

## **The complaint**

A company which I'll call 'D' complains that Elavon Financial Services Designated Activity Company (trading as Opayo) treated them unfairly when they upgraded their systems.

The complaint is brought on D's behalf by their director, Mr H.

## **What happened**

D had a merchant services agreement with Elavon.

D told us:

- They'd been due a refund on their account from the previous provider who Elavon had taken over from, but it hadn't paid this.
- They were due a refund of fee's because they hadn't been able to use their account due to the actions of third parties and because it hadn't been functioning correctly.
- Elavon hadn't updated their company logo on the payment service site, so it was causing reputational damage.
- Elavon initially unfairly put a reserve on their account and had stolen fees so they couldn't fulfil their orders or process refunds. However, it had now suspended their account, so they'd lost out on business which they wanted Elavon to refund, along with compensation for their director's time spent dealing with their complaints.
- They wanted the PCI non-compliance charges refunded and copies of the invoices these related to as they'd been requested but not provided and they hadn't been able to get any support from Elavon's PCI compliance team.
- They'd asked Elavon for a Subject Access Request ('SAR') on several occasions, but this hadn't been provided.

## **Elavon told us:**

- Its terms and conditions said that it wasn't liable for any losses due to any system outages.
- It had provided information about the PCI non-compliance fees within the terms and conditions. Until D's account had been suspended, they had online access to all their statements but hadn't made any calls for support to say they were unable to access them.
- D had complained about third parties, but it wasn't responsible for their actions. It also couldn't arrange any refund for services before it had taken over D's account.

- It had refunded D £162 for fees they felt weren't due. However, D's account had initially been restricted due to their direct debit being cancelled, so it couldn't collect the outstanding fees. It had subsequently suspended and then closed D's account as they had become more than three months in arrears on their account.
- It had apologised for the issue with updating D's logo on its system, and the times that Mr H had to chase it about various issues, so it had refunded D their last three invoices and offered to waive the cancellation fee of £550.25 on D's terminal hire and waive the notice period on their e-commerce payment gateway.
- It had a dedicated team that dealt with SARs, and it had provided the contact details to D on several occasions and explained that they needed to put their request in writing. It could provide the transcripts of any calls D required but it would need the dates and times, or reference number provided to locate them.

Our investigator didn't recommend D's complaint be upheld as she didn't think Elavon had treated them unfairly. She said that D had several complaints with Elavon, however she said that she had only considered the complaint points related to the merchant services agreement between the parties. Our investigator said in summary:

- It was common practice for merchant services agreements to create a reserve in case fees aren't paid in line with the agreement, and this was explained in the agreement which D had accepted.
- The agreement terms said that there was a PCI non-compliance fee which would be payable if merchants didn't meet the requirements, and that it wasn't Elavon's responsibility to remind D that it needed to do this, although it would provide support if requested and refund two months of fees once compliance was confirmed.
- The issue with the payment gateway wasn't due to Elavon but a third party. Although D has now moved to Elavon, their account is currently suspended because of the outstanding fees. Once these are paid the account will be reactivated.
- Elavon provided D with details on how to request a SAR in its FRL in September 2022. D can request all the information they require through this team and contact the Information Commissioners Office ('ICO') if they are unhappy with Elavon's actions regarding this.

D didn't agree. They again provided information and comments about an unrelated third party. However, they also said in summary:

- They wanted to be released from their Elavon contract.
- Previously they'd had fees refunded where there had been discrepancies between the different entities of Elavon and Opayo.
- They were being pursued for the outstanding debt with Elavon by debt collectors.
- Their SAR hadn't been completed as they wanted.
- Elavon hadn't helped them with their PCI compliance.

## **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.

Having done so, I've decided not to uphold it. I'm sorry to disappoint Mr H, but there isn't much more that I can add to what our investigator has already said. D has provided a significant amount of information and I haven't commented on everything the company has said but I've focused on what I think are the key points as my role allows me to do.

D told us that Elavon has treated them unfairly with regards to their fees and contracts, but I'm not persuaded that's the case. The company have provided lots of information and evidence about the history and losses they believe they have incurred, but Elavon isn't responsible for these losses. Therefore, I don't think it's reasonable for it to refund or comment on the losses or the actions of the third parties involved. I've also seen that Elavon offered to release D from their both their merchant services contract – waiving the cancellation fees of £550.25, and their E-commerce Payment Gateway contract – waiving the 30-day notice period. So, I'm satisfied that it behaved reasonably towards D.

D also says that Elavon have employed a debt collection agency who are contacting them. But I don't think this is unreasonable. Elavon have provided evidence of the fees that were payable by D under the terms and conditions, which were provided when D signed their contract. I've seen that Elavon made clear to D that these fees were payable, and I've seen that it previously deferred payment of them previously to assist the company. However, D didn't pay the fees that were due and after they cancelled their direct debit (which was a breach of their contract) and the funds held in the reserve account by Elavon were used, this created a balance that is payable by the company. I think it's fair for Elavon to look to recover a balance that is due to it.

I recognise that D is unhappy with Elavon as they say it didn't help them with their PCI compliance, however, this isn't something Elavon is obligated to do. Elavon doesn't create the rules about PCI compliance, this is an industry wide requirement for businesses that use cardholder information, and I think it's something that D would likely have already been aware of as they had been taking electronic payments before signing a contract with Elavon. But in any event, I've reviewed Elavon's terms and conditions and there is a large amount of supporting information here and options that were available to D. However, I haven't seen any evidence that it asked Elavon for assistance, or raised this as an issue in the emails with Elavon when this fee was discussed. I've also seen that Elavon have a dedicated team to support its customers in this specific area, but again, I haven't seen any evidence that D approached it for assistance. So, I can't reasonably say Elavon behaved unreasonably here.

Mr H says that Elavon hasn't responded to his SAR request for himself and D in the manner that he wanted. Elavon has told us that it did respond to Mr H's SAR request with the information he requested, and it isn't aware of any reason why the information he wanted, such as specific calls wouldn't have been provided. However, if Mr H could provide further information to help it locate the calls he wanted, it would attempt to locate them for him. If Mr H is unhappy with how the information was received, he can also request this in a different format from Elavon. This is in line with the guidance from the Information Commissioner's Office ('ICO'). However, if Mr H is unhappy with the information within the SAR he was provided, he can contact the ICO about this.

As I've said, I know Mr H feels strongly about D's complaint, but I don't think Elavon has treated D unfairly, so I won't be asking it to do anything more.

**My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 5 March 2024.

Jenny Lomax  
**Ombudsman**