

complaint

Mrs F complains that WorldPay (UK) Limited acted unfairly towards her, resulting in her merchant account being closed and money held back.

background

Mrs F took merchant facilities with WorldPay, so that she could accept card payments for her business. She says that WorldPay then gave notice that her account was to be closed, without any prior discussion or in-depth consideration of the nature of her business.

WorldPay held back the money she received from card payments, pending review. Mrs F does not feel these actions were warranted, and considers that WorldPay has failed to approach things properly and has treated her unfairly. She would like WorldPay to accept she has done nothing wrong and to release the money to her.

WorldPay did not accept it had acted unfairly, and so things were not settled. Mrs F brought her complaint to this service where one of our adjudicators investigated it.

From the evidence, the adjudicator considered that WorldPay had been entitled to take the decision to give notice that it would close Mrs F's account. The adjudicator did not consider that WorldPay had acted unreasonably in holding back payments for a period of time, against potential chargebacks. Overall, the adjudicator did not recommend that the complaint should succeed.

Mrs F did not agree and her representative responded on her behalf. He made very full representations, and I broadly summarise what I regard as his main material points:

- Mrs F's complaint is not about notice to close of itself; it is of failure by WorldPay to communicate properly with her during the enquiries it made. Mrs F complained when she received notice to close, but not simply because of that, and these underlying issues were never addressed.
- The principal thrust of Mrs F's complaint is therefore of silence, obfuscation and unfairness on the part of WorldPay.
- Mrs F accepts that either party was legally entitled to terminate the account, and does not seek to interfere with WorldPay's right to exercise commercial judgement in assessing risk. But the ombudsman is able to go further than a court, and is not bound in the same way by the law, when deciding cases.
- The key question is whether WorldPay acted fairly towards Mrs F before, during and after the contract was in place. Mrs F raised fifteen different issues within her complaint and they are struggling to see much in the way of discussion of these points in the adjudicator's assessment letter. The adjudicator seems to have focussed on four specific issues but does not explain why everything else was ignored.
- The points made by the adjudicator should not prevent the ombudsman finding in Mrs F's favour. Being entitled to do something does not make it right – it must be established whether WorldPay acted within its *reasonable* commercial discretion.

- Merchants may be required to act within the terms of the agreement, but WorldPay must also provide proper and timely communication including any warnings. Being concerned about a transaction did not excuse WorldPay from that, and there should have been discussion and a proper investigation before it took any action on Mrs F's account.
- It was wrong for the adjudicator to say that the £500 initial transaction was immediately re-debited. The actual sequence of the transactions was the other way round.
- While it's true to say that WorldPay and Mrs F's current account provider are different companies, and so cannot share records, Mrs F had given WorldPay a direct debit mandate on the account. So it should have been in a position to know what had happened in relation to the current account payment and discuss it with Mrs F.
- Mrs F's business did not need a website to give it legitimacy, and searches done online would show that Mrs F had been praised by other parties. Searching more generally would also show information about Mrs F's business activities.
- It's not enough to say that WorldPay is entitled to hold money back pending review, or to register information with fraud prevention schemes. It must be shown that what WorldPay did was fair to Mrs F. It would be very serious, for example, if a false accusation of fraud was made by WorldPay against Mrs F.
- It was WorldPay's responsibility to make sure it fully understood the nature of Mrs F's business, if it wanted to make judgements of the type it did in this case. WorldPay has produced no evidence that Mrs F was not operating a legitimate business or that there is any real risk of liability for any of the payments.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have very carefully reflected on the points Mrs F and her representative have made about the steps they feel WorldPay should have taken before arriving at any decision about whether or not to allow the account to continue.

This was a business contract for the provision of merchant services. As Mrs F accepts, it allowed either party to close the account. I do not consider that WorldPay was under a duty, either in law or in fairness, to undertake the degree of investigation about Mrs F and her business that Mrs F's representative suggests, before arriving at its decision.

When reviewing risk, it is not unusual to take account of a range of matters including such things as internet presence (where the business is of a type that would normally be represented online). I am not persuaded that WorldPay should have entered into advance discussions with Mrs F about its intention to review the risk posed by her account, or given her pre-warnings before issuing the notice to close.

Taking everything into account, I find that WorldPay did not act unfairly in making its decision to close the account, or in the way it communicated that decision to Mrs F.

Having given notice to close the account, WorldPay held back money against the potential for charge backs or reversals. While I can understand why that was very unwelcome, I'm not persuaded that it was unusual or unfair in the circumstances.

WorldPay is now in the process of releasing all the money held back from Mrs F's account, as the charge back liability period has come to an end and no claims have been made against the transactions. So Mrs F should see that money in her account shortly, if it has not already been received.

WorldPay was not in a position to discuss Mrs F's bank account transactions with her, because possession of a direct debit mandate did not allow it access to the bank account statements or enable it to act as intermediary with the bank. WorldPay has told me that it has now refunded the final invoice payment of £47.98, which consisted of charges.

I have obtained confirmation from WorldPay that it has registered no information at all on the fraud prevention database in relation to Mrs F. So there can be no question of wrong or damaging information having been registered.

I am aware that Mrs F was also concerned that she had not received the promised padded envelope to enable her to return the terminal. WorldPay has told me that it has not made any charge for the non-return of the terminal, and so I'm satisfied that this issue has not caused Mrs F any loss.

As Mrs F did not receive the envelope, WorldPay has said that it will send her another one if she contacts it and confirms the address to which she would like it sent.

I realise that my final decision is not what Mrs F will have been hoping for, but I have made it independently and after careful consideration of all the points and arguments that she and her representative have made over the course of the complaint. I hope that I have also been able to provide greater clarity for Mrs F on some of the concerns she had, such as about the fraud prevention database registration.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 7 April 2017.

Jane Hingston
ombudsman