

The complaint

A company, which I'll refer to as M, complains that First Data Europe Limited have unfairly charged it a monthly compliance fee.

M is represented in bringing this complaint by its director, Mr M.

What happened

M is a merchant. In early 2019, Mr M signed an agreement on M's behalf for First Data to provide M with payment processing services. As part of the agreement, First Data included a monthly fee for the Payment Card Industry Data Security Standard (PCI DSS) management, which is required by all those handling cardholder data.

Mr M explained to First Data's agent that M didn't require this service as M had self-certified its compliance in respect of the PCI DSS. As a result, First Data sent M an updated quote with no figure next to the PCI DSS management fee. Happy that this fee would not be charged monthly, Mr M signed and accepted the agreement on M's behalf.

Mr M complained to First Data in early 2021 about several issues including M being charged a fee for PCI DSS management. First Data replied explaining this compliance charge was non-negotiable and they were charging it in line with the terms and conditions of M's agreement with First Data which Mr M had signed and agreed to.

Mr M was unhappy with this response, so he brought the complaint to our service. One of our investigators looked into the matter and said she thought this fee was unfair and that M should not be charged for it. She asked First Data to refund the fees to date and stop charging it going forward.

First Data initially accepted our investigator's view and refunded the fees that had been paid by M up to that point. However, they continued to charge the PCI DSS management fee on a monthly basis, so Mr M asked us to look into the matter further.

When our investigator questioned First Data about the charging of this fee, they explained that whilst they could accept a self-certified PCI certificate from M and any non-compliance fees would then stop, M would still have to pay the monthly PCI DSS management fee.

Our investigator asked for an explanation as to why this fee would have to be paid if M was self-certifying but never received a satisfactory explanation from First Data. As a result, Mr M asked for an ombudsman to look into matters.

The case was passed to me and I contacted First Data in an effort to resolve the matter informally. Unfortunately, we couldn't reach a satisfactory resolution, so I've proceeded to make my final decision on 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.

Having reviewed the file it became apparent to me that this fee was not for certifying a business' compliance, but rather a cost First Data pass onto their merchants for providing the portal for uploading their compliance documents. It is necessary for even those who self-certify to upload their information into this portal. The fee also covers the monitoring of First Data's merchant's compliance and keeps the merchants updated as to when a new certificate is due or if at any point they become non-compliant.

I phoned Mr M to discuss this matter and explain what the fee is for. Mr M agreed that there had been confusion, and this is not how the fee had been explained to him by First Data's agents.

When I spoke to First Data about the matter, they said they had already refunded this fee up to October 2021 and the payment was made to M in November 2021, so they didn't think they needed to do anything further. They also confirmed the monthly fee would continue to be charged.

I'm satisfied that this fee was applied in line with the terms and conditions of the agreement between First Data and M. I'm not satisfied however that First Data have done everything they could to explain the reason this fee is charged and why it will continue to apply. I think First Data caused further confusion in this case by not explaining what this fee was for despite being asked for an explanation on several occasions by both our service and Mr M.

As such, I think First Data should compensate M for the inconvenience and confusion this matter has caused. And I think a refund of the PCI DSS management fees paid by M between November 2021 and the end of April 2022 would be an appropriate amount to reflect this.

However, once this payment has been made, M will need to pay the PCI DSS management fees on a monthly basis as it is now fully aware of what this charge is for and it understands that paying it forms part of its agreement with First Data.

My final decision

My final decision is that I uphold this complaint in part and require First Data Europe Limited to refund the PCI DSS management fees paid by M between November 2021 and the end of April 2022 to M.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M, on behalf of M, to accept or reject my decision before 27 May 2022.

Tara Richardson
Ombudsman