

The complaint

T complains that First Data Europe Limited trading as Clover has incorrectly applied charges for not being PCI-DSS compliant.

What happened

Between September 2020 and January 2021 Clover charged T PCI-DSS non-compliance fees. But Mr V, T's director, has explained he was unable to upload the documents required to prove compliance to Clover's website. On T's behalf, Mr V raised a complaint with Clover and when he was unable to resolve the issue referred the matter to this service.

The complaint was ultimately referred to an ombudsman who issued a final decision in August 2022. The ombudsman's final decision said Clover should refund the PCI-DSS non-compliance fees it charged T between September 2020 and January 2021. The ombudsman noted their decision only covered PCI-DSS non-compliance fees up to January 2021.

Mr V went on to contact us again on T's behalf. Mr V explained that Clover had failed to comply with the previous decision, issued in August 2022. Mr V also said Clover had failed to assist in making arrangements for PCI-DSS compliance documents to be supplied and had continue to charge PCI-DSS non-compliance fees totalling £70 a month.

In October 2022 we contacted Clover and asked it to look into T's complaint. We also asked Clover to supply its case file. Clover contacted us in early November 2022 and asked for confirmation about whether this was a new complaint. Both the investigator for this new complaint and the investigator that dealt with T's previous case emailed Clover and confirmed this was a new complaint that related to PCI-DSS non-compliance fees charged after January 2021. The investigator sent further requests for Clover's case file and supporting evidence in December 2022 and January 2023 but no response or information was provided.

In the absence of responses from Clover, the investigator reviewed the information on file. The investigator upheld T's complaint and said Clover should refund the PCI-DSS non-compliance fees charged. The investigator also recommended that Clover pay T £100 for the inconvenience caused.

Despite further attempts at contact with Clover and confirmation that, in the absence of a response the complaint would be referred to an ombudsman for a final decision, we didn't hear back. As a result, T's complaint has been passed to me to make a 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.

As I've noted above, another ombudsman has issued a decision that covered PCI-DSS non-compliance fees charged up to January 2021. As another ombudsman has already made a decision about those fees, I'm not going to comment on them further in this decision. My

decision relates to PCI-DSS non-compliance fees applied from February 2021. The decision will cover fees applied until January 2023.

I've used this timescale as in November 2022 we clarified to Clover that the current complaint was separate from the previous complaint T raised that was dealt with by way of a final decision. Businesses have eight weeks to respond to a complaint. So I'm satisfied that, had Clover responded to the new complaint, it should've considered PCI-DSS non-compliance fees that were applied until that point. As Clover had until January 2023 to issue a final response, I think that's the point at which we can look at PCI-DSS non-compliance fees T was charged.

I appreciate T has likely been charged fees in the months that followed this date and may still be having charges applied. But because of the rules that we operate under, we can't consider issues that a business hasn't already been asked to investigate. Ultimately, T may need to ask us to look at the fees applied from February 2023 onwards as a new complaint.

We've been limited in terms of the investigation completed as Clover hasn't responded to our request that it investigates a new complaint for T or complied with information requests sent by the investigator. Despite the investigator issuing their view that T's complaint should be upheld, chasing a response and notifying Clover the matter would be referred to an ombudsman no further evidence or information has been supplied. I'm satisfied the nature of T's new complaint has been made clear. And I'm satisfied Clover has had sufficient time to respond to T's new complaint and provide its case file and supporting evidence to us.

On T's behalf, Mr V has supplied evidence that he wanted to submit to Clover to verify T is PCI-DSS compliant. Mr V has supplied certificates that show T's been professionally verified as being PCI-DSS compliant between 2020 and 2022. The information I've seen appears to be compliant with the terms and conditions of Clover's user agreements with T. And I'm satisfied that Mr V has confirmed he's experienced similar difficulties trying to submit T's evidence of compliance as previously raised.

In the absence of evidence to the contrary, I'm not satisfied Clover has fairly charged T PCI-DSS non-compliance fees. As I haven't seen any evidence that shows the PCI-DSS non-compliance fees have been reasonably charged, I'm telling Clover to refund them, along with 8% interest from the date each fee was applied to the date of refund.

I'm also satisfied the ongoing difficulties T has experienced submitting the documents Clover requires to verify PCI-DSS compliance has caused an unreasonable level of inconvenience. So I'm also telling Clover to pay T £100 to recognise the additional work and inconvenience caused.

My final decision

My decision is that I uphold T's complaint and direct First Data Europe Limited trading as Clover to refund all PCI-DSS non-compliance fees charged from February 2021 to January 2023 along with 8% interest from the date of each fee to the date of settlement. I also direct First Data Europe Limited trading as Clover to pay T £100 for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 28 April 2023.

Marco Manente
Ombudsman

