumer Rights Act 2015 (the CRA), in relation to terms in its contracts relating to:

- Its charging arrangements;
- The cooling off period;
- The consumer's right to terminate the agreement;
- The redemption fee;
- The dormancy fee;
- The auto-renewal of the contract; and
- The jurisdiction clause.

We summarise our concerns and the action the firm has taken below.

Why did we have concerns?

The FCA received a referral from the Dutch regulator (Autoriteit Financiële Markten - The Authority for Financial Markets – AFM) under the Consumer Protection Cooperation directive¹, regarding complaints it had received from consumers. Pursuant to this the FCA conducted a review of PPRO's terms and conditions and its marketing practices.

We communicated a number of concerns to the firm relating to:

- The way in which the contract was drafted, which meant that consumers may not benefit from the statutory 14 day cooling off period;
- The transparency and non-refundability of the card issuing fee;
- The fairness and transparency of the redemption fee;
- The fairness and transparency of the dormancy fee;
- The transparency of the auto-renewal term; and
- The fairness of the firm's jurisdiction clause, which in conferring exclusive jurisdiction on the courts of England and Wales, obliges a consumer not

¹ Regulation 2006/2004

resident in the UK to submit to the jurisdiction of a court different to their home state.

What has the firm done?

PPRO has agreed to make the following changes to its terms and conditions:

- To clarify when the contract commences so that it is clear that it starts when the customer indicates acceptance of the terms and conditions on the firm's website;
- To restructure its charging arrangement, by reducing the issuing fee and annual fee, and making these payable from the start of the contract;
- To make the issuing fee more transparent;
- To make the issuing fee refundable within the cooling off period, even if the consumer has used the card;
- To clarify the duration of the contract and the consumer's right to cancel;
- To improve the transparency of the term relating to the dormancy fee, and committed to contacting consumers prior to this taking effect;
- To improve the transparency of the term relating to the auto-renewal of the contract; and
- To amend the jurisdiction clause so that consumers are aware that they may take action against the firm in the jurisdiction in which they are domiciled.

The firm has also informed the FCA that it will be increasing its cooling off period from 14 to 21 days.

What does this mean for consumers?

The changes that PPRO has committed to making should ensure that consumers are aware of the price of the product and relevant charges. They have enhanced cancellation rights beyond the legal minimum, so that if consumers are not happy with the product they can cancel, either with no charge at all during the first 21 days of the contract, or with a proportionate refund of their annual fee if they choose to cancel subsequently. It should be clearer to consumers what their rights and obligations are under the contract, so that they know what they would be entering into at the start of the contract, and can shop around more effectively.

PPRO has informed us that new terms will be effective immediately for consumers signing up for the prepaid card from 1 October 2017 onwards.

PPRO has told us it has 1.17 million existing consumers who will be affected by the changes, and that it will email all these consumers on 30 September 2017 to provide two months' notice of the changes. For these consumers, the changes will



be effective from 1 December 2017. Consumers wishing to terminate their contract as a result of the changes to the terms and conditions will be able to do so, penalty free.

Until the new terms are in use, the firm has agreed that it will apply the existing terms fairly.

PPRO cooperated fully with the FCA in resolving our concerns.

Undertaking from PPRO Financial Limited

PPRO Financial Limited (PPRO) has given this undertaking to the FCA under paragraph 6 of Schedule 3 to the Consumer Rights Act 2015 (the CRA) in respect of the VIABUY Prepaid MasterCard terms and conditions (2016).

Applying the CRA

Under section 62(4) of the CRA, a term is unfair if:

"...contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer."

Section 68(1) of the CRA states that firms are required to *"ensure that a written term of a consumer contract ... is transparent."* Under section 68(2) of the CRA, a term is transparent if *"... it is expressed in plain and intelligible language and it is legible."*

PPRO Terms and Conditions

PPRO has committed to making changes to its terms and conditions as follows. All references to terms relate to the 2016 contract.

Restriction on cooling off period

Term 1.1 states *'...By submitting your order for a prepaid product you indicate to us that you have accepted and agree to these terms and conditions.'*

Term 9.1 states *'You are entitled to a 14 day 'cooling-off' period from the date that you accept this Agreement. Should you wish to cancel your prepaid product and this agreement please return your card together with the written letter of cancellation to Customer Services at the Address specified at Appendix 1 unsigned and unused within 14 days of your acceptance of this agreement and a full refund of any fees paid to date will be made.'*

Term 9.2 states *'After 14 days from the date that You accept this Agreement all fees and charges will be non-refundable...'*

The FCA concern was that Term 1.1, read in conjunction with Terms 9.1 and 9.2, appeared to limit the consumer's right to cancel the card within the statutory 14 day cooling off period. This was because, amongst other things, it was not clear when the contract started.

In order to address the FCA's concern, PPRO will clarify that the contract commences when the consumer accepts to be bound by the terms and conditions on the website.

Clarity of duration of contract

Term C of Appendix 1 states *'This Agreement shall be deemed to have come into effect on the Date of Your acceptance of this Agreement and shall last for a period of 3 years. If the Agreement is not terminated according to the Terms and Conditions before the end of this period, the Agreement will be automatically renewed for 3 years.'*

However, under the 'service' section of the Viabuy website, it is stated *'The contract initially runs for three years. After this period the card can be cancelled on a yearly basis.'*

The FCA was concerned that the duration of the contract was not sufficiently transparent. This was because it was not clear whether the contract was of indefinite duration or a fixed term of three years. It was also not clear whether the contract would be auto-renewed for a further three year fixed period, or on an annual basis.

PPRO will improve the language of Appendix 1 to ensure that the duration of the contract is clear; that is, it is for an initial period of three years and is then auto-renewed on an annual basis thereafter.

Non-refundability of card issuing fee

Paragraph 9.2 states as follows: *'after 14 days from the date that [the consumer accepts] this Agreement, all fees and charges will be non-refundable apart from those currently applicable fees set out in Appendix 1 that are levied on a regular ongoing basis and paid in advance, which shall be reimbursed proportionally on termination of the Agreement.'*

PPRO charges a card issuing fee, which covers the setting up costs of the card. There is no annual fee for the first three years of the contract, but it is charged annually after the first three years.

The FCA considered that all or part of the card issuing fee was a pre-payment for the initial three year duration of the contract. The FCA was concerned that, should consumers find that the product no longer suited them, they would be unable to receive a pro rata refund of the card issuing fee. The FCA also did not consider the term to be in plain and intelligible language, insofar as it was not clear as to what fees were and were not refundable.

PPRO will change its fee structure, so that it charges a lower card issuing fee and then a separate annual fee which is payable from year 1 rather than year 4. The annual fee will be refundable on a pro rata basis, should the consumer wish to cancel the contract.

In addition, the card issuing fee will be fully refundable during the initial 21 day cooling off period, whether or not the consumer has used the card.

PPRO will also ensure that its fees and charges, and whether they are refundable or not, are set out clearly on their website and in their terms and conditions.

The redemption fee

PPRO charges a redemption fee of 10 euros for redemptions within the first 12 months of the agreement and a refund fee of 25 euros should the consumer wish to end the contract early (and still have unused funds on their card), as set out in Appendix 1 (paragraph A) to the contract.

The FCA's concerns regarding the redemption fee were principally in relation to PPRO's compliance with the Electronic Money Regulations 2011. This was because such fees are **only** chargeable under terms in contracts which have a specified end date. The FCA was concerned that the duration of the contract was not clear, as noted above, and that therefore PPRO did not have the right to charge the fee.

PPRO has agreed to clarify the duration of the contract in its terms and conditions, as set out above.

The dormancy fee

PPRO charge 9.95 euros per month, if there is no load or spend transaction for a 12 month period.

The FCA was concerned that the dormancy fee was not sufficiently transparent to consumers, in that it was not clear in what circumstances it would apply and when.

PPRO will clarify the language in relation to the dormancy fee in its terms and conditions and also make specific reference to it in the fee summary section of the VIABUY website.

It will also send consumers an email, should their accounts be inactive for 11 months, to remind them that they will start to incur a monthly charge should they not use their account.

The auto-renewal term

Paragraph C ('Term') of Appendix 1 to the 2016 contract states: *'If the Agreement is not terminated according to the Terms and Conditions before the end of this period, the Agreement will be automatically renewed for 3 years'*.

Term 8.3 of the 2016 contract states: *'Unless We or You terminate the Agreement prior to the end of the Term, these Terms and Conditions will automatically renew and be applicable for the duration of the renewed Term'*.

The FCA was concerned that there was a lack of clarity in the contract as to how the term relating to automatic renewal of the contract was meant to operate, particularly in light of the unclear duration of the contract. The FCA considered that the combined effect of the duration and auto-renewal wording was that there was a risk either that consumers might not appreciate that their contract would be automatically renewed or that they might not understand for what duration the contract had been renewed for.

In addition to the clarifications on duration of the contract outlined above, PPRO has agreed to improve the language of the term relating to automatic renewal of the contract, such that it is clearer that the contract should be terminated by consumers if they do not wish the contract to continue after the first three years.

The jurisdiction clause

Term 17.1 states as follows: *'The Agreement will be governed by English law, subject to the cases where according to the relevant European Union legislation a given issue is governed by the laws of another country. You agree to submit to the exclusive jurisdiction of the courts of England to resolve any legal matter arising from the Agreement, subject to the cases where according to the relevant European Union legislation a given matter can be resolved by the courts of another country. [...]*

The FCA considered that PPRO's jurisdiction clause was invalid. In our view the natural reading of the term left consumers under the impression they were obliged to take legal action in England & Wales. This is contrary to the Brussels I regulation², under which consumers are free to bring proceedings for any matter under a consumer contract either in the UK or their home member state. Further, proceedings in relation to consumer contracts may only be brought against consumers in their home member state. PPRO has agreed to amend the term so

² Regulation 1215/2012

that it makes clear that consumers are free to take action against PPRO in the jurisdiction in which they are domiciled.

Legal Information

As a regulator, we, the Financial Conduct Authority (FCA), can challenge firms using terms that we view as not being fair and/or transparent within the meaning of Part 2 of the Consumer Rights Act 2015 (CRA) under Part 2 of the CRA. We review contact terms that we come across in our supervision of firms, which includes terms referred to us by consumers, other enforcement bodies and consumer organisations. We may seek an injunction under paragraph 1 of Schedule 3 CRA to prevent the use of an unfair term, or accept an undertaking in lieu, which is what we have done in this case.

We have a duty under the CRA to notify the Competition and Markets Authority (CMA) of the undertakings we receive. The CMA has a duty to publish details of these undertakings, which it posts on www.gov.uk. We also publish the undertakings on our website. When publishing the undertaking we name the firm and identify the section(s) of the CRA to which the undertaking relates.

Even if firms have not given an undertaking or been subject to a court decision under the CRA, they should remain alert to undertakings or court decisions concerning other firms as part of their risk management. These will be of potential value in showing the likely attitude of the courts, the FCA, the CMA or other enforcement bodies to similar terms or terms with a similar effect.

Ultimately only a court can determine the fairness or transparency of a term under the CRA, and therefore, we do not recommend terms that have been revised by a firm as being fair or transparent. We cannot approve terms for the purposes of the CRA; it is for firms to assess the fairness and transparency of their terms and conditions under the CRA and in the context of the product or service in question.

It is important to bear in mind that wording that is fair or transparent in one agreement is not necessarily fair or transparent in another. Where we accept an undertaking given to us from a firm to revise a term, this means that, on the evidence currently available to us, we consider the term to be improved enough that further regulatory action is not required.

Other information

PPRO cooperated fully with the FCA in resolving our concerns.



Timing: Consumers will be moved onto new terms as of 1 December 2017, following the 2 months' statutory notice required by the Payment Services Regulations 2009, to be given on 30 September.