

## The complaint

A company, which I'll refer to as W, complains about certain fees that it believes U.S. Bank Europe DAC t/a Elavon Merchant Services (Elavon) unfairly levied on its account.

In bringing this complaint, W is represented by its director, who I'll refer to as Mr S.

## What happened

The background to the complaint is set out in my provisional decision dated XXXX which forms part of this decision.

I provisionally concluded that this complaint should not be upheld:

In summary I said:

*My starting point has been to look at the terms and conditions of the Agreement as this partly governs the relationship between W and Elavon.*

*The term that is relevant to the circumstances of this case is this:*

- (t) Higher Risk Additional Loading Transactions,*
- (i) The Higher Risk Additional Loading Fee will apply to Higher Risk Additional Loading Transactions.*

*And by way of further explanation the terms and conditions go on to explain that:*

*"Higher Risk Additional Loading Transactions Fee: means the higher risk additional loading fee as set out in the Schedule of Fees"*

*Next, I considered the Schedule that Mr S signed in 2021. It has the following provisions:*

*"The following definitions shall apply to this Schedule of Fees:*

**Secure Transactions** are transactions processed by EMV (Chip & Pin), Contactless, Verified by Visa, Mastercard..... These must be processed within 2 days.

**Non-Secure Transactions** are any Transactions that are not processed as Secure Transactions."

*At present, I'm persuaded the activity fees were charged in the circumstances submitted by Elavon. In other words, that because of the late submissions of the transactions, they could not be processed as secure transactions. The statements relating to February 2024 – May 2024 shows the incidence of late submissions which in my view supports Elavon's position. It seems to me to follow therefore that since they couldn't be processed as secure transactions, there was associated risk in their processing as non secure transactions thereby triggering the activity fees.*

*I note Mr S relies on the Schedule for his submission that Elavon have no basis for charging activity fees as there was no mention of them in that document. But I disagree.*

*More to the point, I can see that the Schedule sets out in percentage terms the "Secure Rate" and "Non-Secure Rate" per transaction. So, having signed the Schedule in June*

*2021, I don't agree with Mr S's submission that W didn't agree to activity fees being charged and Elavon had no right to charge them.*

*I thought about Mr S's testimony that since 2021, W hasn't changed the way it has operated its account. And he's pointed to the statements on W's account for November and December 2023 and January 2024 when there was no activity fees charged. Whereas, he says, such fees all began in February 2024 despite there being no change.*

*From looking at the statements, I agree with Mr S' observation that there are no activity fees shown in the earlier months. But unlike W's statements from February to May 2024, there are no transactions marked "L DEL SUB" for which activity fees were charged.*

*However, Mr S has told us that until relatively recently he wasn't aware how to avoid incurring the fees. So, I can't rule out the possibility that because of this W's account wasn't always operated in a way that best avoided them.*

*All that being said, for me the pivotal point is this. Looking at W's statements between February and May 2024, there were a number of transactions that were designated "L DEL SUB" against which there were activity fees.*

*For me to require Elavon to refund those fees to W, I'd need to find they had made an error or acted unreasonably – and for the reasons explained, particularly having regard to the terms and conditions of the Agreement and the Schedule as explained above, I don't at present think they did. My proposed finding therefore is that Elavon were entitled to charge the activity fees that they did.*

### **What happened since my provisional decision**

Neither Elavon nor Mr S responded to my provisional decision

### **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.

Considering the failure by both parties to respond to my provisional decision, there is no new evidence or arguments for me to consider that might have led me to come to a different conclusion to that which I set out in the provisional decision. I believe therefore, that my provisional decision still stands. In other words, my final decision is the same as my provisional decision.

### **My final decision**

My final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 20 June 2025.

Asher Gordon  
**Ombudsman**