

The complaint

A charity, F, complains that First Data Europe Limited (trading as Clover) has wrongly retained its money.

What happened

F had a merchant services agreement with Clover, which allowed F to receive payments made by plastic cards.

F's directors told us that Clover is unfairly holding on to £5,588.10 of F's money. They say those funds represent payments made in late 2021, which should have been paid over to F but were not. They provided statements showing that Clover had collected more than £5,588.10 for them between July and December 2021, but they said they had received all but £5,588.10 of that money.

F's directors also explained that they closed F's old bank account in July 2021, and gave instructions for F's payments to go to its new bank account instead. That didn't happen. They don't know why not, but they say Clover has suggested that it retained F's funds to cover outstanding fees. They believe they have already paid all the fees that were due.

I don't know what Clover's position on this complaint is, because it has not fully answered our investigator's questions about what it has done. But I can say:

- Our investigator wrote to Clover on 22 February 2023 to explain that, based on the very limited information available to him, he thought Clover should return F's funds and also pay £100 to apologise for the inconvenience it had caused.
- Clover replied on 4 April 2023 to say it had "arranged a refund of £100.00 in relation to this case". On 6 April 2023, it said "we are no longer holding any funds for this merchant".
- F's directors told us that they had not received the £100 compensation or the funds in dispute. Our investigator wrote to Clover on 17 April 2023 to ask for evidence that the funds had been released, and for details of the account the £100 compensation had been paid to.
- On 20 April 2023, Clover's representative said "Please accept my apologies, due to an internal error this was raised under the head office MID. This has since been rectified and the merchant should receive this within 3 to 5 working days." (I am unclear what Clover meant by "this", or by "the head office MID".)
- F's directors told us they still hadn't received payment, so our investigator wrote to Clover again on 12 May 2023 asking for evidence that the money in question had been paid over to F.
- Clover responded on 15 May 2023 with a statement showing that £100 had been credited to F's account with Clover on 21 April 2023. But it did not provide anything to

show that the £100 had reached F's bank account, nor did it provide any comment on the funds originally complained about.

- Our investigator chased Clover on 6 June 2023. It responded on the same day with evidence that it said showed it had refunded £455 to F – but it turned out that money had nothing to do with F, and in fact was a refund due to a different Clover customer.
- Our investigator re-sent documents to Clover on 6 June 2023 in the hope of helping it to trace F's funds. Clover acknowledged that email on 13 July 2023 with a promise to review F's account that day.
- We didn't hear from Clover, so our investigator telephoned on 31 July 2023. Clover told us verbally that it didn't hold any funds for F, and that it would email F directly with evidence.
- F's directors told us they still hadn't heard from Clover, so our investigator called Clover again on 10 August 2023. Clover's representative told him that he could see on Clover's system that it had sent approximately £5,000 to F – and he promised to provide an explanation the following day.
- The investigator did not receive Clover's explanation on 11 August 2023, so he told both parties that he intended to refer the matter to an ombudsman.
- Clover told us on 14 August 2023 that F "was in arrears, due to a delay in receiving documentation from the merchant account manager... due to the time taken to have this complete the merchant's bank rejected the funds back to Clover Merchant Services, I can confirm that due to the outstanding balances on both the merchant accounts your funds were diverted to clear these amounts, this is in line with your Terms and Conditions." However, Clover did not provide any supporting information, and it has still not done so despite the further request our investigator made on 16 August 2023.

My provisional decision

I issued a provisional decision on this complaint on 4 September 2023. I said:

"Clover has told us both that it has paid F approximately £5,000, and that it has retained F's funds to cover an outstanding debt F owed to it. But despite ample opportunities – and many promises to both F and the Financial Ombudsman Service – Clover has not told us when it paid that money to F, nor has it given us any details of the amount of the alleged debt. Further, Clover has not explained why a delay in receiving documentation would have caused F to incur a debt to Clover.

On the other hand, F's directors have shown me evidence (in the form of account statements) that Clover collected £5,588.10 for F in the second half of 2021. They have shown me evidence that they have paid all the fees they believe are due to Clover. F's directors also say they have carefully checked all of F's accounts, and they are satisfied that F has not received the disputed £5,588.10 or the promised £100 in compensation.

I acknowledge that there is a possibility that Clover has in fact paid over the disputed funds. There is also a possibility that any discrepancy in the amounts paid over was indeed the result of a debt that F legitimately owed to Clover. However, based on the

evidence currently available to me, I am persuaded by F's directors' version of events – and I agree that Clover is unfairly holding on to £5,588.10 of F's funds."

I went on to say that I thought Clover should pay F £5,588.10, plus interest at 8% simple from 1 January 2022 until the date of settlement, plus £300 to compensate F for inconvenience.

I also said that unless I received further information by 18 September 2023 that caused me to change my mind, my final decision was likely to be along the same lines as my provisional decision.

F accepted my provisional decision. Clover confirmed that it had received my provisional decision, but did not provide a full response.

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 still don't know exactly what happened. However, I am satisfied that Clover has had ample opportunity to provide me with its version of events, and that in the circumstances it is fair for me to issue this final decision without Clover's full response.

Based on the limited evidence available to me, I remain satisfied that Clover is unfairly holding on to £5,588.10 of F's funds. My reasons are the same as those I gave in my provisional decision, and I now confirm those provisional conclusions as final.

Putting things right

To resolve this complaint, Clover should pay F £5,588.10. In addition, to compensate F for not having access to its money, Clover should pay interest on that amount. Interest should be at a rate of 8% per year simple, calculated from 1 January 2022 until the date Clover settles this complaint.

I have chosen 1 January 2022 as the start date for the interest calculation because I think the money Clover collected on F's behalf during 2021 should have been handed over to F by the beginning of 2022 at the latest.

Clover should also pay F £300 to compensate for the inconvenience it has caused. I consider that amount is fair in light of Clover's continued failure to return the funds and its continued failure to provide F with a complete explanation.

My final decision

My final decision is that I uphold this complaint. I order First Data Europe Limited (trading as Clover) to pay compensation to F as set out above.

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

Laura Colman
Ombudsman