

The complaint

A, a limited company, complains that First Data Europe Limited (trading as Clover) has refused to refund a transaction which it didn't authorise.

This complaint is brought on A's behalf by Mr A, the company's sole director.

What happened

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail here but, in summary:

- A has an agreement with First Data to process card payments made by, and refunds made to, its customers.
- Mr A has complained to First Data that on 14 March 2021 a £10,000 refund was processed without the authority or consent of anyone appointed to act on A's behalf. A £5,000 refund was put through the terminal later that day, but was "rejected" by First Data. And a £900 refund was put through, but also "rejected," on 16 March 2021.
- First Data refused to reverse the £10,000 refund. They said Mr A told them he had changed the security code on the terminal. He'd also said the merchant terminal had been snatched out of his employee's hands. Mr A failed to report this or complete the end-of-day process, which prevented them from stopping the payment.
- Our investigator didn't think First Data had provided sufficient supporting evidence. Nor did he think A had authorised the transactions or been grossly negligent. So he recommended that the £10,000 be returned with interest. Mr A accepted this on behalf of A. But First Data didn't reply. So the matter has come to me 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.

First Data initially sent us some limited evidence relating to this case. But they haven't replied to any of the investigator's subsequent requests for information or his opinion. I think they've been given ample opportunity to put forward their arguments.

Overall, like the investigator, I don't think First Data has shown that A (or anyone appointed on behalf of A) authorised the disputed £10,000 refund. Or that A failed in some other way such that First Data can hold it liable for the refund. I say this having taken the following into account.

- The Payment Services Regulations 2017 say that a payer (A in this case, or anyone appointed to act on its behalf) authorises a payment transaction when they consent to that transaction in line with the form and procedure agreed with the Payment Service Provider (or PSP – First Data in this case). And if a payer denies having authorised a

payment transaction that has taken place, their PSP must prove the payment was authenticated.

- First Data has provided a copy of a *Merchant Agreement and Card Acceptance Operating Guide* as well as the *Merchant Conditions*. But neither document explains the form and procedure for making refunds or talks about the necessity for a security code to be entered. Nor do these documents warn about this particular fraud risk or how to prevent it, in particular, that amending the code from the default can help prevent fraudulent refunds.
- First Data hasn't provided the supporting evidence we asked for to show a security code was entered in relation to this particular refund. They say Mr A altered the code when he took possession of the merchant terminal but he told us that he hadn't changed the code and First Data hasn't given us a recording of the call in which he, allegedly, said he had changed it.
- In my experience, it's not unusual for a security code to be needed when processing refunds through merchant terminals. But I'm also aware that merchant terminals are often issued with a standard, default 4-digit code and this might also be known by fraudsters.
- Mr A has provided CCTV footage that he says relates to the disputed £10,000 refund. And it appears from this that the payment terminal was handed over (rather than being "snatched") by A's employee to a customer so they could pay for some goods. The customer had the terminal for longer than I would usually expect – either to enter their own 4-digit PIN or to touch their card to the terminal. And, during that time the customer appears to be doing something with the terminal while his companion distracted the employee. I think it's entirely possible the customer carried out the fraudulent refund during that time. And I don't think the employee ought to have realised what had happened at that point in time or prevented it.
- First Data say Mr A should be held liable for the disputed refund because he didn't complete the end-of-day process. The *Operating Guide* tells the reader to "*follow the end-of-day banking procedure detailed in your Terminal User Guide to make sure you receive payment for all transactions.*" But also that "*It's essential that all transactions are submitted for payment within two (2) working days of being accepted.*" This seems to suggest there's some lee-way and the reader actually has two working days to complete the end-of-day process. There's also no warning here that the process is important in detecting fraudulent refunds. And First Data hasn't provided a copy of the Terminal User Guide. In any event, First Data hasn't shown that completing such a process some time after the event would have prevented the refund from being made to the fraudster's card.
- First Data says it has fraud prevention measures in place, but it doesn't monitor live transactions. It's not entirely clear what First Data means by this. But I do note it managed to reject the two subsequent refunds and prevent additional losses to A. Those refunds were both of a significantly lower value than the £10,000 refund. It's not clear to me why the first refund wasn't also rejected, particularly given that it was for such a large amount and Mr A says it didn't match any previous payments and was extremely unusual given the usual merchant terminal activity.

My final decision

My final decision is that First Data Europe Limited should return the £10,000 to A and also pay interest calculated at 8%pa simple from 14 March 2021 to the date settlement is made.

If First Data Europe Limited considers that they're required by HM Revenue & Customs to deduct income tax from the interest award, they should tell Mr A how much has been taken off. They should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

First Data Europe Limited should settle the matter within 28 days of receiving notification of Mr A's (on behalf of C) acceptance of my final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A (on behalf of A) to accept or reject my decision before 28 March 2023.

Ruth Hersey
Ombudsman