

The complaint

Mr Y is a sole trader. He complains on behalf of his business which I'll call 'V' that Retail Merchant Services Limited treated it unfairly when charging monthly compliance fees.

What happened

Mr Y told us:

- In September 2020, he received an offer from Retail Merchant Services Limited ('RMS') to provide V with PCI compliance instead of its existing provider.
- RMS said it would cancel V's contract with the existing provider, give the company three months free PCI compliance and provide this at a cheaper cost. However, he had never at any point accepted RMS's offer to provide PCI compliance.
- In March 2022, he noticed that RMS hadn't cancelled V's contract with the original PCI compliance provider but had also been debiting the company for PCI compliance fees. This meant the company had been paying both RMS and the original provider from September 2020 – and therefore had incurred around £1,420 of extra fees. RMS also hadn't given V the three months free PCI compliance which had been offered, so he made a complaint.
- It was only at this point that RMS contacted the original PCI compliance provider to cancel the contract. It also gave V the agreed three months free PCI compliance, along with an additional three months to apologise that this wasn't provided initially.
- He wanted RMS to refund the fees that V had been charged by the original PCI compliance provider between September 2020 and May 2022 as it hadn't cancelled the original contract.

RMS told us:

- V was responsible for ensuring it remained PCI compliant at all times, so it wasn't responsible for the company being charged a 'PCI Non-Compliance' fee, so it didn't uphold V's complaint.

Our investigator recommended V's complaint be upheld. She said that despite numerous requests, RMS hadn't provided any information about V's complaint, so her opinion was based on the evidence from Mr Y. The investigator thought that RMS had acted unfairly by charging V a PCI compliance fee without its agreement to do so. So, she recommended RMS refund V the PCI compliance fees that it had charged between August 2020 and March 2022. However, she said that the offer from RMS to switch V from its existing provider was dated after RMS had already started charging V, and V would have been paying its existing provider anyway – so it wasn't fair to ask RMS to refund the original providers higher fee instead.

RMS accepted the investigators view and agreed to refund £180 for the PCI compliance fees

and pay a further £150 for the inconvenience caused. Mr Y didn't accept the investigators opinion or RMS's offer. He said that RMS should have cancelled the contract with its original provider as it had agreed to do so and by not doing so, the company had incurred fees of around £1,420 to the original provider – which V wanted refunded. As an agreement couldn't be reached, the case has been passed to me to decide.

I issued a provisional decision on 12 September 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 think both parties should be liable for the losses V says it incurred. I'll explain why.

Mr Y says RMS's offer said the business would cancel V's contract with the original PCI compliance provider, and therefore RMS should refund V for the fees it incurred by this not taking place. But I don't agree. I say this because I've seen that RMS started taking fees from V in August 2020, which was before V received the offer email dated September 2020 in which RMS said it could switch V's PCI compliance provider. Furthermore, Mr Y told our investigator that at no point had it accepted the offer from RMS to provide it with PCI compliance. Therefore, it follows that at no point would RMS have been asked by V to cancel the contract with the original provider – so I don't think RMS can fairly be held responsible for the continuation of the original PCI compliance contract.

Nevertheless, I'm satisfied that V did enter into a contract with RMS for it to provide V with PCI compliance as both parties agree that this service was already being provided by August 2020 as the first direct debit left V's account in September 2020. I recognise that RMS say that it was V's responsibility to show its payment processors that it was PCI compliant, however I don't think that's fair as the company were paying RMS a fee to provide with that service. I think it's also worth noting here that RMS told our service that the PCI compliance certificate was sent directly to the payment processors, which implies that it was responsible for sending the certificates, rather than V. Therefore, I think RMS was responsible for making relevant payment processors aware that V was meeting its PCI compliance obligations.

RMS says that it would have sent confirmation of V's PCI compliance to the payment processors, however, it hasn't been able to provide any evidence that this confirmation was actually sent. Therefore, it appears that RMS didn't make the payment processors aware that V had met its PCI compliance obligations, so they charged V the contractual non-PCI compliance fee of £75 per month between September 2020 and March 2022.

However, I do have to take into consideration that V could have mitigated its losses here. I say that because V would usually have also been provided with a copy of its PCI compliance certificate which it could have provided to the payment processor. Furthermore, I can also see that V received monthly bank statements and account statements from its existing provider showing the increased fee of around £85 per month debiting its account. So, I think it's reasonable to believe that V should have identified that it was being charged incorrectly from either of these monthly statements. So, I can't fairly hold RMS solely responsible for the losses V says it has incurred.

RMS has accepted that it made a mistake. It agreed with that it would refund V the PCI compliance fees of £180 and pay £150 for the inconvenience caused. However, I don't think that's enough to put things right. I think RMS should refund V the £180 it

paid as PCI compliance fees because V didn't actually receive the benefit of the service it was paying RMS for and pay the £150 compensation for the inconvenience caused. However, in addition to this, I think RMS should pay V £750 - which is 50% of the £75 PCI non-compliance fee that the company paid between September 2020 and March 2022.

I recognise that Mr Y will be disappointed with my decision as he wanted RMS to refund all the costs incurred by V. However, I consider that both parties were responsible for V being charged the PCI non-compliance fee and therefore this part of the loss should be shared equally.

I invited Mr Y and RMS to give me any more evidence and information they wanted me to consider before issuing my final decision. RMS accepted the decision and had nothing further to add. Mr Y didn't agree with the decision. He said in summary:

- That RMS said it would cancel V's contract with the original PCI compliance provider.
- V didn't receive any physical invoices from RMS about the charges being incurred.
- RMS changed its invoices from quarterly pre-July 2020 to monthly after that and they were still paying the same fee of around £41 so wouldn't have noticed the changes.
- There was no obligation or timescale for V to check its bank statements to see that it was being overcharged.
- V only received its PCI compliance certificate from RMS in March 2022 after it had made a 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 conclusion as I did in my original decision, for the same reasons.

Mr Y has reiterated that RMS agreed to cancel the contract with the original PCI compliance provider and therefore V shouldn't be responsible for the additional fees the company has incurred. But as I have already explained in my provisional decision, I haven't seen any evidence that's the case and Mr Y already told our service that he'd never agreed to this – so if he didn't agree to the change then RMS had no reason to action the request.

Furthermore, Mr Y says that V didn't receive physical invoices from RMS, and he wouldn't have noticed the change in payments due to the change from quarterly to monthly direct debits. However, the complaint that Mr Y brought to our service was that RMS hadn't cancelled his original compliance provider contract and was being paid PCI 'non-compliance' fees – and Mr Y has provided this service with the paper invoices that he received during that time showing the higher fee. In addition, Mr Y said that he wouldn't have noticed the difference in cost had changed from £41. However, this was a quarterly fee, not monthly and the charge had increased from £10 per month whilst V was compliant to £85 per month when V was non-compliant. So, I'm not persuaded by Mr Y's argument here.

I recognise that Mr Y is unhappy with my provisional decision and says that there is no obligation for V to check its bank statements to see that it was being overcharged. But it also

isn't fair to hold RMS solely responsible for V's losses because the company didn't identify the increase in the PCI compliance fee from its bank statements, or the monthly invoices that V was receiving. Furthermore, I have already addressed the point that RMS didn't provide V with a copy of the PCI compliance certificate in my provisional decision, and this contributed to my decision that RMS should be held responsible in part for V's losses.

I'm sorry to disappoint Mr Y, but decision remains the same that RMS should refund the fees that it charged V as Mr Y said he didn't accept the offer from RMS, and that both parties were responsible for the costs incurred to V as a result of the PCI 'non-compliance' fees.

My final decision

My final decision is that I uphold this complaint. I instruct Retail Merchant Services Limited to do the following:

- Refund V the PCI compliance fees it charged between September 2020 and March 2022.
- Pay V £750 which equates to 50% of the PCI non-compliance fees it was charged between September 2020 and March 2022.
- Pay V £150 compensation for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask V to accept or reject my decision before 25 October 2024.

Jenny Lomax
Ombudsman