

## **complaint**

M is a limited company and its complaint is brought by its representative Mr T. Mr T complains that Elavon Financial Services Limited has allowed a large card payment to be charged back from M's account.

## **background**

M had a merchant services account with Elavon, through which card payments made to it were processed.

M made a sale to a customer who paid £6,000 for goods. Mr T later heard from Elavon that this payment was the subject of a charge back request by the card issuer, and he provided information to Elavon to try to defend the charge back claim.

The charge back was ultimately successful and Mr T says that this should not have happened, because he believes the payment was made by the genuine cardholder. He feels that Elavon has not given a convincing reason for allowing the charge back and considers that Elavon should refund the money in the circumstances.

Elavon says that the way in which M had carried out the transaction, which the card holder was disputing having made, meant that the information that Mr T provided was insufficient under the card rules to enable it successfully to defend the charge back request.

It also said that the amount of the transaction, and the method used to make it, were outside the agreed parameters of the merchant services agreement. It was not prepared to refund the money that M had lost.

As things were not settled, Mr T brought M's complaint to this service where an adjudicator investigated it. From the evidence (which included technical evidence) the adjudicator was satisfied that the circumstances of the transaction were such that Elavon was not obliged to do any more to defend the charge back. So the adjudicator did not recommend that the complaint should be upheld.

Mr T did not agree and said (through his representative and in summary):

- Mr T asked Elavon whether or not he should contact the police and was instructed not to. This prejudiced him, and he should have been told by Elavon as soon as possible that this was fraud.
- Mr T does not accept that this was a chip and PIN card, as the adjudicator suggests. The transaction was made by swiping the magnetic stripe, and it is not reasonable to conclude that the card was not present. Both the card and the buyer were present.

## **my findings**

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

Looking at the evidence provided about the card, I am satisfied that the genuine card was a chip and PIN card. So, if Mr T was carrying out the transaction using the genuine card then there was no reason why that should not have been processed through the terminal as a normal chip and PIN transaction. Instead, the transaction was made by manual keying as a 'card not present' transaction.

I also note that the customer with whom Mr T dealt was a different gender from the genuine card holder in this case. The name and signature of the genuine card holder are also entirely different from those given to Mr T. It appears, therefore, that this transaction was fraudulent. M would not be entitled to keep a fraudulent credit card payment, even if taken in good faith.

I realise that this matter was very upsetting for Mr T. But it was made clear, in Elavon's letter telling him about the charge back request, that the grounds given for the charge back were that the genuine card holder said they had not made the transaction. Elavon could only pass on what it was told by the card issuer.

It would have been for Mr T to decide whether or not to involve the police. Whilst Elavon may well have said at an early stage that it would try to resolve matters, I am not persuaded that it instructed Mr T that he must not to go to the police. I cannot see how it would benefit Elavon to give such an instruction when the genuine card holder was challenging the transaction, and I note that Elavon's final response to Mr T specifically recommends reporting the matter to the police.

Given the card scheme rules and the terms and conditions of M's merchant services facility, I am satisfied that Elavon did not act unfairly when allowing to the charge back request in this case. Card transactions are not guaranteed and, although a merchant may reduce risk by taking the steps outlined in the merchant operating instructions, they cannot entirely remove it.

As a final point, I note that there has also been disagreement around the question of whether or not Mr T was processing transactions outside the agreed terms of M's facility. But nothing actually turns on this, because it was not the reason why the charge back request succeeded.

### **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 Mr T (on behalf of M) to accept or reject my decision before 9 November 2015.

Jane Hingston  
**ombudsman**