

The complaint

A company, which I will refer to as F, complains that First Data Europe Limited (trading as Clover) has unfairly held it liable for chargebacks.

What happened

F's director told us:

- F had an agreement with Clover which allowed F to take payments from its customers using plastic cards.
- In March, April and May 2024, F received several letters from Clover explaining that cardholders had raised chargebacks for transactions with F. In each case, the cardholder denied participating in the transaction.
- She tried to discuss the chargebacks with Clover, but it did nothing to help her contest the chargebacks. Ultimately, Clover said that F was liable for all of the chargebacks.
- It is not fair for F to be held liable. Neither she nor any of F's staff did anything wrong. Customers ordered goods from F, paid by card over the phone, and then the goods were correctly delivered. F could not have done anything differently.
- Clover has since told her that telephone transactions (or "card not present" / CNP transactions) carry a high risk. But nobody told her that before the transactions were taken. Clover should not have allowed F to process any transactions where F would not be fully protected. If she had known of the risks, she would not have used Clover to process telephone transactions.
- Clover's approach shifts the entire burden of risk to merchants without providing adequate tools or support to mitigate those risks. That is particularly concerning for CNP transactions, which were promoted as acceptable during onboarding.

Clover told us:

- Clover did not make the decision to apply chargebacks, and was simply following the card scheme rules (rules put in place by card schemes like VISA and Mastercard).
- It believes that F was a victim of fraud. It has no reason to doubt that F delivered goods exactly as F promised to do. But the cardholders involved say that they did not place the orders that F delivered. The orders therefore appear to have been made by fraudsters – and in those circumstances, the card scheme rules say that the genuine cardholders will not be liable for the transaction.
- The contract between Clover and F says that F (and not Clover) will be liable for any chargebacks.

- It provided an Operating Guide to F when the account was opened in 2022. That Operating Guide (which our investigator has since shared with F) explained the risks of chargebacks, and made clear that one of the common causes of chargebacks was a fraudulent telephone transaction.

One of our investigators looked at this complaint, but he did not uphold it. Briefly, he said that Clover had complied with the agreement it had with F. Clover notified F of the chargebacks, but did not receive suitable evidence in order to defend the chargebacks by the given deadline. That meant he couldn't conclude that Clover had acted unfairly.

Our investigator said that even if he were to conclude that Clover's communication with F should have been better, ultimately that would not have made a difference. There is nothing to suggest that F possessed any evidence that would have allowed Clover to defend the chargebacks. The chargebacks were not because of a dispute about the quality of the goods F provided to its customers; instead, the chargebacks were because the genuine cardholders said that they did not place the orders and did not give permission for their cards to be used.

F's director did not accept our investigator's conclusions, so the matter was referred to me.

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 am sorry to further disappoint F's director, but there is very little I can add to what our investigator has already said. I agree that Clover has treated F fairly.

Clover has provided us with a copy of its agreement with F. That agreement makes clear that in the event of a successful chargeback, it is the merchant and not Clover who will be liable. Clover's role here is to apply the rules of the relevant card scheme (for example VISA or Mastercard), and those rules say that cardholders will not be liable if their cards are used without their permission.

I acknowledge that F's director does not recall being told about the risks of chargebacks. But I think the agreement does make that risk clear. I know this will be difficult for F's director to hear, but in choosing to accept card payments by phone she also chose to accept the associated risks.

I am also aware that F's director has suggested that Clover should not have allowed F to take CNP transactions if F could later be held liable for those transactions. But I don't agree. Clover offered a service to F – the ability to take card payments over the phone – and it was F's choice whether to use that service. That service carried risks, but I think those risks were explained in the documents Clover provided to F.

F's director has also stressed that she and F have done nothing wrong, and that she did not know that the people who placed orders with F were not genuine cardholders. I accept her evidence on that point. But I don't think Clover did anything wrong either.

In my view, the people who did something wrong here are the people who used the cards in question to place orders with F (who do not appear to have been the actual cardholders). If it were possible for F to find the people who used the cards, then it might also be possible for F to sue them for the amount of the chargebacks. But it seems very unlikely that the people who used the cards can be found, which means that somebody else must bear the loss. I

understand that F's director thinks Clover should pay, but that is not what the agreement between F and Clover says about chargebacks following disputed CNP transactions.

I don't think there is anything unusual about Clover's terms. I acknowledge that F's director thinks that Clover should cover the loss, but in this case I don't think it would be fair for me to simply set aside Clover's terms and conditions.

I know F's director would have preferred Clover to speak to her about the chargebacks, rather than simply sending letters. But in the circumstances, I agree with our investigator that further contact between F and Clover wouldn't have made any difference to the outcome of the chargebacks. I've seen nothing to suggest that F would have been able to demonstrate that the transactions were authorised by the genuine cardholders.

I don't underestimate the emotional effect on F's director. Being a victim of fraud can have a significant impact on mental health, in addition to any financial consequences. I am very sorry to hear of the distress the director has suffered. But I think her distress was caused by the people who used the cards, and not by Clover. Even if I did think Clover had caused her distress, I would still be unable to award any compensation to her; the complainant here is the limited company F and not the director as an individual. Limited companies like F are not capable of having emotions or feeling distress.

My final decision

My final decision is that I do not uphold F's complaint about First Date Europe Ltd (trading as Clover).

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 25 April 2025.

Laura Colman
Ombudsman