

The complaint

A partnership which I'll call 'S' complains that First Data Europe Limited (trading as Clover Merchant Services) didn't set up their account correctly which has led to incorrect charges being applied to certain transactions.

The complaint is brought on S's behalf by one of the partners, Mr F.

What happened

S told us:

- In June 2021, they took out an agreement with Clover for it to provide them with merchant banking services for different types of transactions, including those where the 'Card [was] Not Present' ('CNP'). Different transactions incurred different rates depending on whether the card was present or not, and if they were 'qualifying' transactions which incurred a lower rate.
- They were told by Clover that for CNP transactions, if they verified a customer's address and post code, these would be treated as qualifying transactions and subject to the lower rate. However, this wasn't happening and all their CNP transactions were being treated as 'non-qualifying'.
- They believed there was an issue with the terminal supplied by Clover because it always said there had been 'no cardholder verification' even if they'd input the correct address details to verify their customers.
- Clover told them that if they made an error inputting an address or wanted to check the details were correct before processing a payment, that the terminal would allow them to reinput this correctly. However, that wasn't the case, and they were unable to correct any mistakes or check the details. Their only option was to void the transaction which caused them and their customer's inconvenience as the funds were then blocked.
- Initially they were only being overcharged on Mastercard scheme transactions, however, since the complaint had been brought to this service, they were now experiencing the issue with VISA transactions too.
- Clover hadn't understood their complaint or acknowledged the email from the sales manager telling them how their CNP transactions would be charged, provided they obtained the verification information. It also hadn't replied or updated them about their complaint when promised.

Clover told us:

- It was applying the correct 'non-qualifying' rates to S' transactions, which the Partners had accepted when they'd signed the merchant services agreement.

- Non-qualifying rates were applied when transactions weren't in line with the merchant agreement or card scheme rules, and it had no control over this.
- It identified there was an error on S's account which meant that CNP transactions hadn't been charged correctly and it was refunding the company £1,076.22. The error had now been corrected, but some card transactions would still be 'non-qualifying', and this would show on S's statements. It then refunded a further £226.22 but said the system issue had been resolved and any charges S was incurring were now correct.

Our investigator recommended the complaint be upheld. He thought that Clover had agreed with S that certain transactions would be free but had then proceeded to charge the partnership unfairly. He said that based on the evidence provided by both parties, S was validating the addresses for CNP transactions as instructed by Clover, so these should have been treated as qualifying transactions. So he recommended that Clover refund the charges that had continued to be taken unfairly and hadn't already been refunded – along with £200 compensation for the inconvenience caused.

Both parties accepted the investigator's view. However, Clover didn't proceed with the recommendations it agreed to and then said it had accepted the view in error. So the complaint was passed to me to decide.

I issued a provisional decision on 6 November 2023. I said the following:

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 to uphold it.

There's not much more that I can add to what our investigator has already said, and as neither party disputes that an error has taken place, I'll focus on how I think Clover should put things right.

S says that Clover treated them unfairly as it has charged them the wrong rate for CNP transactions. Clover has now accepted that it made a mistake, apologised, and refunded S the charges the incurred from June 2021 until September 2022. However, S says that although it now appears that Clover has resolved its issues for VISA payments, they are being charged incorrectly for Mastercard payments and therefore Clover still owes them a refund of these charges from October 2022 onwards.

Clover said that its system issue had been resolved, and any transactions going forward were incurring the correct fee. It also said that some card transactions would always incur the non-qualifying rate and that this was in line with the terms S had agreed to. But I'm not persuaded that's the case. I say that because I've seen the email from Clover to S in mid-June 2021 when they took out their agreement, which confirmed that CNP transactions would incur the same rate as their other transactions, provided the 'full postcode and door number or name is entered' and that 'both entries are confirmed as correct by the card issuer'.

I've also seen that Clover only provided a breakdown of personal credit and debit transactions, business credit and debit, diners card transactions and American Express transactions. So based on the evidence from both parties, I think it's reasonable that S believed that all transactions which were verified in the manner advised by Clover, would be captured by this, and treated as 'qualifying' – regardless of the card issuer.

S has told us that Clover has now corrected the issues they were experiencing with VISA transactions. However, they are still being overcharged on their Mastercard transactions each month. Clover initially told us that the non-qualified transactions were being applied correctly because S wasn't verifying the address information on the terminal as they'd been advised. However, based on the evidence provided from both parties, I'm not persuaded that's the case.

I've looked at the sample statements provided and seen that Clover has applied the non-qualifying rate for transactions which Clover's own records say were verified correctly. So I don't think Clover has treated S fairly here and I think it should refund any transactions that were incorrectly charged at the non-qualifying rate if the address verification was correct.

S also says they were told the terminal would give them the option to check the address before making a payment and change it if needed. So they don't believe they should be charged the higher rate even if the address verification fails and they choose to continue with the payment. But I don't agree. I've seen the email from Clover, and I can see that it does say that if the address is incorrect, they can either continue – effectively without verifying their customer – or void the transaction without cost. So, I'm not persuaded S was told they could change an address mid-way through a transaction without processing it in one of these two ways.

I've seen that S clarified this with Clover at the time and accepted this, and S has already told us they do have the option to void transactions if they are made aware the address is incorrect and have used this – albeit this causes inconvenience. So I won't be asking Clover to refund any transactions which were treated as non-qualifying when they correctly failed the address verification.

It's clear that Clover's actions have caused S inconvenience, and I can see that the partners have had to spend time manually reconciling their accounts to show which transactions have been applied incorrectly and trying to resolve the issue with Clover directly by phone and email, without success. I've also seen that despite accepting the investigator's view in June 2023, Clover didn't proceed with the refund or ensure the right charges were applied to S's account when they obtained the correct address verification.

Therefore I think Clover should pay S £500 compensation for the inconvenience caused by its actions, refund S the charges from October 2022 onwards that were applied incorrectly plus interest at 8% per year simple and amend S's account held with it so that S is charged a 'qualifying' rate when they have verified the address correctly in line with the information they were given when signing the agreement with Clover.

I invited S and Clover to give me any more evidence and information they wanted me to consider before issuing my final decision. Clover accepted the decision and had nothing further to add.

S didn't say whether or not they accepted the decision, but they said:

- The provisional decision failed to mention that S was being overcharged for both VISA and Mastercard transactions initially.
- Clover had refunded them the VISA transactions up to May 2023 when they started experiencing issues with this card type again.
- All Mastercard overcharges from October 2022 hadn't been refunded.

- They were concerned that Clover wouldn't be able to resolve the issue between 'qualifying' and 'non-qualifying' transactions, and as most of their transactions were qualifying, Clover should just refund the overcharges for all their payments.

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.

I acknowledge S's comments about the timing of the issues experienced with both VISA and Mastercard transactions. However, I don't think that has a material impact on the decision as I've recommended that Clover refund S for *any* transactions that were incorrectly treated as 'non-qualifying'. So this encompasses transactions from both card schemes from the time that S took out the agreement until the date of the decision.

I also recognise S's concerns about Clover being able to identify 'non-qualifying' transactions and that it would be simpler for it just to refund all the overcharges. But this isn't fair to Clover, nor is it in line with the agreement that S signed. It also wouldn't be reasonable for me to make a recommendation for something that S isn't entitled to receive. I think that Clover needs to resolve the issue that S is experiencing so that it is also fulfilling its part of the agreement, which is the reason I have included this as part of the decision. However, it's a commercial decision for Clover to make on how it does so.

On the basis that neither party has provided any additional evidence or information, I see no reason to reach a different conclusion to my provisional decision. So this final decision confirms the findings set out in my provisional decision.

My final decision

My final decision is that I uphold this complaint. I instruct First Data Europe Limited to do the following:

- Refund any fees from transactions that were incorrectly treated as 'non-qualifying' and haven't yet been refunded plus interest at 8% per year simple.
- Correct S's account so that it is charged a 'qualifying' rate for transactions which have received confirmation that an address has been verified.
- Pay S £500 compensation for the inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 21 December 2023.

Jenny Lomax
Ombudsman