

## **The complaint**

A company, which I will refer to as E, complains that Paymentsense Limited (trading as Dojo) is unfairly pursuing it for a debt of £2,000. It also complains that its merchant services account should never have been set up in the first place.

## **What happened**

E's director told us:

- He opened a new account with Dojo to enable E to take payments using plastic cards. He later discovered that the salesperson had misrepresented his business – it is a wholesaler, not a retailer. That misrepresentation resulted in E's Merchant Category Code (MCC) being recorded incorrectly.
- E's transactions were flagged and stopped by E's underwriters because they were outside the expected pattern of transactions for a retailer. That meant E's account with Dojo was closed, and left E without a card terminal.
- Dojo told him to refund the card payments E had taken, which he attempted to do. Dojo also told him that it would not release the stopped funds to him – but then it did release those funds. He believes that was due to a systems glitch or fault in Dojo's system.
- Dojo is now seeking to hold E liable for losses that Dojo has suffered as a result of its own poor performance.
- To resolve the matter, he would like Dojo to stop chasing E for money and to cease all correspondence.

Dojo told us:

- On 3 June 2023, E attempted to process several transactions from the same card (one of which was declined). Dojo believes that E was trying to split a single payment into several smaller ones. Its terms and conditions explain that "You must not process more than one sale through a card machine for any one card transaction unless the cardholder gives you more than one card, each with a different card number".
- On 8 June 2023, it gave E two months' notice that it intended to terminate E's account. That was because it was not satisfied with the outcome of its review of E's account.
- On 29 June 2023, it told E that it had suspended E's account due to out-of-line high value transactions which were processed through the card machine on 28 June 2023 (for amounts of £1,600, £2,000 and £1,400). E's representative called Dojo back on the same day and explained that the payments were for the purchase of shares in E.

Dojo told E that it was not prepared to support processing payments for the purchase of shares, and E agreed to refund the cardholders.

- On 30 June 2023 E raised a complaint, because it was attempting to refund a cardholder (who was also a shareholder) and the refund attempts were failing. E believed the failures were because of a problem with the MCC, but in fact the issues were due to the cardholder's bank. The refund later went through.
- It subsequently closed E's account. At that point the balance of the account was minus £2,000.
- On 23 January 2024 it emailed E with a reminder that E still owed Dojo £2,000 for the refunds paid out. It is prepared to consider a payment plan if E is not able to pay the full amount all at once.

One of our investigators looked at this complaint, but did not uphold it. He said that regardless of any issues surrounding the setup of the account, ultimately Dojo released funds to E and also refunded those same funds to the cardholder. He therefore thought it was fair for Dojo to pursue E for the return of its money.

Dojo accepted our investigator's opinion, but E's director did not. He said that Dojo's salesperson and underwriters failed utterly, and that it was Dojo's own faulty system that created the refund situation. He also said that Dojo would never have known that the funds had been used to purchase shares but for the salesperson's error in setting up the account, and that it then took Dojo many months to try to hold E accountable for Dojo's own sequence of catastrophic errors.

### **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 have reached the same conclusion as our investigator, for the same reasons. Briefly:

- Dojo received funds once (from the cardholder);
- Dojo paid those funds out twice (once to E, and once to the cardholder as a refund);
- Dojo is therefore acting fairly in pursuing E for the return of the funds.

I acknowledge that E's director considers that the matter is much more complex. I have considered his arguments in more detail below, but briefly I am satisfied that none of his arguments affect the underlying issue – which is that E has not reimbursed Dojo for a refund Dojo paid out to a cardholder.

I want to be clear that it is not my role to decide whether E is required to pay any money to Dojo. My role is to determine the fair and reasonable outcome to this complaint. Having done so, I am satisfied that Dojo is entitled to pursue E for the £2,000 that Dojo claims is owed. I cannot consider any wider disputes, and in particular I cannot consider any dispute between E and the cardholder/E's shareholder. I don't know whether the cardholder has paid for the shares in full, but I cannot consider that issue.

### ***The incorrect MCC***

Everyone now accepts that E's Dojo account was set up with the wrong MCC.

E's director's position is that if the salesperson hadn't deliberately misrepresented the situation, none of the subsequent events would have occurred. But I don't need to consider that issue in any detail. The usual remedy for misrepresentation is to put the innocent party into the position they would have been in if the misrepresentation had not occurred. But here, if the account had not been set up in the first place, then Dojo would never have paid any money over to E. So even if there was a misrepresentation, and even if Dojo was responsible for that misrepresentation, I would still see nothing unfair about Dojo attempting to recover money from E.

In any event, I am not persuaded that the incorrect MCC was the cause of the problems E experienced here. Regardless of whether the MCC actually used was the retailer code or the wholesaler code, Dojo would still not have permitted E accept payments for the purchase of its own shares.

### ***Dojo's original reason for freezing the account***

E's director has pointed out that Dojo would have had no way of knowing that the funds that had been processed were for a shareholders agreement. It says Dojo only knew that because he told them – and that he provided that information after Dojo had already frozen the funds. He also said that Dojo told him on the phone that funds were frozen because the transactions had been flagged as unusually large given the MCC associated with the account.

At this point, I don't think it matters why the Dojo originally put a hold on the account. Dojo is entitled to ask questions about any transaction. Dojo says it originally flagged the account because E attempted to split one large transaction into several smaller ones – but even if the reason was because transactions were unusually large, Dojo was still entitled to ask questions about them.

I accept Dojo's evidence that it does not allow its merchants to process transactions for the sale of the merchant's own shares. I am therefore satisfied that Dojo was entitled to require E to refund the cardholder, regardless of how Dojo came to find out what the transactions were for.

Even if Dojo had been wrong to freeze the account, that would still not change the underlying issue here; Dojo has paid money to E that E is not entitled to retain, and it is therefore fair for Dojo to ask for those funds to be paid back.

### ***Why the cardholder was refunded***

E's director has said he feels he has been punished for following Dojo's advice. Dojo told him to refund the cardholder, which he did, and now Dojo are pursuing E for money.

I can see that there was some confusion about the refund. At one stage (on 3 July 2023) Dojo told E "you may be aware that, due to a system error, your transfers have been paid into your account therefore we no longer require you to process the remaining refunds". It therefore appears that Dojo did experience some kind of systems issue, and that may be the reason that funds were credited to E's account as well as refunded to the cardholder. But regardless of the reason why that happened, I have seen nothing to suggest that E is entitled to retain all of the funds Dojo has paid to it. I am satisfied that Dojo paid £2,000 more to E than E was entitled to retain, and I see no reason why Dojo should not seek the return of that money.

### ***Whether Dojo's terms and conditions are valid***

E's director argues that although Dojo has mentioned its terms and conditions, they are null and void because the contract was not valid in the first place.

My role as an ombudsman is to resolve complaints in a way that I believe is fair and reasonable in all the circumstances. The terms and conditions applying to a contract may be a relevant consideration, but they are not always determinative. Here, Dojo has received funds once and paid them out twice. Regardless of what the terms and conditions say, and regardless of whether the terms and conditions apply, I see nothing unfair about Dojo pursuing E for the return of its money.

### ***Delay***

E's director says that Dojo took too long to request the return of the funds. I accept that Dojo appears to have done little or nothing between July 2023 and January 2024, but I don't think that means Dojo is no longer entitled to seek the return of the funds. E's director told us that he accepts that the funds were *both* refunded to the cardholder *and* sent to E (he believes due to a glitch).

It is clear that the circumstances that led to this dispute, and the way in which Dojo chose to attempt to recover its money, caused considerable distress and frustration to E's director. I sympathise with him, but I do not have the legal power to consider making an award in his favour. Dojo's customer here was the limited company E, and not E's director as an individual. I cannot consider an award for distress and frustration suffered by E either, because – as a corporate body – E is not capable of having emotions or suffering distress.

E is capable of suffering inconvenience, but I don't think an award for inconvenience would be appropriate in this case. In his original telephone call to our service, E's director accepted that he knew Dojo had paid both E and the cardholder/E's shareholder. Dojo's delay in seeking repayment is unfortunate, but I don't think it would be fair for me to award financial compensation as a result.

### ***My final decision***

My final decision is that I do not uphold this complaint, and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 4 December 2024.

Laura Colman  
**Ombudsman**