

The complaint

A company which I'll call 'N' complains that GPUK LLP (trading as Global Payments) unfairly applied charges to their account.

The complaint is brought on N's behalf by one of their directors, Mr S.

Mr S is represented by Mr O, but for ease, I'll refer to Mr S throughout the decision.

What happened

N had an agreement with GPUK for it to provide the company with merchant services from June 2021.

N told us:

- In November 2022, December 2022, and January 2023, GPUK charged them £6,216 because their PCI compliance was overdue.
- They had been mis-sold as GPUK's sales agent didn't tell them that the Payment Card Industry ('PCI') compliance needed to be completed on an annual basis.
- When onboarding them to GPUK, the sales agent had offered to complete the PCI compliance for them, which they'd declined. He said there would be a charge if this wasn't completed but didn't say how much.
- They'd contacted GPUK in February 2023 to make a complaint, after identifying the charges, but GPUK didn't speak to them and just made an assumption. They believed there had been failings by GPUK and the charges were disproportionate compared to other merchant service companies.

GPUK told us:

- It is a customer's responsibility to ensure their PCI compliance is completed on time. It will reminder customer where possible, but this is a best endeavours basis.
- It had sent email reminders about the compliance expiry to N at the email address held on file from July 2022 – before their PCI compliance had expired and a further seven reminder emails between August and December 2022.
- The service agreement and terms of business explain the importance of PCI compliance, and that customers need to complete this to avoid charges. It charged fees in this way as its customers needed to be aware of the importance of maintaining this compliance.
- The charges had been applied correctly and hadn't done anything wrong, so it

wouldn't be refunding the full amount of charges N had requested. However, as a gesture of goodwill it had offered to refund the charges for December 2022 and January 2023 which amounted to £1,583.40.

Our investigator thought GPUK's offer was fair. He thought GPUK had provided details about the PCI compliance charges in the documents, and they were also highlighted in the declaration signed by Mr S. He was also satisfied that GPUK had sent reminders to N about the PCI compliance and noted that Mr S said he had received these. He said that the charges were applied monthly in arrears and were payable if a merchant wasn't compliant by the first of the month. So, he thought GPUK had done enough to put things right.

N didn't agree. They said their complaint was that they were mis-sold the agreement by GPUK as they weren't aware of the costs of not being PCI compliant. They thought this would be around £5 per month not £0.15 per transaction. And because of this, being PCI compliant wasn't a high priority. They also felt that being charged in arrears was a failing on GPUK's behalf and unfair so it should refund them the charges they incurred from December and January immediately, rather than offer this as a gesture of goodwill. So, they requested that November's charges also be refunded to settle the complaint.

GPUK didn't accept this request, and as an agreement couldn't be reached the case has been passed to me to decide.

What I've decided – and why

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

Having done so, I'm satisfied that GPUK's offer to N is reasonable.

N told us that their main complaint is that the contract was mis-sold by GPUK as it didn't make them aware of how important it was due to the costs involved. But I don't agree. I've seen a copy of the agreement which Mr S signed on N's behalf. At the start of the document, it says that there are four documents which form the basis of the agreement. I've looked at the documents provided to N by GPUK, and I can see that PCI compliance is included prominently within all of them - including on the declaration page, just above the signature box of the main agreement. So, I'm satisfied that GPUK did make it clear that PCI compliance was extremely important.

Furthermore, on the declaration page it requires customers to declare that they have read and understood the four documents, which include the 'Know the Risks' leaflet. It then refers again to PCI compliance and says that further information on PCI compliance is found in this leaflet. I've looked at the leaflet and PCI compliance is clearly defined and within the dedicated section it explains how and when the charges will be applied and that the cost for non-compliance is £0.15 per transaction, for each merchant ID. So, I think N ought reasonably to have been aware of the importance of PCI compliance and the costs involved with non-compliance.

N told us that they weren't made aware that the PCI compliance needed to be undertaken on an annual basis. But I'm not persuaded that's the case. In several of the four documents, including the 'Know the Risks' and 'Merchant Operating Instructions' it's clear that there are different requirements and levels of compliance - depending on how many transactions are undertaken per year. However, *all* of the levels require an annual audit or, as in N's case, an annual self-assessment questionnaire. I think it's also worth noting here that GPUK also provide contact details for their support team, should a customer be unclear on what they need to do and a link to the PCI compliance main website. So, even if I accepted that N

hadn't been given all the information by GPUK's sales agent, I think the terms do make it clear that the PCI compliance was required on an annual basis and how much the costs would be. And if N was unsure, they could have called GPUK's dedicated team to check.

N told us that it's unfair that GPUK applies the PCI non-compliance charges per transaction and monthly in arrears. But that's a commercial decision that GPUK is able to make, and not one that our service would interfere with unless it was treating its customers unfairly. I'm satisfied that GPUK are clear on how much, and when these charges will be applied, and that by paying it in arrears this gives customers the opportunity to cover those costs – rather than simply taking them without warning. So, I don't think GPUK has behaved unreasonably here.

I recognise that Mr S will be disappointed with my decision as he wanted November's charges refunded, as well as December 2022 and January 2023. However, based on what I've seen I think GPUK did make N aware of the importance of PCI compliance, the costs involved with non-compliance and sent reminders to N about the deadlines to provide the compliance declaration. So, I don't think it did anything wrong and therefore I think its offer to refund the PCI non-compliance charges it applied to N's account for December 2022 and January 2023 is fair.

My final decision

GPUK LLP has already made an offer to refund the PCI non-compliance charges it applied to N's account for December 2022 and January 2023 to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that GPUK LLP should refund the charges applied to N's account in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 1 April 2024.

Jenny Lomax
Ombudsman