

The complaint

A company, which I'll refer to as W, complains about how Paymentsense Limited (Paymentsense) dealt with two refunds that were obtained from it by a customer that W believes was a fraudster.

In bringing this complaint, W is represented by its director, who I'll refer to as Mr L

What happened

The background to the complaint is set out in my provisional decision dated 13 June 2024 which forms part of this decision.

I provisionally concluded that W's complaint should not be upheld.

In summary, I said:

"Mr L has made clear that although he's brought this complaint to our service against the background of the two chargebacks that were raised against W, its complaint against Paymentsense does not concern them directly. Rather, the main focus, concerns the refunds that were given to the fraudster.

In any case, alongside Paymentsense, I note W has complained separately about Clover's responsibility for the chargebacks themselves. That complaint is being reviewed by one of my ombudsman colleagues. So, I do not propose to comment further on it. Instead, I've focused on why separately, W thinks Paymentsense is responsible for the alleged financial loss that W has incurred as a result of the fraud that took place in April 2023.

I appreciate the refunds were done not knowing that the customer to whom they were being granted wasn't the genuine cardholder.

However, W hasn't challenged Paymentsense's account of the reasons W granted the refunds. More particularly, that they were made as a gesture of goodwill because the fraudulent customer had changed their mind about the goods that had been purchased.

It seems reasonable to assume also that since one of the refunds was for the total cost of the goods - £162, that it was returned to W and could therefore, in all likelihood be sold on. The second refund was partial – for £75 against the price paid which was £315. So, my assumption is that this more expensive product was not returned.

But in relation to those refunds, for me to require Paymentsense to compensate W for them, I'd need to find they had made an error or acted unreasonably. But in the circumstances of this case, I don't presently think they did. I'll explain why.

The card machine's functionality

Mr L has said that he was not made aware beforehand that a customer could key in card details into the machines provided by Paymentsense. And more to the point, that he'd been told by Paymentsense's representative that the terminal could not be accessed by manually keying in card information. Whereas, he said contrary to his expectation, the machine had been provided to W without the relevant functionality being disabled.

Paymentsense say they have no records of the conversation Mr L said took place with their representative. In effect, neither party has a written record of such discussions. But Paymentsense doesn't deny the adjustment to the card machine that Mr L described is indeed possible. My understanding of their position is that, for this to happen, Mr L would have needed first to contact their customer services department to implement the change which he did not.

On balance, it seems likely there were discussions between Mr L and Paymentsense's representative about the functionality and settings on the card machine. But I can't be certain there were any undertakings given to Mr L that the particular functionality he described would have been disabled before it was delivered.

That being said, it's my understanding that the transactions were conducted in store. So, it seems to me that if the fraudster was using the machine in order to pay for the goods in ways contrary to W's expectation of how it should be used, it wouldn't have been unreasonable for W to call this into question and declined proceeding further with the transactions.

But more to the point, I'm afraid W hasn't persuaded me that the reason it is out of pocket by the refunds is because of the card machine setting rather than its decision, as a gesture of goodwill to grant the fraudster the refunds it did.

In any case, Paymentsense have granted refunds and credits to W. In light of this, I've thought about whether W is truly out of pocket by the refunded amounts granted to the fraudster. And I'm not persuaded it is.

I say this because my understanding is that the refunds granted by W to the fraudster amounted overall to £237 (£162 and £75). Whereas refunds and credits Paymentsense have paid to W is equivalent to £244.58.

Paymentsense's decision to decline reversal of the transaction

According to Paymentsense, card reversals on behalf of a merchant can only be done before the transaction is completed and settled. Whereas Paymentsense weren't made aware of an issue with the transactions in question until the 18th of May 2023 long after the event.

Paymentsense believe Mr L is confusing the 90 day window with the timeframe allowed for chargebacks.

I have no basis for disputing Paymentsense's testimony in this regard and Mr L has not provided me with any evidence to persuade me they're wrong.

In summary, for the reasons I've already explained, I don't at present think I can reasonably hold Paymentsense responsible for the refunds W gave to the fraudster. And in any event having noted, as a goodwill gesture, the refunds and credits Paymentsense have granted to W (£244.58) set against the refunds W gave to the fraudster (£237) I'm not persuaded W is out of pocket".

W did not respond to my provisional decision and nor did Paymentsense.

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, and since there is no new evidence or arguments for me to consider that might have led me to come to a different conclusion to that which I set out in my provisional decision, I believe my provisional decision still stands. In other words, my final decision is the same as my provisional decision

My final decision

My final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 29 July 2024.

Asher Gordon
Ombudsman