

## **complaint**

I, a trade association, has complained Squareup Europe Ltd, closed their account and retained their money.

## **background**

I entered into an agreement with Squareup in 2017 where Squareup provided them with merchant acquiring services. After I had processed more than a week's payments, Squareup decided to deactivate their account immediately. They also confirmed they'd retain £2,762.90 for 90 days. This would be released to I within a couple of days of 22 February.

As Mr M, a director of I, was dissatisfied with this response from Squareup, he brought I's complaint to the ombudsman service.

Our adjudicator considered the evidence provided by both I and Squareup. She felt their terms and conditions allowed them to retain I's funds and make a commercial decision to close I's account.

Mr M didn't agree with this outcome. He's asked an ombudsman to review I's complaint. He feels a court would decide Squareup's terms and conditions were not enforceable and we should be deciding they're unfair.

## **my findings**

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've reached the same conclusion as our adjudicator. I'll explain why.

There are two main aspects of I's complaint and I've considered both of these in coming to my decision. I've also reviewed Mr M's detailed submissions around Squareup's complaints handling and terms and conditions.

*do Squareup have the right to close I's account without notice?*

Squareup decided after I's account started operations to deactivate the account. I know Mr M feels Squareup should have undertaken all necessary checks before granting I an account, but it's not unreasonable for a business to review the operations of accounts. This can only really be done once an account is active and transactions are being made. This is what happened here with I's account. I think it's fair that Squareup – in fulfilling its legal and regulatory obligations – reviewed I's account.

I can see Squareup asked I some further questions. But they felt the answers they were getting were vague nor could they validate all the information. It was then they decided to close the account.

I've looked at Squareup's terms and conditions which applied at the time I opened their account. Section 35 of the Payment Terms apply to all Squareup's sellers and covers the termination of payment services. These state:

*“We reserve the right to terminate the Payment Terms either:*

*a. on two (2) months’ notice; or*

*b. subject to Applicable Law, immediately:*

*i. should you breach the Payment Terms (including (A) if your activity is fraudulent (B) if your activity is otherwise wrongful or in violation of the Network Rules or (C) if you submit transactions for processing on behalf of any third party);*

*ii. should Square Europe determine (including as a result of recommendations made by Square International derived from its SaaS Services) that you have provided inaccurate, untrue or incomplete information to any Square Company or that you failed to comply with the account registration requirements;*

*iii. should you act in a manner which clearly shows that you do not intend to or are unable to comply with any provisions of the Payment Terms (including your commission of any act in contravention of any Applicable Law);*

*iv. should you revoke your direct debit mandate at any time;*

*v. if Square International recommends that we do so as a result of its SaaS Services, including where the percentage, number or amount of fraudulent transactions submitted by you or the number of Chargebacks you receive in relation to similar businesses is determined by Square International to be excessive; or*

*vi. if we are required to do so by A. the Acquirer (for example, where the Acquirer terminates its relationship with us for any reason); B. the Networks (for example, the Networks de-register us as a payment processor or if the Acquirer ceases to be a member of the Networks for any reason); or C. Applicable Law (for example, where the provision of Payment Services to you is or becomes, unlawful).”*

It’s these terms that Squareup have relied upon in telling I they intended to deactivate their account. I don’t think it’s unreasonable Squareup’s terms and conditions allow them to close accounts immediately. They have to meet regulatory requirements ensuring they’ve done all the proper checks. I know Mr M feels it’s unfair he doesn’t know the reasoning behind their decision. But taking everything into account, I don’t believe Squareup has acted unreasonably.

*can Squareup keep I’s funds for 90 days?*

Squareup told I they could retain their funds for 90 days. They felt section 14 and 15 of the Payment Terms made it clear they could retain funds and had no obligation to pay interest on these during that period. I don’t see anything wrong with the latter point but I can see nothing within the payment terms why a period of 90 days was the time chosen to retain I’s funds. Squareup’s subsequently confirmed they don’t specify a timeframe but the minimum would be 90 days.

I can see terms and conditions made it clear to I Squareup could retain funds to ensure they could meet any chargeback requests. And this doesn’t seem unreasonable. Customers are allowed to put in a chargeback claim within 120 or 180 days of the goods or service being provided. So it’s fair to assume 90 days would catch the majority of any chargeback claims.

But I can’t see Squareup made this clear to I so appreciate why Mr M is upset at what he believes an arbitrary time period being set. But in fact our adjudicator spoke to Squareup and they agreed to repay the money they owed I. This was done on 2 February and I received the money in full. I’ve also got Squareup to confirm no chargeback claims were ever received.

*have Squareup done anything wrong?*

I've considered this carefully and taken into account Mr M's thoughts. But overall I don't think they have. I appreciate they may not have been clear to I about their basis for deciding they could retain money for 90 days but in the end they didn't do this. And their terms and conditions do allow Squareup to retain funds even if they don't specify a timescale.

As I've already said I believe it's clear Squareup can terminate I's agreement without notice so it wouldn't be fair to say they did anything wrong.

I know Mr M is concerned about Squareup's governance model and complaints handling. He's right Squareup did not use the format of a proper final response as laid out in the Financial Conduct Authority's rules.

But we're not the regulator so the FCA would need to consider whether to penalise Squareup's actions. What I can look at – and have – is whether this lack of a formal final response had any impact on I's ability to bring a complaint to the ombudsman service. I don't believe this is the case. Squareup wrote to Mr M on 7 December 2017 telling him that was their final response. Mr M contacted the ombudsman service the following day so I don't think there's any impact that I need to consider.

I know Mr M will be disappointed on I's behalf with my decision but I hope I've made it clear why I've reached the decision I have.

### **my final decision**

For the reasons I've given, my final decision is not to uphold I's complaint against Squareup Europe Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M, on I's behalf, to accept or reject my decision before 8 May 2018.

Sandra Quinn  
**ombudsman**