

The complaint

A company, which I'll refer to as B, complains that First Data Europe Limited (trading as Clover) didn't complete adequate checks to prevent a fraudulent transaction.

Mr T, who is a director of B, brings the complaint on B's behalf.

An employee of B has represented B in its complaint. However, I will refer to all comments and submissions received as being from B.

What happened

In September 2023, B received a high-value order and processed a Card Not Present (CNP) transaction through its Clover payment system. The customer came to collect the items in person.

A month later, B received a chargeback claim for the items. This was approved by the card scheme as the purchase was fraudulent.

B said that it shouldn't be held responsible for the loss as Clover should have provided better fraud protection. B said that, under the Payment Services Regulations (PSRs), Clover was liable for unauthorised payment transactions, and was obliged to provide strong customer authentication (SCA) for CNP transactions, which it had failed to provide.

Our investigator considered matters and found that Clover had done nothing wrong. He said that the conditions for use of Clover's services clearly stated that CNP transactions held higher risk and were undertaken at the liability of the merchant. However, B felt that these statements did not absolve Clover from its responsibilities under the PSRs.

So the matter has been passed to me to decide.

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.

In the circumstances of a chargeback dispute, it is not for me to decide whether the chargeback claim should have been approved. The card scheme decided to allow the chargeback because it believed the payment was fraudulent.

The subject of this dispute is whether Clover should have done more upfront to prevent the fraudulent transaction.

Clover's terms and conditions give many warnings about CNP transactions. For example:

- *CNP Transactions are in all cases at your own risk. Any CNP Transaction disputed by the Cardholder may be charged back (in accordance with clause 19) even where you have complied with your Merchant Agreement and we have given Authorisation.*

(clause 8.3)

- *We may charge back to you any Card Transaction with respect to which... the Card Transaction is a CNP Transaction... and is disputed by the Cardholder. (clause 19.1.12)*

The Merchant Agreement and Card Acceptance Operating Guide goes further, requiring specific written agreement to accept CNP transactions. It says:

- *CNP transactions are considered high risk as you can't check the card or the customer. Fraudulent CNP transactions are your liability as they are likely to be charged back to you. Written agreement from us is needed to take this transaction type. (Section 2.3 How to guard against fraud)*

There is no evidence that B received written agreement from Clover for this type of transaction.

The Operating Guide gives further warnings about CNP transactions, stating:

- *Goods relating to a CNP transaction should not be collected by the cardholder. If the cardholder wishes to collect the goods they must present the card for payment at the time of collection. (Section 2.3 How to guard against fraud)*
- *There are increased risks of chargebacks for CNP transactions as the cardholder and card are not present. If you choose to deliver goods to an address other than the cardholder's address you are taking an extra risk... An authorisation with or without confirmation of AVS/CSC information does not guarantee payment. If fraud subsequently occurs you will be liable for the chargeback. (Section 4 Accepting Card-Not-Present (CNP) transactions)*

On the basis of these terms and conditions and user guidance, it is clear that B undertook the transaction at its own risk and is therefore liable for the cost incurred. I believe the requirements in these documents are clearly stated and B ought reasonably to have been aware of them. It appears that, in processing the CNP transaction and allowing the collection of goods, B did not heed the many warnings which had been provided.

Nevertheless, I have also considered if Clover had adequate fraud protections in place under the PSRs. B has highlighted various SCA measures which it believes Clover should have used to identify the transaction as fraudulent. However, as B didn't obtain permission from Clover to undertake such transactions, I am not in a position to know what further measures Clover might have implemented to protect B's interests. Therefore, in the circumstances of this complaint, I cannot say that Clover failed to meet the requirements of the PSRs.

I know this decision will be a disappointment to B. A fraudster has caused B to suffer significant loss. But, in the circumstances of this complaint, I can't say that Clover has done anything wrong.

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 B to accept or reject my decision before 30 January 2025.

Andy Wright
Ombudsman