

complaint

M is a limited company and its complaint is brought by its representative Mrs E. Mrs E complains that First Data Europe Limited (trading as First Data Merchant Solutions) did not arrange the correct card payment package that she asked for, made mistakes in the provision of the service and provided inaccurate or misleading paperwork.

background

Mrs E took card payment facilities with First Data, so that M could take payments through a card terminal and over the phone. Mrs E also signed up for an additional facility that enabled M to take card payments online.

Shortly after the agreements were put in place, Mrs E queried exactly what she had been given, as this did not seem to fit with what she had wanted. First Data agreed to lower the monthly payments for the facilities.

Mrs E still felt that she had been given an internet payment facility that she had not asked for or wanted, and this was subsequently closed and the payments refunded. An overcharged amount was also identified and credited.

Mrs E did not feel that this was sufficient to resolve her complaint, given her dissatisfaction with the service First Data had provided. She brought the complaint to this service where an adjudicator investigated it.

From the evidence, the adjudicator considered that the charges made were in keeping with the agreements and that First Data (in combination with its partner) had adequately explained the charges. The adjudicator was also satisfied that the final refund provided by First Data was correct in amount.

Whilst the adjudicator appreciated that Mrs E had found the payment statements confusing, he was satisfied that matters had been put right overall and so did not recommend that the complaint should succeed.

Mrs E did not agree and said, in summary:

- No mention has been made of the failure to produce a formal complaints procedure, the initial mistake about the debit or of her assertion that she did not sign up for the cancelled service.
- There has also been no consideration of whether the additional service was mis-sold.
- She understands that the relevant regulations require financial businesses to provide clear documentation – yet the adjudicator agrees the statements sent to her were confusing.
- She has now cancelled the remaining two contracts with immediate effect as these will never be used. But she has now been notified of an additional monthly charge of £4.99 for data standards non-compliance – which nobody has explained.
- Repeated customer service questionnaires are being sent each time she raises another issue.

- It was always clear that M was a limited company and she is very angry to be told that M cannot complaint about mis-sale of the hire agreement. If she had known this, she would have started a legal claim using M's legal expenses policy.
- She has now returned the terminal by recorded delivery.
- She was not made aware that the contract for provision of the terminal was with a separate company, and she had never heard of it before. She was not told she would be liable for any charge if she cancelled and sent the terminal back.
- She cannot remember anyone ever telling her that she had a cooling-off period when she first took the facilities. She should have been made aware of her rights.

my findings

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

This complaint is about First Data Merchant Solutions, the company that put together the merchant services package that Mrs E signed for on behalf of M. In order to be able to take card payments in person and by phone, M needed to have a processing facility and also the terminal.

Mrs E agrees that she wanted to be able to take payments in this way, and I'm not persuaded that First Data misled her about the costs of that. As Mrs E signed agreements with the hire company for the terminal, I do not accept that First Data concealed the fact that it was not providing the terminal directly.

A further 'e-commerce' facility was provided to enable Mrs E to take internet payments, which she says she never intended to have. That was cancelled and the payments refunded.

Looking at the merchant card processing statements that were sent to Mrs E, I find them to be clearly set out. To clarify, the adjudicator didn't make any finding that these statements were confusing – he simply said that he appreciated Mrs E had found them so.

There is no doubt that Mrs E remains unhappy with First Data, but I cannot see that it has charged outside the tariff set out in the application form. I am not persuaded that First Data is liable to meet the costs of M's exiting the agreements it entered into for these various facilities.

The complaint Mrs E initially detailed on the complaint form she sent to us was not about mis-sale of agreements – it was about problems with the telephone facility, over-charging, incorrect invoices and incorrect statements.

Mrs E later said that she also considered that the hire agreement she entered into on behalf of M for the terminal hire was mis-sold. But the rules within which we have to operate do not enable us to deal with a complaint brought by a limited company about mis-sale of a regulated hire agreement, so I'm afraid I cannot consider this aspect.

I appreciate that will be disappointing and probably frustrating for Mrs E, but any right M may have to take legal action against the hire company is not affected by our investigation or by this final decision about First Data.

Similarly, this final decision cannot include new complaint matters that Mrs E has recently introduced, though Mrs E may pursue them separately with First Data. I would add that I don't have any form of regulatory or supervisory role over financial businesses.

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 E (on behalf of M) to accept or reject my decision before 19 February 2016.

Jane Hingston
ombudsman