

The complaint

Mrs F and Mrs D are partners in a partnership, which I'll call C. They complain that Takepayments Limited has unfairly charged them a lost terminal fee.

What happened

C took out a terminal hire contract with Takepayments in late 2023. The partners complained about the terminal's functionality and Takepayments' aftercare and in March 2024, Takepayments agreed to terminate C's contract and refund all charges.

Following the termination of the contract, C needed to return the terminal. Takepayments twice arranged for a courier to call to collect the terminal, but the courier didn't turn up. On 7 May 2024, one of the partners spoke to Takepayments and arranged a third collection for the next day.

Later on the same day, a courier arrived from the appointed courier firm. One of the partners handed over the boxed terminal.

Takepayments said they never received the returned terminal and that the courier on the 7 May 2024 had not come from them. They therefore charged the partners a £480 lost terminal fee.

The partners complained, but Takepayments did not uphold the complaint as they didn't feel they'd done anything wrong.

The partners asked the Financial Ombudsman to look into what had happened.

One of our investigators did so and concluded that the fee should not be charged, as she thought the partners had followed all Takepayment's instructions.

Takepayments disagreed. They said no collection had been arranged for 7 May 2024 and the terminal had therefore been handed over to a courier they did not arrange.

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. I don't think the £480 fee is not fair.

The decision for me is whether it's fair and reasonable in the circumstances here, for Takepayments to charge a £480 fee. To decide this, I've taken into account what the contract between the parties said, as well as the phone calls in which the collections were discussed.

First, I'll set out what the contract said. Under Charges, it said:

If you fail to return the equipment to Takepayments after the termination of the contract, and Takepayments collect it, then you shall pay the Collection charge in accordance with clause 13.5 of the terms and conditions.

The relevant clauses then said:

13.4 The Merchant shall, at its own cost, return the Equipment to Takepayments within ten (10) days of the date of termination of the Contract (regardless of the reason for such termination). The Merchant shall, if requested by Takepayments, promptly provide Takepayments with proof (to Takepayments' reasonable satisfaction) that the Equipment was so returned.

13.5 If the Merchant does not return the Equipment in accordance with clause 13.4 then Takepayments shall be entitled to access the Merchant Site (or any other premises at which the Equipment is or may be located) without notice to collect the Equipment and the Merchant shall pay the Collection Charge on demand.

13.6 If the Equipment returned by the Merchant (pursuant to clause 13.4) or collected by Takepayments (pursuant to clause 13.5) is not in complete working order and in good condition (allowing for fair wear and tear) then the Merchant shall pay the costs of repairing the Equipment."

I think it's relevant that these clauses all refer to something called a collection charge. This charge is later specified in the contract as £100. I think it's clear that this is not the fee that is the subject of this complaint, as the amount and name is different and Takepayments has clearly agreed to arrange a collection in this case.

Takepayments has described the fee it wishes to charge C consistently as a lost terminal fee of £480. I can see no reference at all in the contract to a lost terminal fee. So my starting point here is that I'm not persuaded that the contract sets out any contractual basis for charging the £480 fee.

Nonetheless, I need to decide what's fair and reasonable and if the partners had simply mislaid the terminal, I might consider it reasonable for some kind of fee to be charged (although the amount would be debatable).

I note that Clause 13.4 requires the merchant to provide proof (to Takepayments' reasonable satisfaction) that the equipment was returned. The fact that the partners are unable to provide this evidence in this case is a relevant factor for me to consider.

However, I think this factor is outweighed by the guidance given by Takepayments in the phone calls regarding the collection. I have listened to these calls carefully.

In the 2 May 2024 call, Takepayments' agent gave one of the partners instructions to take photos of the front and back of the terminal, so "if DPD lose or damage the parcel, the pictures will fully protect you from liability." He also said: "The machine can go into any box...DPD will come and stick the returns label on top of the box".

I think it's clear that C's partners followed these instructions carefully and they have provided evidence of the photos taken and emailed to Takepayments. Given this, and the partner's desire to check Takepayments' requirements on the phone, I consider it more likely than not that if Takepayments had told her to get a receipt, the partners would have done so – or else would not have handed over the terminal.

I have seen no evidence that Takepayments told the partner to get a receipt. Rather,

Takepayments told her the only thing needed to protect the partners fully from liability was to take the photos. I therefore don't think it's fair for Takepayments to say that the partners erred by not getting a receipt.

Takepayments' main argument for why C should be liable for the fee is that the terminal was handed over to a courier they did not arrange, because the partners knew that no courier had been arranged for that date.

However, as the courier had already twice failed to turn up the expected day, I think it's reasonable that when someone from the expected courier company arrived for a collection on the 7 May 2024 (the date the partners had chased), the partners assumed this was Takepayments' courier. I think it's fair to say most people would have made this assumption in this situation. C's partner says the courier then duly stuck a label on the top of the box, which was the process Takepayments had led her to expect.

In summary, I do not consider it is fair for Takepayments to charge a £480 fee in the circumstances of this complaint. The partners were expecting a courier to arrive and Takepayments did not tell them that they would need to obtain a receipt. I also cannot see that this fee is specified in C's contract.

Putting things right

I understand that C has not paid the £480, but has been invoiced. I therefore direct Takepayments to cancel the invoice and no longer to pursue the partners for this sum.

My final decision

I uphold this complaint and direct Takepayments Ltd to cease to hold the partners liable for a lost terminal fee.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 12 March 2025.

Louise Bardell
Ombudsman