

## **complaint**

Mr J runs a business and complains that First Data Europe Limited (First Data) unfairly closed his merchant account for card payments. Mr J is represented in this complaint by his wife, Mrs J.

## **background**

In 2012 Mr J opened a merchant account with First Data so that his business could receive card payments from customers. Early in 2013, First Data closed the account as it said it had not received Mr J's direct debit payments for the service fees and the account showed too little activity to cover the fees.

Mr J complained that the direct debit instruction had been set up correctly and he had not been notified of any debt or of the closure of the account. First Data said that it had written to Mr J about the debt and had discussed it with him by phone.

Unhappy with the bank's response, Mr and Mrs J referred the complaint to this service. They wanted the account to be opened again so that the business could receive payments.

Mr and Mrs J also complained that First Data was charging a termination fee for the terminal hire contract. Since the complaint came to this service, a reduced payment has been accepted, the machine has been returned and the hire account has been closed.

Our adjudicator did not recommend that the complaint about the account closure should be upheld. Briefly, she said:

- Mrs J had acknowledged that they had not monitored Mr J's business current account, so they did not notice that the monthly fees were not being paid to First Data.
- No direct debits were being received by First Data, so initially the rental payments due were taken from sales receipts or settled funds instead. But as there were no transactions on the account after September 2012, a debt built up.
- Mr J's contractual obligations to make the payments remained. Even if the direct debit had not been set up, the adjudicator would expect the payments to be maintained by some other method.
- First Data's contact notes indicate that the situation was explained to Mr J twice and he was asked to settle the arrears, which was not done.

Mr J did not agree with the adjudicator's conclusions. Mrs J said that Mr J had correctly submitted two direct debit mandates – one for the card terminal hire and the other for the merchant service. Direct debit payments were taken for the terminal hire, but First Data did not submit the other mandate to Mr J's bank. To support this, Mrs J provided a copy of a letter from the bank saying that four direct debit payments were attempted but it did not pay them because it had not received the instruction. Mrs J also said they did not receive the communications from First Data in the autumn of 2012 about the outstanding debt.

First Data has insisted that it sent the direct debit mandate to Mr J's bank.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I am sorry to tell Mr and Mrs J that I have come to the same conclusions as the adjudicator and for much the same reasons.

There is mixed evidence regarding who was responsible for the failure of the direct debit. It may be that First Data did not process it properly, but it may have gone wrong somewhere else. But in any event, First Data notified Mr J that a debt was building up. Mrs J said that First Data's letters did not arrive, but I see there is evidence that the problems were also discussed with them on the phone. It would also have been evident from bank statements that the required monthly payment was not being made. I am satisfied that Mr J possessed enough information to allow him to rectify the situation at the time.

When the debt was not settled, I do not think it was unreasonable of First Data to close the merchant account. I am satisfied that First Data explained to Mr and Mrs J why it closed the account.

I realise that Mr and Mrs J will be disappointed by my decision and I understand that these events caused them considerable trouble. But I find that First Data was in the circumstances entitled to close Mr J's merchant account.

### **my final decision**

My final decision is that First Data Europe Limited has done enough to settle this complaint.

Colin Brown  
**ombudsman**