

## **The complaint**

Mr W, a director of 'H' – a limited company, is unhappy with his merchant services provider Alma Attic Limited, trading as Glorydale Merchant Services ('Glorydale').

## **What happened**

The background to this complaint is well known to both H and Glorydale. I won't repeat in great detail what is already known to both parties. In my decision I'll mainly focus on giving the reasons for reaching the outcome I have.

In 2019 H took out a merchant services agreement with Glorydale. H says they were still setting up their business, so rather than paying a monthly fee for their merchant services, they opted to pay a one-off fee of £118.80. Glorydale say they've got no record of receiving that fee.

In late December 2019 H processed seven transactions totalling £2,642.25. Glorydale say given that H had told them previously that the largest transaction would be around £1000 and six of these transactions were from the same card, their system flagged them as potentially suspicious. Glorydale say as the funds had already been credited to H's account, they reserved the right under this agreement to withhold future amounts up to the value of £2,642.25 whilst their investigation was ongoing.

Glorydale say the next transaction H processed was a few months later, for £100 and they withheld it. H was unhappy with the service provided and complained to Glorydale. They didn't uphold the complaint and H referred it to our service for an independent review.

Our investigator considered the evidence and upheld the complaint. H partially accepted the recommendations, but Glorydale didn't respond. The complaint was referred to me for a decision. Both parties were sent a copy of my provisional, intended findings on 21 February 2022. In that provisional decision I explained why I was intending to uphold this complaint and both parties were given an opportunity to respond with any additional comments or evidence. H responded to say they accepted the decision, Glorydale didn't respond.

## **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 again considered the evidence and response to my provisional decision, I see no fair or reasonable reason to deviate from my intended findings and I uphold this complaint. As my provisional findings form part of this - my final decision, I've included a copy below for reference.

Copy of provisional findings:

*"Although a number of issues have been raised, this decision only addresses those issues*

*I consider to be materially relevant to this complaint. However, I've given careful consideration to all of the submissions made before arriving at my decision.*

*Glorydale has not engaged effectively with our Service during the course of our investigation into this complaint. Our investigator made numerous information requests for Glorydale to send important information, yet each time an excuse was provided for not being able to meet the deadline. Despite fair time extensions being granted, the information or responses weren't received. This is very disappointing.*

*This means that I've had to rely on the available evidence when coming to my decision. That is - the information available to me now after both parties were given a fair opportunity to provide their side of the story and any supporting evidence they wished to rely on to support their position. The relevant DISP rules for the approach I'm taking here are DISP 1.4.4 and DISP 3.5.14:*

*"Co-operating with the Financial Ombudsman Service*

*Where a complaint against a respondent is referred to the Financial Ombudsman Service, the respondent must cooperate fully with the Financial Ombudsman Service and comply promptly with any settlements or awards made by it."*

*And:*

*" If a respondent fails to comply with a time limit, the Ombudsman may:*

- (1) proceed with consideration of the complaint; and*
- (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make."*

*I've carefully considered the evidence in this complaint and currently intend to uphold it.*

*The monthly cost of the agreement*

*H has said that due to their business being in the early stages of being set up and not having the intention to fully trade for some time, they opted to pay a one-off fee of £118.80 rather than opting to pay monthly. Glorydale have said the merchant services agreement was taken out in November 2019 and scheduled to run for a 12-month minimum period.*

*A number of transactions were flagged as potentially suspicious by Glorydale and their processing bank in December 2019. These transactions totalled around £2,600 and were significantly outside of H's expected transaction value. Glorydale say their processing bank put a hold on the approximate value of the transactions to potentially mitigate any future chargebacks. This isn't uncommon in merchant service related transactions. Glorydale in turn have said that they had the right to put a hold on future transactions processed by H. The next transaction was for £100 in March 2020.*

*The transactions that Glorydale flagged as potentially suspicious didn't occur until 28 December 2019 and the next transaction was three months later in March 2020. This is significant in my opinion as it supports what H has said about their business being in the early stages of being set up. In this scenario I can understand why H would prefer the certainty of knowing how much they needed to initially outlay and budget for. Glorydale have said they have no record of receiving a payment of £118.80, but in the absence of any other supporting evidence and for the reasons outlined, I find it more likely than not H did opt to pay a one-off upfront cost rather than paying monthly.*

*But, as already explained by our investigator, although H wants this fee refunded, that wouldn't be fair or reasonable as they've had a service available to use during the time period of this agreement. For business reasons they weren't in a position to use that service all of the time and after the issue of the dispute about the £100 transaction in March 2020 they chose not to use Glorydale's services.*

*Due to the uncertainty and lack of communication with our Service on this complaint, it's not entirely clear if Glorydale has charged H a minimum fee per month. But I'm satisfied Glorydale has had a fair opportunity to respond to this point before our service formally investigates it.*

*I've also noted that Glorydale told our service in August 2020:*

*"...the MMSC fee was not a major issue as we could have dealt with it by exercising our discretion by been able to waive it. This issue could have been resolved swiftly without any issues arising..."*

*For completeness - as this issue may be outstanding, I'll address it in my provisional decision.*

*Glorydale, in an email to our service dated 28 August 2020, said:*

*"Once a card terminal provided and regardless the rental is paid by the merchant or not, there is an industry standard position where a merchant is given the 'Processing Platform'. In order for processing platform to be provided, generally speaking, the industry standard is that a merchant would be levied with the charge under the name of MMSC. This fee would be to cover the cost of keeping a sim card active in the terminal, KYC, KYB, fraud detecting software providers and providing support whenever needed by the merchant etc."*

*Glorydale suggested that H owed this minimum monthly service charge ('MMSC') fee for the period December 2019 - July 2020 and it totalled £160. I've carefully considered the unsigned and undated copy of the merchant services agreement provided by Glorydale. At no point in it does it refer to the MMSC. Instead, I've seen it refers to transaction fees as a percentage as well as pounds and pence. I've also considered the terms and conditions for this agreement. Term 6.1 states:*

*"In return for us providing you with the Services, You shall pay to us the Fees and all other sums payable by You to Us in accordance with the provisions of the Contract including MMF and MMSC."*

*Given what I've already found about H's likely intention to not process transactions for some time initially and pay an upfront cost and as I've seen no strong or persuasive supporting evidence from Glorydale that the MMSC was discussed or highlighted at the point of sale, I've concluded that it's more likely than not the MMSC wasn't brought to H's attention.*

*I've then considered what H likely would done had it sufficiently been brought to their attention. I find it more likely than not H wouldn't have gone ahead and taken out this agreement as it didn't suit their business intentions and needs. I also conclude that it would neither be fair or reasonable of Glorydale to charge H a minimum usage fee that hadn't sufficiently been brought to H's attention.*

*Glorydale can't fairly charge H the MMSC as it hasn't shown any evidence that it was sufficiently brought to H's attention at the point of sale. I've acknowledged the terms make reference to a MMSC - but not an actual amount. The agreement here was the key*

*information document H relied on when deciding if this merchant services agreement was right for them.*

*The £100 transaction in March 2020 being held*

*If things had happened as they should've, Glorydale would've held the £100 transaction from March until the chargeback period related to the December 2019 transactions elapsed. The terms of the agreement allowed them to do so.*

*But based on limited responses from Glorydale it appears that Glorydale hasn't yet released the £100 back to H.*

*Glorydale should now - if it hasn't already done so, refund H £100 plus 8% simple interest per year from the date the £100 should've been released until the date payment is made.*

### **Summary**

- *I've seen no strong or persuasive supporting evidence from Glorydale that the MMSC was brought to H's attention and I find it more likely than not H wouldn't have gone ahead and taken out this agreement had it sufficiently been brought to their attention – for the reasons I've explained. Therefore it isn't fair or reasonable of Glorydale to charge H £160.*

*Because of the specific circumstances of this case and because H has had the benefit already of some services, I currently consider the fairest remedy here to be that Glorydale should cancel any balance owed due to the MMSC that it intends to charge H and ensure that if any adverse credit information has been reported it's amended.*

- *If Glorydale had doubts or suspicions about the 7 transactions in December 2019 as they were far outside the expected transaction value and 6/7 processed using the one card in a short space of time, it wasn't unreasonable to put a hold on those funds or future funds pending the typical 180 day charge back period – to offset against the potential chargeback liability. However, once the chargeback period ended these funds should've been released back to H..."*

### **Putting things right**

Glorydale should now - if it hasn't already done so, refund H £100 plus 8% simple interest per year from the date the funds should've been paid back until the date payment is actually made.

Glorydale should also cancel any balance owed (due to the MMSC) that it intends to charge H and ensure that if any adverse credit information has been reported it's amended.

### **My final decision**

I uphold this complaint. I now direct Alma Attic Limited, trading as Glorydale Merchant Services ('Glorydale') to follow my direction as set out under the heading '*Putting things right*'.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or

reject my decision before 31 March 2022.

Daniel O'Shea  
**Ombudsman**