

The complaint

A company I'll call K complains that First Data Europe Limited (First Data) delayed in releasing its account balance to K, and provided poor service when K tried to contact First Data to resolve the issue.

K is represented by one of its directors, Mr T.

What happened

Between 18 and 31 August 2020, K received a total of £49,317.50 into its First Data account. That balance accrued as a result of several payments being rejected by K's bank, after K's bank closed K's account. First Data required new bank details for K, which K provided and which First Data updated on 21 September 2020.

But K didn't receive the account balance, so it complained to First Data. First Data's account records showed a nil balance for K, so it carried out an investigation to locate K's funds. It located £49,317.50 on 22 December 2020 and returned that amount to K.

K had raised a formal complaint, which First Data responded to on 31 December 2020. It said it had completed its investigation into the missing funds, and that the £49,317.50 had been located and was in the process of being returned. It didn't offer any explanation for what had happened or why there had been a delay. But it did say it had paid K £100 in recognition of the inconvenience and poor service K had experienced.

Mr T wasn't happy with First Data's resolution, so he brought K's complaint to our service. Our investigator looked at K's complaint and felt First Data should pay compensation to K. She said First Data had caused delays in returning the funds, given First Data located them on 21 September 2020 but didn't return them until 22 December 2020.

She said First Data hadn't provided any comments to justify the delay in returning K's funds, so she felt First Data should pay K interest at the rate of 8% on K's account balance for the period during which K was deprived of its money. She also thought First Data should pay K £250 in respect of the inconvenience First Data caused K while it was investigating the missing funds.

Mr T didn't accept our investigator's findings. He said K had to borrow money to cope without the £49,317.50. And he felt the compensation didn't take into account the months First Data took to locate the funds. He asked for an ombudsman to review the matter afresh.

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.

Firstly, I should say that I'm aware I've summarised the events of this complaint in far less detail than the parties, and that I've done so using my own words. The reason for this is that I've focussed on what I think are the key issues here, which our rules allow me to do.

This approach simply reflects the informal nature of our service as a free alternative to the courts. And I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome in this case. So, if there's something I've not mentioned, it isn't because I've ignored it, and I must stress that I've considered everything both Mr T and First Data have said, before reaching my decision.

First Data told our service that the delay in returning K's funds was caused by K's bank, saying it was waiting for the payments to reject back from K's bank. However, I've seen evidence from K's bank that demonstrates it had blocked K's account before any of the payments in question were made, and that shows, on the balance of probabilities, that the payments were returned promptly by K's bank.

First Data also told our service that the funds were on hold because K didn't have an active bank account. But it told our service that matter was completed on 21 September 2020, its internal notes and emails to K acknowledge the funds were missing, and First Data later wrote to K confirming it had located the funds (which suggests they were missing rather than not received). And I haven't seen anything from First Data to demonstrate that the funds were missing because they hadn't reached First Data.

And, when our investigator asked for an explanation of the delay, First Data simply said it had to wait for the funds to be returned and keyed on its internal systems. But, as I've said above, I've seen evidence from K's bank to show that it had sent the money back to First Data.

So, on balance I'm not persuaded that First Data returned K's account balance as promptly as it should have. And First Data hasn't been able to demonstrate it wasn't at fault for delaying the return of K's funds. That being the case, it should compensate K for the time K was deprived of its funds.

First Data told our service it received the £49,317.50 on 21 September 2020 and it contacted K on 29 September 2020 to say it was in the process of releasing the funds to K. It's difficult to say exactly when First Data ought to have released K's funds by, but given it received them on 21 September 2020 and given K had been chasing First Data before this date, I take the view that it should have sent the funds to K on 21 September 2020. Because it didn't return the funds then, I'm persuaded First Data should pay K compensation from that date up to the date it did send the money, to compensate K for the time it was deprived of the use of those funds.

Our investigator said she thought First Data released K's funds on 22 December 2020. But First Data sent two statements that seem to show a payment of £49,317.50 being made on 4 January 2021. And First Data's response to K's complaint dated 31 December 2020 said it was in the process of returning the funds. So, on balance, the evidence suggests First Data returned K's funds on 4 January 2021. Meaning the period it should pay compensation for is between 21 September 2020 and 4 January 2021.

In response to our investigator's view, K said the compensation award didn't take into account the time it took First Data to locate the funds, and that K would have suffered serious harm, had it not been able to borrow money from its directors.

However, I'm satisfied that, subject to a slightly extended timescale, the compensation our investigator awarded puts K back in the position it would have been in, had First Data returned K's funds when it should have. While I accept K might have been put into difficulty, had it not been able to borrow money from its directors, fortunately it was able to mitigate its losses by borrowing the funds. And I can't reasonably award compensation for hypothetical

losses K might have suffered, had circumstances been different.

And I'm satisfied that an award of interest at the rate of 8% does in fact compensate K for the time it went without access to its funds because of an avoidable delay. Our investigator suggested interest for the period First Data caused delays, so that award covers the full period during which K was deprived of its funds. And K hasn't provided any evidence to show it suffered a loss greater than the compensation our investigator suggested.

With regard to our investigator's award of £250, it might help if I explain the parameters our service must operate under for such compensation payments. I do have the power to make an award for distress and inconvenience a customer experiences, but the issue here is that First Data's customer is K, a limited company. A limited company of course can't feel distress, and I can't make an award for any distress experienced by K's directors or staff as they are not First Data's customer.

However, I can make an award for any inconvenience K experienced as a result of its directors' attention being diverted away from day-to-day duties. And I can see K had to chase First Data on a number of occasions. I'm satisfied M experienced a reasonable amount of inconvenience as a result of poor service on First Data's part. So, to put matters right, First Data should pay K £250.

My final decision

My final decision is that First Data Europe Limited must pay K:

1. 8% simple interest on the balance of £49,317.50 from 21 September 2020 to 4 January 2021; and
2. £250 in recognition of the inconvenience it caused K.

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 31 October 2023.

Alex Brooke-Smith
Ombudsman