

## **The complaint**

T, a limited company, complains that it has been charged fees for not being PCI-DSS compliant by First Data Europe Limited trading as Clover, despite trying to send proof of compliance. Miss V, a company secretary of T, brings the complaint on its behalf.

## **What happened**

In September 2020, T was charged a fee for PCI-DSS non-compliance. Miss V didn't think this was right, as she couldn't upload the documents she needed to prove compliance to First Data's online portal. Her understanding was also that T wasn't required to fill out a questionnaire that First Data said was necessary, because of the nature of the business.

Miss V raised a complaint about this on T's behalf in October 2020. In January 2021, First Data responded and said that its online portal did have the ability to accept the documents Miss V needed to upload. But it accepted that its service had fallen short and that it could have contacted T about this sooner, so it agreed to refund £225 of the fees it had applied as a gesture of goodwill and to contact T to help with the issues it was facing.

Miss V wasn't happy about this though and brought her complaint to us. Our investigator looked into this and didn't think it was fair that First Data had applied the fees between September 2020 and January 2021. They said that while the relevant documentation hadn't been uploaded to First Data's portal, T had repeatedly tried to provide this and hadn't been given any alternative method to do so, or support around this. So they felt that First Data should refund all the associated charges (minus the refund already given) from September 2020 until January 2021 and pay 8% interest on this amount.

Initially Miss V didn't accept this on behalf of T as she expected all the charges to be refunded and was unhappy that First Data was now threatening to close T's account. Our investigator clarified that we could only consider the complaint about charges up to January 2021 that First Data had already responded to. Any complaint about further charges, or the possible account closure would need to be dealt with separately.

First Data eventually responded to say that T was (and remained) PCI-DSS non-compliant and could have submitted the relevant documentation in a number of ways. It restated that T had been awarded a gesture of goodwill. So the complaint was passed to an ombudsman to decide.

## **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'll start by clarifying that this decision here only covers T's complaint about the charges applied between September 2020 and January 2021, as it's these charges that First Data's final response letter of January 2021 covered. Our investigator has explained that First Data will need an opportunity to respond to any further complaint about charges applied since then and about the potential closure of T's account.

Having looked at what happened here, I think that it'd be fair and reasonable for First Data to refund all the charges applied during this time. I realise that Miss V hasn't submitted the relevant documentation about her PCI-DSS compliance using First Data's online portal in the way it would like, but she's clearly experienced some problems in doing so. She's also clearly tried to prove T's compliance a number of times and also asked First Data for its help with this matter. But that help wasn't forthcoming until January 2021 when it responded to her complaint.

Miss V has provided this service a certificate of compliance and a completed self-assessment questionnaire from September 2020 which would seem to show that T was PCI-DSS compliant during the relevant times here. So I'm satisfied that her attempts to provide this to First Data were genuine. She may not have done this in exactly the way First Data wanted her to, but she told it why she couldn't do this and asked for its help. It was only in January 2021 that First Data offered to help with this. The fact it didn't do so until then means I don't think it's fair that the charges were applied during this time.

So I think First Data should refund the charges applied between September 2020 and January 2021 along with adding 8% interest on top of this, for the period of time T has been without this money. But I make no findings on what has happened since then and nor does this decision automatically mean that T will be entitled to any future refund. First Data has the right to look at these issues before this service gets involved. Should we need to get involved, we then have to look at each case individually, on its own merits.

### **Putting things right**

First Data Europe Limited trading as Clover should refund T the total of all PCI-DSS non-compliance fees minus any amounts already refunded. It should also add 8% interest on top of this amount, payable from the date of the first charge, to the date the refund is made.

### **My final decision**

My final decision is that I uphold this complaint in the way I've described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 22 September 2022.

James Staples  
**Ombudsman**