

## **The complaint**

A limited company, that I'll refer to as K, complains about the actions of First Data Europe Limited trading as Clover in relation to chargeback claims made by a third party.

## **What happened**

The following is intended only as a brief summary of events. K has a merchant services agreement with First Data. In February 2023, a third party made a number of card payments to K over the phone. A few weeks later, First Data wrote to K advising it of chargeback claims in relation to these payments.

K contacted First Data. But the claims were not successfully defended, and First Data debited the amounts from K's account. K complained about this, but First Data said that card not present (CNP) transactions were taken at the risk of the merchant (K, in this case) and that First Data hadn't done anything wrong in the circumstances.

K brought its complaint to the Ombudsman Service. But our Investigator did not recommend it should be upheld. She said that the account terms and conditions were clear about the risks involved with CNP payments and that she did not consider it would be likely the chargeback claims could have been defended in the circumstances.

As K remained unsatisfied, its complaint was passed to me for a decision.

Based on the information on file, I didn't think that First Data had given a reasonable explanation for why the chargeback claims were not defended. And I issued a provisional decision partly upholding the complaint. However, First Data confirmed that information had previously been provided to the Ombudsman Service – though for some reason this was not received – and provided a further copy of this.

Based on this additional information, I was satisfied that First Data had acted appropriately. And I informed both parties that I no longer intended to uphold the complaint. I asked both parties to provide any response to this that they wanted to by 8 March 2024. Neither party provided any additional information.

## **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 am not upholding this complaint. I'll explain why.

What a merchant acquirer (in this case First Data) should do in circumstances such as this, is promptly inform the merchant (K) of the chargeback claim. And gather any evidence in defence of the claim. The merchant acquirer should then make a decision about whether the evidence provided is enough for it to be likely for the claim to be defended.

In this case, First Data informed K of the chargeback claims in a timely manner, and K responded with the information that was requested within the deadline for doing so (at least

on at least two of the chargeback claims).

First Data made an initial attempt to defend the claims, raising what is known as a pre-arbitration dispute. However, no agreement was reached with the third party's bank. First Data could have pursued the complaint to arbitration. However, it would only be reasonable to expect this were there was a good chance of the claim being defended.

As has been pointed out by both First Data and the Investigator, CNP payments are inherently more risky than other forms of transaction. It is more difficult to verify that the payee is the cardholder. And this means such transactions are more likely to lead to chargeback claims, with the cardholder usually saying that they did not authorise the transaction.

The third party might have had their card used by someone they are close to, who would have been able to provide the information K collected. So, it is difficult to be sure this information came from the actual card holder.

As a result, even where information such as that K collected and provided to First Data about the third party is available, it may not be possible to successfully defend the claim. And First Data will have needed to consider the costs of bringing this defence to arbitration.

Taking everything into account, I am satisfied that First Data took matters as far as was reasonable in the circumstances of this complaint. I consider it was reasonable for it to decide not to bring this defence to the arbitration stage, as it reasonably concluded there was not a good chance of this being successful. And so, I am unable to fairly and reasonably ask it to do more.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 19 April 2024.

Sam Thomas  
**Ombudsman**