

The complaint

M, a limited company, complains that First Data Europe Limited won't refund fees and charges made to an inactive merchant account.

What happened

M had a merchant services agreement with First Data. By 2016 M had incorporated and a new merchant account ID was required. This was opened but the old one wasn't closed, and M says charges continued to be made to that as well as for the new account. M became aware of this when it asked that its agreement be cancelled in August 2020. It is unhappy that First Data won't agree to refund all the fees since 2016.

First Data issued two final responses about the complaint. In the first dated 25 November 2020 it said that *"your old merchant ID [...number ending in '841'] remained open in error"*. And that due to this, charges continued to be applied and totalled £813.76 and had been refunded. In a second final response letter dated 11 January 2021 it said that M had contacted it in May 2017 and said that it wanted the account to continue. And that it hadn't confirmed it wanted to close the account until August 2020. So, it had refunded fees of £813.76 for the period from August 2019 to August 2020 as a gesture of goodwill. It didn't agree that M should receive the refund of £3,500 it had requested.

Our investigator recommended that the complaint be upheld and all the charges since the change of legal entity refunded plus simple interest of eight percent per annum. He looked at the contact notes First Data had regarding M. On 28 April 2017 there had been a request to close the agreement which included the rental of a terminal. And on 3 May 2017 M said it wanted to continue with the agreement. But he thought that First Data ought to have identified at the earliest stage that the inactive merchant account was still being charged.

M agreed and said that it hadn't received any refund.

First Data didn't agree. It said that it didn't monitor activity and that some seasonal businesses only trade in certain months and many didn't at all during the pandemic. M would have been receiving annual VAT statements and could have viewed its statements. It said that we were applying hindsight and that it had been aware of the issue from the time of the complaint and had made a goodwill gesture. It wouldn't have been able to gauge the understanding of the merchant at the time. And as far as it was aware M had asked that the account be left open.

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.

Through our investigator I asked First Data to provide some information about what happened. I'd asked for a breakdown of charges for merchant ID account ending '841' since February 2016 and for clarification of the two final response letters as there seemed to be an inconsistency about what charges had been refunded.

It provided copies of invoices on merchant ID '841 for the period August 2019 to November 2020. And it said it agreed to pay simple interest on the amount it had refunded now too.

By my calculation the total charges over the period shown on those invoices were £838.76. First Direct provided evidence that an amount of £813.76 was refunded on 30 November 2020. But in any event there were charges as M states before that date.

I'm unclear what basis First Data believed it had to apply these. The previous trading entity no longer existed and had been incorporated into M. By First Data's own process this necessitated a new merchant ID. And I've seen evidence that the business consultant involved would be required to cancel the old merchant ID as part of the process and in error that didn't happen.

First Data seems to rely on M not noticing and/or objecting to the charges. And it apparently asking that these continue when it was in contact in 2017. But as I understand it there was a live merchant ID then too and a terminal rental agreement that had transferred. And I'm satisfied that this would likely be what M was referring to and decided not to cancel at the time. I also think that First Data's argument that there was no activity on the old ID account (and possibly new account) which wasn't uncommon due to seasonal variations or the pandemic carries no weight. The issue was that the old business no longer existed. And as a result, although M was paying for the charges on the old merchant ID it wouldn't properly have been able to use the account.

So, I agree that all charges on the old merchant account ID should be refunded from the date that the change of legal entity was made. I can see from information provided by First Data that a query about the change of legal entity was made on 14 January 2016 and the change applied on 19 February 2016. That in my view is fairly the date which should be used. I also agree that M should receive simple interest of eight percent per annum. I haven't been provided with a breakdown of all those charges. M says that these came to £3,593 and so will be in a position to verify any payment from First Data if it accepts my decision.

My final decision

My decision is that I uphold this complaint and I require First Data Europe Limited to:

- 1) Refund to M all charges applied to merchant ID ending '841 from 19 February 2016 and recognising that an element of these charges has already been refunded as set out above.
- 2) Pay M simple interest on each monthly charge from the date it was applied to the date of settlement at a rate of eight per cent simple interest per annum.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 23 November 2022.

Michael Crewe
Ombudsman