

## **The complaint**

Mrs S is a sole trader. She complains that Elavon Financial Services Designated Activity Company treated her unfairly by not defending two chargeback claims against her company, which I'll call 'O' and also withholding the company's funds.

Mrs S is represented by Mr A, but for ease I'll refer to Mrs S throughout the decision.

## **What happened**

Mrs S told us:

- In February 2023, she took two payments over the phone from a customer who wanted to purchase two high value items totaling £11,300. These transactions showed as 'authorised' on the card machine. When the funds were received, she allowed the items to be collected from her shop.
- In mid-March 2023, Elavon contacted her to say that the cardholder had raised a chargeback dispute with their bank about these transactions saying they hadn't made them, and they were fraudulent.
- Elavon said it couldn't defend the chargeback because they were fraud claims, so she'd be liable for the £11,300. It then tried to take the full payment from her bank account.
- Since then, Elavon has withheld about £7,000 of her funds which is affecting O's cashflow and she can't afford to repay the full amount. She'd repeatedly asked Elavon not to restrict O's account until the matter was resolved, but it refused to do so.
- She offered Elavon the profit she would have made of around £3,400 as settlement but it wouldn't accept this and wanted full repayment.
- She didn't think Elavon was treating her fairly because when she'd completed the transactions, her terminal had given her a receipt and authorisation code and she had been the victim of the fraud.

Elavon told us:

- It had processed two chargebacks against Mrs S in February 2023. Mrs S was unhappy that she was being held liable for the chargebacks made against her for fraudulent transactions.
- It told Mrs S that the payments had been taken as 'Card Not Present' transactions, and therefore not subject to chip and pin or other face to face verification. This meant they were the most high-risk transactions, and she was 100% liable for accepting the payment.

- Its terms and condition said that when a payment was processed by it, that the merchant represents that the use of the card has been approved and authenticated by the cardholder. Which is difficult if the card holder isn't present.
- All cardholders are entitled to raise chargebacks in line with the scheme rules (e.g., VISA/Mastercard). And in the event of a chargeback the merchant is held responsible, and the full outstanding balance is debited from their account pending the investigation. It had restricted Mrs S's account as it hadn't been able to reclaim the full outstanding balance.
- It recognised that Mrs S said she couldn't afford to repay the full balance in one lump sum. It had been able to reclaim around £7,000 from the account restriction and offered Mrs S a repayment plan to clear the outstanding balance. However, she had declined this, so her account remained restricted. This was in line with the agreement terms, so it didn't think it had acted unfairly.

Our investigator didn't recommend the complaint be upheld. She said that the payments taken by Mrs S had been CNP which meant they were higher risk. She didn't think that the authorisation code given by the card terminal was a guarantee that the payment was legitimate and she thought Elavon's terms made it clear that Mrs S would be liable for any chargebacks. She acknowledged that £11,300 was a lot to repay in one amount, but she didn't think it was unreasonable for Elavon to reclaim the amount it was owed. She said she could see Elavon had offered Mrs S a repayment plan, which hadn't been accepted, so Elavon had restricted O's account until the balance was repaid. This was in line with the account terms, so the investigator didn't think Elavon had behaved unreasonably.

Mrs S didn't agree. She said that Elavon hadn't made her aware of the risks of transactions like CNP, or told her that these weren't final and could be disputed via a chargeback. Mrs S said the receipts said 'authorised', so she had acted in good faith when supplying the goods and neither Elavon, or the merchant provider, had highlighted her liability in the terms and conditions so it had acted unfairly. Mrs S also said Elavon hadn't helped her and its customer service throughout had been poor.

### **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 Mrs S, but there's not much more that I can add to what our investigator has already said.

A chargeback is the process by which some disputes are resolved between card issuers and merchants under the relevant card Scheme rules. Elavon doesn't operate the Scheme or decide if a chargeback is successful – it can only decide whether or not to defend it. And in the case of fraudulent transactions, there is no decision to be made as the cardholder has said they weren't responsible for the transaction. This was the starting point for these transactions as the card issuer had told Elavon their cardholder information didn't match the person who had undertaken the transactions with Mrs S.

Mrs S says that Elavon has behaved unreasonably because it didn't make her aware that payments that had been 'authorised' by the card terminal could be subject to a 'chargeback'. But I'm not persuaded that's the case. I've seen the terms and conditions which were provided to Mrs S and there is a whole section specifically related to 'authorisation' and I'm satisfied that it is in plain language when it says that authorisation doesn't guarantee

payment for a transaction or guarantee that the transaction won't be disputed at a later date as all transactions are subject to chargebacks. I also haven't seen any evidence that Mrs S had contacted Elavon previously to say that she didn't understand the agreement or needed further support. So, I think Mrs S ought reasonably to have been aware that CNP transactions weren't guaranteed.

I've also seen that within the terms there is a specific section which explains about chargebacks. The terms make clear that Mrs S was fully liable for any transactions which were returned to Elavon including chargebacks, and that the amount would be repayable back to Elavon immediately. The terms also say that businesses should maintain sufficient funds in their accounts in the event of a chargeback so that Elavon can recover any payments it needs to make. So, I can't reasonably say that Elavon has treated Mrs S unreasonably by attempting to take back the £11,300 which it had already returned to the card holder because of a valid chargeback.

I recognise that Mrs S says she's been the victim of fraud and therefore she shouldn't be responsible for the loss. I also understand that she feels Elavon's customer service was poor when she asked it not to take the balance until an investigation had taken place. I do have some sympathy for Mrs S here. However, Elavon also wasn't responsible for the loss either and it has simply followed the scheme rules in accepting and refunding the chargeback made against Mrs S. Its terms make clear that if it has to pay a chargeback claim, it will immediately seek repayment from a merchant then investigate – not the other way round. So Elavon didn't behave unreasonably by not agreeing to Mrs S's request.

I've also seen that the jargon Mrs S said she was unhappy about Elavon using was defined within the terms and conditions, so I think it was fair that it used these terms and expected Mrs S to understand them – as she hadn't told them initially that this wasn't the case. So, I don't think it did anything wrong here. Furthermore, I can see that Elavon offered Mrs S a repayment plan so that she didn't have to repay the outstanding balance in full – which she declined. So, I'm satisfied that Elavon did try to assist Mrs S when requested. I recognise that this has been a difficult time for Mrs S and that she'll be disappointed with my decision. However, I don't think Elavon did anything wrong, so I won't be asking it to refund the chargeback.

### **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 O to accept or reject my decision before 19 March 2024.

Jenny Lomax

**Ombudsman**