

The complaint

A company, which I will refer to as T, complains that U.S. Bank Europe DAC (trading as Elavon) did not give it a fair opportunity to challenge a chargeback.

What happened

Elavon acts as a merchant acquirer for T, allowing T to take payments from its customers by plastic cards.

On 28 March 2024, Elavon applied a chargeback of £3,608.35 to T's account following a chargeback request from one of T's customers.

T's representatives told us:

- They didn't know about the chargeback until August 2024, when their accountant pointed it out to them.
- Although Elavon later said that it told them about the chargeback by email on 25 March 2024, they did not receive that email – and they certainly did not respond to it in July 2024.
- If they had been given the opportunity to defend the chargeback, they believe that their defense would have been successful. They would therefore like Elavon to refund the amount of the chargeback.
- They complained to Elavon in August 2024. Elavon did not uphold their complaint, so they would like the Financial Ombudsman Service to consider the matter.

Elavon's final response

Elavon issued its final response on 16 August 2024. T has provided us with a copy of that response (I have not received the document directly from Elavon). Briefly, Elavon's final response said:

- Elavon sent an email to T notifying it of the chargeback on 25 March 2024. The 'respond by' date on the letter was 23 April 2024. Elavon's IT department has confirmed that the email was sent successfully.
- The chargeback was also shown on T's March 2024 statement, under the heading "Chargebacks / Representments".
- Elavon did not receive T's response to its email of 25 March 2024 until some time in July 2024, which was beyond the critical date for Elavon to defend the case. The timeframes for chargebacks are set by the Card Associations and not by Elavon. (Elavon's final response said T's response was received on both 10 July 2024 and 20 July 2024. I don't know whether Elavon meant that T responded twice, or whether

one or both of those dates were given in error.)

- Elavon therefore considers that it is not responsible for the chargeback, and it recommended that T contact its customer to resolve the dispute.

Our attempts to obtain Elavon's file

We have still not received a copy of Elavon's file on this complaint, despite many requests. I list those requests below.

- 19 December 2024: we sent our initial file request to Elavon by email.
- 21 January 2025: we sent an email chaser to Elavon.
- 27 February 2025: we sent a second email chaser to Elavon.
- 18 March 2025: one of our investigators contacted Elavon by telephone. Elavon said it had no record of our previous file requests, but that the email address we had been using was correct and should work. Elavon also gave us a different email address to try, and we sent a further email chaser to that address.
- 16 April 2025: we still had not received Elavon's file, so we chased Elavon by email again.
- 1 May 2025: one of our investigators contacted Elavon by telephone. She wasn't able to speak to a casehandler, but she left a message. She also sent an email to Elavon explaining that if she hadn't received Elavon's file by 15 May 2025 she would issue her opinion on this complaint without waiting for the file.
- 30 May 2025: our investigator issued her opinion on this complaint (see below). She sent her opinion to both parties via email.
- 2 June 2025: Elavon replied to our investigator's email of 30 May 2025 to say it had no record of receiving any previous correspondence from us about this complaint. Our investigator replied on the same day to say that she was pleased that Elavon had received her opinion, and to provide copies of our previous file requests. She asked Elavon to respond to her opinion by 30 June 2025.
- 7 July 2025: our investigator had still not received Elavon's file, nor had she received a substantive response to her opinion. She sent an email to Elavon to explain that if she didn't receive a response by 21 July 2025 the complaint would be referred to an ombudsman based on the information we have on file.

Our investigator's opinion

Our investigator issued her opinion on this complaint on 30 May 2025. Briefly, she said:

- T says it did not receive Elavon's email of 25 March 2024, informing T about the chargeback.
- Elavon says that T responded to its email of 25 March 2024 on 10 July 2024 – but it has not provided any supporting evidence.
- Based on the limited evidence available to her, she didn't think T had received

Elavon's 25 March 2024 email, and she didn't think that T had responded to that email on 10 July 2024.

- Unless Elavon can provide further evidence, she thought that Elavon should refund the full amount of the chargeback.

T's representatives accepted our investigator's opinion. Elavon neither accepted nor rejected her opinion, but instead said that it had no record of any previous correspondence from us in relation to this complaint. (I note that that was the second time Elavon had told us that it had no record that we had told it about this complaint).

Elavon asked for the chance to review its customer's complaint, and as I've said above our investigator forwarded the relevant correspondence to Elavon. However, we did not receive a reply.

Our rules

Our rules are set out in full in the Financial Conduct Authority's Handbook, available in full at <https://www.handbook.fca.org.uk/handbook/DISP/>.

DISP 3.5.9R says:

"The Ombudsman may: ...

(3) reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested".

DISP 3.5.13R says:

"The Ombudsman may fix (and extend) time limits for any aspect of the consideration of a complaint by the Financial Ombudsman Service."

DISP 3.5.14R says:

"If a respondent fails to comply with a time limit, the Ombudsman may:

- (1) proceed with consideration of the complaint; and
- (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make."

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 have not received any evidence directly from Elavon, but nevertheless I consider that it is appropriate to issue this final decision without giving Elavon any more time. I am satisfied that we have given Elavon ample opportunity to provide evidence if it wished to do so.

I also note that we have explicitly warned Elavon that we may determine T's complaint on the basis of the information T had given us unless Elavon provided its evidence by 21 July 2025. That date has now passed. Our rules allow me to proceed with my consideration of this complaint.

In this case, the available evidence is incomplete, and in parts contradictory. I have therefore determined the complaint based on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the evidence I do have.

I note:

- I think it's clear that T must have had constructive (if not actual) knowledge of the chargeback before August 2024. T's accountant was able to deduce the existence of the chargeback. I cannot therefore conclude that T's representatives could not possibly have known about the chargeback before August 2024.
- However, I consider that it is good industry practice for firms in Elavon's position to clearly notify merchants about any chargebacks and the process for challenging them. Elavon says that it did that by way of its email of 25 March 2024. But I have not seen that email, and T's representatives say they did not receive it. I am therefore unable to consider whether the contents of that email were clear (if it existed at all).
- If T had responded to Elavon's 25 March 2024 email on 10 July 2024 (or on 20 July 2024) then I would have seen that as very strong evidence that T must have received Elavon's 25 March 2024 email. But despite our many requests for Elavon's file, Elavon has not provided us with a copy of T's responses. Given Elavon's failure, I consider that it is fair for me to assume that T did not in fact respond – because it did not receive Elavon's email.

In the circumstances, I am not satisfied that Elavon sent an email on 25 March 2024 (or on any other date) to notify T about the chargeback. I am therefore not persuaded that Elavon gave T a fair opportunity to defend that chargeback.

I acknowledge the possibility that T's defence might have been unsuccessful even if it had been submitted in time. But given that the available evidence does not persuade me that T had a fair opportunity to submit its defence, I think it is fair for me to endorse our investigator's conclusions, for the same reasons she gave.

My final decision

My final decision is that I uphold this complaint. I order U.S. Bank Europe DAC (trading as Elavon) to pay T £3,608.35, the amount of the chargeback.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 5 September 2025.

Laura Colman
Ombudsman