

complaint

K is a limited company and its complaint is brought on its behalf by its representative Mr J. Mr J complains that First Data Europe Limited unfairly withheld money representing plastic card payments made to K and unreasonably terminated K's merchant facility with it.

background

K had merchant facilities with First data to enable it to take card payments. First Data wrote to K to say that, due to recent activity and transactions passed through K's account, it was withholding the funds and also giving notice of closure of K's merchant facility.

Mr J says that the activity and transactions were not such as to warrant such drastic action by First Data, which has affected K's ability to trade. He says that the customers who made these transactions came into the shop and that he undertook the transactions in the normal way and in good faith. In Mr J's view, if the card transactions were fraudulent then it is K that was the victim of fraud and First data should have tried to help rather than taking the steps it did.

First Data did not accept it had been wrong to terminate the facility and withhold funds. It said it was not suggesting K or Mr J had been involved in fraud, but that the card activity on K's facility had caused its risk team to take the decision to close the facility. First Data said that, because of the timescales within which card holders were entitled to raise disputed transactions, it was necessary for the transactions to be withheld until the risk of a charge back had passed.

As things remained in dispute, Mr J brought K's complaint to this service where it was investigated by an adjudicator. First Data subsequently released the withheld transactions, but Mr J remained unhappy about the removal of the facility and its effect on K, as well as any fraud prevention information that may disadvantage K.

From the evidence, the adjudicator concluded that First Data had acted reasonably, and within the terms of the facility, in making its decisions regarding K's facility. The adjudicator was not persuaded that First Data should remove factual information it had registered with fraud prevention databases. Overall, the adjudicator did not consider that K's complaint should succeed.

Mr J did not agree with the adjudicator's conclusions and said, in summary:

- First Data had no right to terminate K's facility – he was the victim of fraud, not a party who committed fraud.
- K has been punished unfairly for what happened and continues to be affected by the actions First Data took. He has been personally affected, too.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I note that First Data released the funds to K at the end of the period during which it was at risk if a successful charge back was raised by the card issuing bank. Given that First Data had been told by the relevant bank that there was suspicion of fraud, I consider that it was not unreasonable for the funds to be retained in that way.

I do not agree with Mr J's interpretation of the terms and conditions of K's account as meaning that First Data may only close the facility if he himself acts fraudulently. I appreciate his view that K was the potential victim of fraud, but that does not mean First Data could not take account of the suspicious transactions when assessing the risk of continuing to provide K with a facility.

First Data has registered factual information with fraud prevention databases about what happened, which it did in accordance with the requirements of the card schemes. I realise that Mr J has said that this may affect K's ability to get a replacement merchant facility, but I am not persuaded that First Data is obliged to remove the registration.

First Data will not know about a problem with a card until it is notified through the card-issuing bank, so I do not see that it was in a position to prevent Mr J from taking the transactions here.

my final decision

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

Under the rules of the Financial Ombudsman Service, I am required to ask Mr J on behalf of K to accept or reject my decision before 24 March 2015.

Jane Hingston
ombudsman