

## **The complaint**

I has complained Paymentsense Limited, trading as Dojo, is requiring them to pay a card refund of £5,000 that was made fraudulently.

## **What happened**

Mr B runs a company, called I, and uses a card processing machine provided by Dojo.

In March 2023, a couple of men came into his retail outlet to buy some goods. The transaction got refused and a refund got processed for £5,000 to one of the individual's cards. This was done by the individual inputting the correct supervisor code.

Mr B complained to Dojo on I's behalf as he didn't believe I should have to repay this money to Dojo. Dojo believed they'd acted in accordance with their terms and conditions which required I to be responsible for all security details, including the supervisor code needed to process a refund. They continued to hold I liable for the funds.

Mr B brought I's complaint to the ombudsman service.

Our investigator reviewed the detailed technical information provided by Dojo, as well as CCTV and other information shared by Mr B. She believed that whilst the transaction had been correctly executed in line with processing requirements, there was nothing to indicate I had consented to the transaction. Under the PSRs, she asked Dojo to write off the debt relating to the £5,000 refund and pay Mr B for other transactions that were initially offset against this debt along with 8% simple interest and £100 for the inconvenience.

I accepted this outcome. Dojo has asked an ombudsman to review I's complaint.

## **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've reached the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The regulations which are relevant to I's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves. Authorisation is made up of two concepts: execution and consent.

To help me come to a decision, I've reviewed the detailed evidence Dojo provided including copies of phone calls and transaction data. I've also reviewed the testimony provided by Mr B to support I's complaint.

I won't go through all the detail provided already as I'm satisfied both parties are aware of the background and the evidence. Our investigator provided two detailed views dated 11 January and 16 February and I've not seen anything to suggest either party disputes the facts.

Overall I don't believe I authorised the refund of £5,000 processed in March 2023. I say this because:

- A couple of days before this refund was processed, a smaller refund of £15 was processed by Mr B using his supervisor code. This is the code that Mr B had set up when initiating the payment terminal ensuring the code was changed from its default setting.
- It's worth saying up front I've seen no evidence to show Dojo specifically warned I against using the supervisor code in use in March 2023. I see that Mr B has noted in his subsequent correspondence with our service this may not have been the best selection of code. However there's nothing to indicate this choice of code would lead me to believe I could be seen as acting in a grossly negligent manner.
- I also believe it's feasible that when the £15 refund was processed a couple of days prior to the fraud, this could have been when fraudsters noted the code in use to pass to others. This allowed its use in this fraud a couple of days later. Or alternatively as it was such a simple set up of four digits, this could have just been a lucky guess. I'm aware that the numbers Mr B chose used to be the default codes for other card processing machines. Unfortunately fraudsters trying to get to know supervisor codes and using them to process card refunds is not an unknown fraud.
- The technical evidence supports the valid execution of the payment transaction with the appropriate processes being followed. However there is no indication that I consented to this transaction. I didn't have a history of processing high-value refunds and I believe if Mr B had known what was going on, he'd have taken action to stop this. The CCTV evidence shows, as all parties recognise, that Mr B was diverted from paying close attention by the other customer.

Dojo seemed to accept early on that I was targeted by individuals carrying out a fraudulent refund but didn't believe they should be liable as I may have breached their terms and conditions. I'll just remind Dojo that the PSRs trump terms and conditions generally in these types of cases. However I have considered the points they have made that I may have been insecure with the supervisor code used to process the refund successfully.

As noted above, there are different scenarios which could explain how the fraudsters were able to know the correct supervisor code. Dojo has provided no evidence, as would be required under the PSRs, that I have been grossly negligent, which as they'll know is a high bar over and above carelessness.

Based on the evidence, I'm satisfied I should not be liable for the £5,000 refund processed in March 2023.

### **Putting things right**

Dojo has discussed taking action against I to secure payment against the debt they believed

was owed because of the processing of a fraudulent refund. They will need to ensure this debt is now written off as I don't believe they can require I to pay this.

I believe Dojo withheld funds of the successful transactions processed by I on the day of the fraud. These will now have to be reimbursed to I, along with 8% simple interest from that date.

I'm also asking Dojo to pay £100 to I for the inconvenience caused.

### **My final decision**

For the reasons given, my final decision is to instruct Paymentsense Limited, trading as Dojo, to:

- Write off the debt created by the fraudulent refund of £5,000 in March 2023;
- Stop asking I to make any payment towards that debt and ensure that no debt collector pursues them for collection;
- Refund monies due to I for the properly processed sales in March 2023;
- Add 8% simple interest a year to that amount from March 2023 to the date of settlement; and
- Pay £100 to I.

Under the rules of the Financial Ombudsman Service, I'm required to ask I to accept or reject my decision before 16 May 2024.

Sandra Quinn  
**Ombudsman**