

## **The complaint**

Mr L is a director of a limited company which I'll call 'W'. He complains on the company's behalf about the service received from First Data Europe Limited (trading as Clover) when defending W against a chargeback.

## **What happened**

For ease of understanding I've set out list of the parties involved in the complaint as follows:

- First Data – The merchant services provider responsible for processing transactions on W's behalf.
- P – The service provider of the card terminal for 'card present' transactions working on First Data 's behalf to fulfil its contractual obligations to W.

Mr L told us:

- In November 2020, W signed an agreement with First Data to provide it with merchant banking services for 'Card Present' ('CP') transactions. This meant W would hire a card terminal from First Data. This part of the contract was fulfilled on First Data's behalf by P.
- In April 2023, W took two card payments for £162 and £315. Shortly after, two refunds were requested for £162 and £75 – but to different cards than had been used for the purchases originally.
- In May 2023, W was subject to two chargeback claims for the original £162 and £315 – despite having already refunded the £162 and £75. He contacted First Data to challenge these chargebacks because for the payments in question, W's staff had been given an authorisation code on the card terminal.
- He'd been told when agreeing to the contract for W, that the terminal couldn't be manually overridden (which he understood was the reason for the chargebacks), so he felt the goods had only been released because authorisation had been given.
- First Data had behaved unreasonably as it said it couldn't confirm what was said when Mr L had signed the agreement. First Data also said the authorisation code only confirmed that there were funds in the account from where the payment was being made and the card hadn't been blocked – not that the person using the card was the rightful owner. However, he thought it was W's customer who had committed fraud.
- He'd contacted the police and Action Fraud, but he wanted First Data to refund the chargeback payments.

First Data told us:

- It had sent letters to W on 5 May 2023 saying that two chargebacks had been raised against the company for £162 and £315.
- The letters said that the card holder disputed the transactions from April 2023 and W needed to supply the terminal receipts (amongst other things) within 10 days so that it could review the evidence in line with the scheme rules.
- It believed the cards used for the original purchases of £162 and £315 were fake cloned cards.

Our investigator didn't recommend the complaint be upheld. She didn't agree that First Data had acted unfairly as the merchant terms and conditions made it clear about the risks of 'Card Not Present' ('CNP') transactions. She also said that based on this, even if W had received the letters from First Data, it wouldn't have been able to defend the chargeback. She acknowledged that W had taken the payments in good faith, however she didn't think First Data was responsible for the chargebacks being successful.

Mr L didn't agree and asked for an ombudsman to review his complaint. He said that for these transactions the bank had requested a signature to allow the payments to be debited. So, W's staff had checked the signature made by the customer at the time of the purchases to the signature on the card - which was present at the time of the transaction - and these matched. The staff then confirmed this on the terminal and was given a specific code - which was also printed on the terminal receipt.

As an agreement couldn't be reached, the case was passed to me to decide.

I issued my first provisional decision on 6 August 2024. In summary I said:

- I thought First Data should have done more to defend W. Although First Data said it believed the cards used for the £162 and £315 purchases were fake cloned cards, I'd seen that W sent First Data the signed authorisation slips from the purchases, but I couldn't see that First Data sent this to the card providers to confirm if the signatures matched that of the card holder. By not doing so, I didn't think First Data had treated W fairly, and had prevented the company the opportunity to defend itself against the chargeback claim – given that these were CP rather than CNP transactions.
- W had provided us copies of the signed card machine receipts which it said were verified in person using the signature on the back of the card which was provided for the purchases. The receipts also confirmed the authorisation codes which were received at the time. W told us that this evidence, along with other supporting documentation was supplied to First Data once it was contacted about the chargebacks, and this was well within the timescales requested. It also said that it had repeatedly asked First Data for information about the chargeback and why this had been debited, however it hadn't received a response.
- Despite repeated requests, First Data didn't respond to my request for information either so I couldn't say that it had followed its process or attempted to defend W appropriately. Therefore, as I couldn't say First Data had acted fairly, I recommended it refunded W the £315 and £162 and pay £100 compensation for the poor service it had provided.

W didn't respond to say whether or not it accepted the provisional decision or had anything further to add. However, First Data responded to say that:

- It had acted correctly and in line with the scheme chargeback rules as it had sent letters to W to advise of the chargebacks and hadn't seen any compelling evidence from the company to defend the chargebacks.
- One of its agents had spoken to W in May 2023 and explained the risks of manually keying in card details into a terminal – rather than inputting the card – even in a 'face to face' transaction.
- As W had keyed in the details into the terminal, rather than using the chip, the security features of the card couldn't be verified and therefore under the scheme rules, it could not defend W against the CP Fraud reason code which was raised for the chargeback.
- The operating manual provided to W explains that a merchant should never key in a card number into a terminal if the card and cardholder are present as this could result in a chargeback.

I issued a second provisional decision on 22 August 2024. I said the following:

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 now of the opinion that even with the evidence which had been sent by W to First Data, First Data wouldn't have been able to defend the company against the chargeback claim which had been made against it. However, I still think that First Data has provided poor service to W and therefore I think it should pay £100 for the inconvenience caused.

It's not disputed by either party that W manually entered the card details into the terminal, rather than using the chip and pin. However, based on what I've seen I don't think that W understood the full impact of entering the details manually, and although it was possible for a chargeback to be raised against it, it appears it thought that the authorisation and signed terminal slips would be a sufficient defence – which unfortunately First Data has confirmed wasn't the case here.

As I explained in my first provisional decision, First Data doesn't decide the outcome of a chargeback against a merchant – that's the decision of the cardholders bank. First Data can only attempt to defend W in line with the scheme rules, and in this case, it has now explained that it couldn't defend W because W had manually keyed in the details from a cloned card – and therefore the authorisation and signatures evidence would be irrelevant against a fraud chargeback claim. So, I can't say that First Data was wrong to debit W's account for the successful chargebacks made against the company in line with the scheme rules.

I recognise that Mr L says he was assured when taking out the agreement with First Data that the terminal it was provided with couldn't be manually overridden. However, I haven't seen any evidence that's the case but, in any event, I'm not persuaded that makes a difference here. I say that because the operating manual says that there is a risk where payments are manually keyed in, and if Mr L didn't want W's staff to manually key in details, then he could also have requested that they not do so. In this case, it appears that W's staff made a conscious decision to accept the card payment in this way, and it's unclear why if this wasn't expected to be an option for the company that the staff would attempt to do so. Therefore, I can't fairly hold First Data responsible for W's staff manually entering the card details into the terminal.

I am sorry to disappoint Mr L, particularly after indicating in my first provisional decision that I intended to uphold W's complaint. But overall, I think that First Data has now provided sufficient evidence to show that it applied the chargebacks to W fairly and reasonably. Subject to anything further W might provide that causes me to change my mind, I no longer intend to direct First Data to refund the chargebacks debited to W's account. However, I don't think that First Data fairly or promptly responded to W's enquiries and challenges about the chargebacks, so I think it should pay £100 compensation for the inconvenience caused.

I invited Mr L and First Data to give me any more evidence and information they wanted me to consider before issuing my final decision. First Data accepted the decision and had nothing further to say, other than it wasn't recommended that W allow cardholders to key in their details due to the risk of fraud. Mr L disagreed with my decision. He said in summary:

- That he oversaw the transaction and W's staff didn't key in any information, the card holder appeared to input the card and key in the information.
- He'd spoken to First Data about it preventing the terminal being keyed and he'd been given conflicting information on four occasions about this. However, First Data had now amended the terminal so it couldn't be manually keyed – but this should have been done before it was sent out.
- He was fully aware of the terms and conditions and consequences of keyed transactions and the risks which is why W doesn't allow CNP or phone payments. He takes these matters seriously and hasn't previously incurred a chargeback.
- He'd complied with all requests from First Data, but it had continued to ignore his complaint and was focused on negating its liability. He didn't think it was fair that he was liable for losses caused by a cloned card – particularly as the card wasn't suspended and authorisation codes were issued.
- He had done nothing wrong, but his business had lost £1,191 as a result of the chargeback's, refunds, and stock, in addition to the time he'd spent dealing with the matter.

### **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.

I acknowledge Mr L's comments about the losses incurred to W and that he hadn't done anything wrong, and had done as much as he could to prevent the company being subjected to fraudulent transactions. It wasn't clear from the evidence provided initially by the parties how the card machine was keyed and I'm sorry that Mr L felt the provisional decision implied that W was responsible for the loss. I don't think that W is responsible for the losses it has incurred, however I also don't think that First Data is responsible for the losses caused to W by the fraudster's actions.

I'm sorry that Mr L has had to contact us in these circumstances, and I recognise the impact the fraud has both financially and emotionally. However, I haven't seen any evidence that Mr L was told by First Data when he took out the agreement that it could restrict W's terminal from being keyed by a third party. Mr L has provided emails from First Data showing that he was given conflicting information about this, however these are all after the chargeback took

place. And I have taken the service provided by First Data here into consideration when making my award for the inconvenience caused.

Mr L says that he complied with all First Data's information requests to defend the chargeback, but it was only interested in removing its own liability. I'm satisfied that Mr L did provide First Data with the information it requested, however unfortunately that doesn't make a difference in this case. As I explained in my provisional decision, First Data doesn't operate the chargeback scheme, or decide if a chargeback is successful – it can only look to defend a merchant in line with the scheme rules. In this case, it wasn't able to defend W as the purchases had been made from a cloned card – therefore the legitimate cardholder had also been subjected to the fraud and the chargeback would be valid.

I recognise that Mr L says it's not fair W has been held liable for the losses caused by the fraudster, particularly as the card wasn't reported stolen and the company received an authorisation code. However, I can't say that it's fair to hold First Data responsible for W's losses either and the terms of W's agreement are clear that an authorisation code only confirms that the card used hasn't been registered as lost or stolen at that time, and there are sufficient funds in the account to make the payment. So based on all the evidence I've seen, I can't say that First Data has acted unreasonably by issuing a chargeback against W.

I'm sorry to disappoint Mr L as I know he feels strongly about W's complaint, and I recognise the impact that he says the loss has caused W. However, I can't fairly hold First Data liable for the actions of the fraudster here. I remain of the opinion that First Data should have been clearer in its communication with Mr L and responded sooner when he contacted it about W's chargeback and therefore it should pay W £100 compensation for the inconvenience caused.

### **My final decision**

My final decision is that I uphold this complaint in part. I instruct First Data Europe Limited to pay W £100 compensation for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 27 September 2024.

Jenny Lomax  
**Ombudsman**