

The complaint

Mrs S, a sole trader, complains about the way a card terminal was sold.

Mrs S holds a business development manager (who I will call Mr G) responsible for the problems she has experienced. However, for reasons that I explain below, we have set this complaint up against First Data Europe Limited (trading as Clover).

What happened

Mrs S told us:

- At the end of 2023, Mr G came to her business premises and sold her a Clover card machine for £250. Mr G promised that because she had bought the machine, she would not be charged any monthly fees.
- Clover then began taking money out of her bank account each month. When she told Clover she wanted to leave, Clover said she had an agreement with them and had to pay an exit fee.
- She did not at any point sign any agreements with Clover. She has repeatedly asked Clover to send the original business development manager, Mr G, to resolve the issue. However, Mr G has not returned to her premises, and Clover keeps trying to involve unrelated people in the issue.

First Data Europe Limited told us:

- Mrs S signed two applications for contracts with members of the Clover group. She signed one application for a contract for acquiring services with First Data Europe Limited. She also signed an application for a contract with Marketplace Merchant Solutions Limited, an Irish company, which leases a terminal to Mrs S. Mrs S signed both applications on 24 December 2023.
- It accepts responsibility for the actions of Mr G in respect of both of those contracts.
- Mrs S asked to cancel her merchant acquiring contract in May 2024, and was given a termination quote of £456. She didn't proceed with the cancellation, and continued to use the facility until December 2024.
- Mrs S's lease agreement has now been terminated, with the outstanding balance of £168 written off. However, Mrs S has not yet returned the terminal itself.
- It is open to Mrs S terminating her merchant acquiring contract, but she will need to pay the arrears on that contract (which were around £124 as at February 2025).
- It has already paid Mrs S £250 in relation to this complaint.

My provisional decision

I issued a provisional decision on this complaint, and said:

“[My] provisional conclusions are:

- I cannot consider a complaint against Mr G directly; I can only consider a complaint against First Data Europe Limited. First Data Europe Limited has accepted responsibility for the actions of Mr G, so it is responsible for the recommendations he made.
- I think it is likely that Mrs S did sign two contracts with members of the Clover group.
- I don't have sufficient evidence to show that Mrs S purchased a terminal.
- Based on the evidence I've seen so far, I can't say that Mrs S suffered a loss as a result of the new contracts that Mr G recommended to her.
- Overall, I don't think that First Data Europe Limited needs to do any more to resolve this complaint.

I give more details about my findings below.

Who is this complaint against?

I know that Mrs S would like me to investigate her complaint about Mr G. From her perspective, Mr G is the person who caused the problems she has experienced, and she would therefore like Mr G to be held responsible for them.

However, as an ombudsman I have no power over Mr G. My role is to resolve disputes between financial businesses and the users of those businesses. First Data Europe Limited is a “firm”, as that term is defined in our rules, which means that I have the power to order First Data Europe Limited to pay compensation (if I think it is fair and reasonable to do so). But Mr G is not a “firm”, and I have no legal power to investigate a complaint against Mr G personally.

First Data Europe Limited has accepted responsibility for Mr G's actions. That means I have the legal power to consider the whole of Mrs S's complaint as though it were against First Data Europe Limited.

Did Mrs S sign contracts with members of the Clover group?

I know Mrs S does not recall signing any agreements with Clover. But in light of the evidence First Data Europe Limited (trading as Clover) has provided, I think Mrs S did sign two agreements on 24 December 2023 – one for merchant acquiring services, and one for the terminal.

I say that in part because Clover has been able to provide me with copies of the signed agreements. But I also note that it has been able to provide a copy of Mrs S's passport, as well as her gas bill and an insurance certificate. If she hadn't signed an agreement with Clover, then it is not clear to me why she would have provided Clover with those documents.

Did Mrs S buy a terminal?

Mrs S's recollection is that she paid Mr G £250 in exchange for a terminal. But there is no documentary evidence for the transfer of cash, or indeed for the sale of a terminal. Mrs S says she asked Mr G for a receipt, but was not given one.

In my experience, it would be unusual for an agent in Mr G's position to have been able to sell a terminal to Mrs S. I think it would also have been very odd for Mr G to have sold a terminal to her and then gone on to ask her to sign a contract to borrow that very same terminal.

Overall, whilst I am sorry to further disappoint Mrs S there is insufficient evidence for me to conclude that she paid Mr G £250 (or any other amount) in exchange for a terminal. However, I note that First Data Europe Limited has given her the benefit of the doubt and refunded £250. I can't fairly say that it should do more than that in relation to the terminal.

Did Mrs S benefit from the contracts Mr G sold to her?

The evidence here is incomplete, and I can't be sure exactly what happened. But Mrs S has provided evidence to show that she entered into a merchant acquiring contract with a third party in September 2023 (before Mr G's December 2023 visit to her premises). First Data has provided evidence to show that entered into contracts with members of the Clover group in December 2023. I think it is self-evident that she must have acquired those contracts as a result of information or advice from Mr G. First Data Europe Limited is responsible for the advice or information he gave, so I have considered whether it was appropriate. However, that is difficult to assess given that I don't know what Mr G said.

It is unfortunate that First Data has not been able to provide any evidence from Mr G himself. Nobody else at First Data is in a position to know what he said. Given that Mrs S does not remember entering into the First Data contracts, it seems very unlikely that she would be able to tell me what Mr G said about those contracts.

Based on the information I have, I can't say whether Mrs S was better off with the Clover contracts than she would have been if her existing contracts had remained in force. The two fee structures were different – for example, Mrs S's previous provider charged 1% on credit card transactions, whereas First Data Europe Limited charged 0.59% to 2.46% (depending on the card scheme). First Data also charged an authorisation fee on each transaction, and had various other monthly fees. That means that Mrs S may or may not have benefitted from the new contracts with the Clover group depending on the types of transactions she took. But broadly speaking, the two sets of contracts appear fairly similar.

I know that Mrs S will strongly disagree with my findings. But given that I can't say that she was disadvantaged by entering into the new contracts, I don't think it would be fair for me to conclude that she should not be bound by those contracts. That means I don't think it would be fair for me to require First Data to do anything more."

First Data Europe Limited did not provide any further comments or evidence in response to my provisional decision.

Mrs S did not accept my provisional findings. Briefly, she said:

- Mr G told her that he needed a range of personal and legal documents, including her passport and signature, in order to “open an account” with Clover. But he did not tell her that she would be entering into binding contracts – and she was never made aware, either verbally or in writing, that she was entering into long term financial agreements.
- The fact that Clover later refunded the £250 suggests that they recognise at least some fault in the way the sale was conducted. But they failed to produce any statement or explanation from Mr G, and did not investigate the conduct of their own agent. That was procedurally unfair, and also undermines her ability to challenge the validity of the agreement.
- She would like me to consider whether this matter constitutes a breach of consumer protection standards. The Consumer Rights Act 2015, along with general principles of contract law, say that a contract formed through misrepresentation is unenforceable. No reasonable consumer would have agreed to the terms she is now bound by had those terms been properly disclosed.
- She still has the payment terminal, which she has not been using, and it can be collected at any time.
- This incident, together with Clover’s persistent emailing, has seriously impacted her mental health.

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 conclusions as I did in my provisional decision, for the same reasons. I therefore confirm those provisional conclusions as final. I will also make some further comments below.

I am sorry to hear about the way this incident has affected Mrs S’s mental health, and I thank her for her openness with our service. I acknowledge that she will be very disappointed with my decision, but I am satisfied that the outcome I have reached is fair to both parties.

It is unfortunate that First Data Europe Limited has not been able to provide me with Mr G’s recollections, but I don’t think it is unfair for me to consider this complaint without his comments. I have Mrs S’s recollections, and I have the documentary evidence. In the circumstances, I think that is enough.

I know Mrs S does not recall signing the contracts. But as I said in my provisional decision, having reviewed the evidence I am satisfied that she did. I acknowledge that she says she only provided her passport and other documents so that Mr G could open an account for her, but I think the documents she signed made clear that she was entering into contracts.

The Consumer Rights Act 2015 is not relevant here, because when Mrs S entered into these contracts she was not acting as a consumer – she was entering into a contract for business purposes, so that her business could take card payments from her customers. But in any event, I haven’t seen sufficient evidence to persuade me that Mrs S was misled.

In addition, I still haven’t seen evidence to show that Mrs S was worse off on a monthly basis with the new contracts than she would have been with her old provider. The new contracts

may have had a higher monthly fee, but that does not automatically mean they were more expensive overall – that would depend on the number and types of transactions Mrs S took. I don't agree with Mrs S's view that no reasonable person would have signed the contracts if they had not been misled.

Finally, I don't think that First Data Europe Limited's decision to pay Mrs S £250 implies that it accepts that it did anything wrong. It says it made the payment after giving her the benefit of the doubt, and I don't think that implies that it should have to do anything more.

My final decision

My final decision is that First Data Europe Limited does not need to do any more to resolve this complaint.

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

Laura Colman
Ombudsman