

The complaint

A company, which I'll refer to as E complains that First Data Europe Limited (First Data) treated it unfairly by failing to challenge a number of chargeback claims that were made against it.

In bringing this complaint, E is represented by its director who, I'll refer to as Mr F.

What happened

Mr F has told us that between December 2019 and June 2020 several chargebacks totalling £13,141.10, were raised against E.

At the time each of the chargebacks was raised, First Data wrote to E to confirm the reasons for the chargeback – which included “goods not as described”, “goods/services not received”, and “refund not provided”. E was asked to provide evidence to First Data to enable them to defend the chargeback.

According to E, the chargebacks were unjustified because they were raised by various customers after it had declined to return their deposits following cancellation by those customers of their hotel accommodation bookings.

E said it didn't agree to refund the deposits on the basis that at the time the accommodations were booked, it had made clear to customers in its terms and conditions that the deposits were non-refundable. Including, in circumstances of '*force majeure*' such as:

“war or threat of war, civil or political action or disturbance, riot, natural disaster, fire, epidemic, bad weather, terrorist activity (threatened or actual), military activity, governmental or regulatory action, industrial dispute. Act of God, failure of power or machinery, failure of or interruption of externally provided services and utilities, and all similar events outside the hotel's control.”

E said it was for that reason, and to protect customers from potential loss, it advised them to take out travel insurance.

Mr F has told us that on each occasion E was notified of the chargeback, he gathered all the relevant evidence and emailed it to First Data so that they could challenge the chargebacks. But Mr F doesn't believe First Data did so and complained to them.

In their final response letter to E, as well as commenting on the chargeback process generally, First Data said that undefended, or late defences, could result in chargebacks being lost. They said that it was important therefore to engage with First Data to avoid the loss of transactions and incur associated fees.

E's complaint remained unresolved, however, and on its behalf Mr F referred it to this service.

Our investigator was satisfied E did provide First Data with evidence to defend the chargebacks on E's behalf. But she didn't think there was clear evidence to demonstrate that First Data had done so. So, on 16 December 2022 she sent First Data a full list of the chargebacks and asked them to provide by 6 January 2023, evidence of their attempt to defend each of them and if they made no such attempts, to explain why.

On 12 and 25 January and on 2 February 2023, the investigator chased First Data for the evidence she'd requested. But this wasn't provided.

So, having had no response from First Data and in reliance on the evidence to hand, the investigator upheld E's complaint. She said she had not been satisfied that First Data did challenge the chargebacks. She said in her review of the evidence E provided to First Data, she believed had this been provided to the cardholder's bank, there was a reasonable chance E would have successfully defended the chargebacks. Given her conclusion, the investigator recommended the chargeback amounts be refunded to E in full.

E accepted the investigator's recommendation. First Data did not respond. So, the complaint has been referred to me for review and final decision

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.

Where the evidence is incomplete or inconclusive (as indeed some of it is here) I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

When a chargeback is raised, we would expect the merchant acquirer (First Data) to act in line with their terms and conditions to ensure the chargeback is handled correctly. I have therefore looked at what First Data's policy says to determine whether in relation to the chargebacks that were raised against E, they followed their established policy.

The relevant parts of First Data's operating guide say:

"When a chargeback is received, we will debit the disputed amount from your account and contact you with details of the card transaction together with the information/documentation we require from you and the deadline by which we require it."

And

"If the information provided is sufficient to warrant a reversal of the chargeback and is within the applicable timescale, we will attempt to defend the chargeback. However, reversal is contingent upon acceptance by the card issuer under the applicable card schemes guidelines.....We will do our best to help you defend a chargeback "

From the information to hand, like the investigator, I'm satisfied E provided First Data with sufficient evidence to enable them to defend the chargebacks. However, although First Data were asked on 16 December 2022, 12 and 25 January 2023 and 2 February 2023 for evidence they'd attempted to do so, First Data have not responded with that evidence.

Our powers to consider complaints are set out in the Financial Services and Markets Act 2000 (FSMA) and in rules known as the Dispute Resolution Rules (DISP) written by the Financial Conduct Authority (FCA).

Within these rules DISP 3.5.9 says that the Ombudsman may:

“(3) reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested”.

DISP 3.5.14 goes on to say:

“If a respondent fails to comply with a time limit, the Ombudsman may:

(1) proceed with consideration of the complaint”

To date no response has been received, to the various requests made by the investigator for evidence First Data attempted to defend the chargebacks which leads me to conclude that in all likelihood they made no attempt to do so. Based therefore on what I've seen, I'm not persuaded that First Data have acted fairly, and in line with their policy.

To be clear, I've considered how the chargebacks were dealt with by First Data in light of the policy referred to above. In other words, I've looked at and thought about First Data's actions and in particular, whether they acted fairly and reasonably, within the context of their policy in their role as an acquirer, once the chargebacks were raised. I've not been persuaded they did. I've seen no evidence they did their best to defend the chargebacks and therefore I'm upholding this complaint.

Putting things right

I'm not persuaded First Data acted reasonably in holding E liable for the chargeback amounts and they should be refunded to E

My final decision

For the reasons explained above I uphold this complaint. In full and final settlement, I recommend that First Data Europe Limited refunds the chargebacks totalling £13,141.10 raised against E, plus any fees associated with the chargebacks

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 18 April 2023.

Asher Gordon
Ombudsman