

The complaint

A company, which I'll refer to as R, complains that WorldPay Limited has unfairly charged it £59,646 of transaction authorisation fees.

R is represented by one of its directors, who I'll refer to as Mr M.

What happened

R accepts card payments via its website, using WorldPay as its merchant acquirer.

On 19 August 2021, WorldPay emailed R to inform it of suspicious activity on its website. The company suspended its website and started investigating what had happened. It later discovered that its August invoice from WorldPay contained an unexpected £59,646 of transaction fees.

R complained to WorldPay, which said that the charges were correct, as they related to some 238,000 small £0.001 card transaction attempts, which took place over 12 August 2021 and the following days. WorldPay said these transactions fitted the pattern of an activity known as card testing.

WorldPay declined to refund the 25p per transaction fee, as they said they'd done nothing wrong and had themselves incurred a cost. They suggested R implement security measures on its website. In the meantime, as R's account was subject to net settlement, WorldPay stopped settling any further transactions until the outstanding fees were cleared.

R referred its complaint to our service and one of our investigators concluded that it wouldn't be fair to expect WorldPay to waive the charges, as it wasn't responsible for protecting R against this type of activity.

R disagreed with our investigator and asked for an ombudsman to look at things again.

My provisional decision

I issued a provisional decision on 11 January 2023, because I had reached a different conclusion from our investigator. I provisionally concluded that WorldPay should recalculate its fee at 4.5p per transaction rather than 25p for the fees resulting from the card testing activity. In my provisional decision, I said:

I think both sides agree that it's likely R has been the victim of a fraudulent practice known as high volume card testing. This is where fraudsters attempt a large number of low value payments with an online merchant to check if stolen card details are still valid or to search for valid card numbers. Automated bots or scripts are often used to carry out a large amount of card testing transactions in a very short period of time.

It's also not in dispute that the terms of the contract between R and WorldPay permit WorldPay to charge a fee per authorisation attempt, whether successful or not. There is no exception for card testing. I can also see that R was given due notice of the introduction of the 25p transaction fee and didn't object.

There does seem to be a disagreement between the parties about who is in control of the "front end" platform that R's clients use to input their card details on R's website. R told us that it was using WorldPay's "hosted payment gateway". WorldPay says that this isn't correct and the service they provide is just a set of application programming interface ("API") keys that "plug in" to their customer's platform to communicate the transaction details to WorldPay for authorisation. I can see from R's application form that it applied for the API keys, so I don't think WorldPay is in control of the payment gateway in this case.

If WorldPay were in control of the gateway, I think it would have given WorldPay greater and earlier visibility of the fraudulent transactions. It would also have meant they had some oversight over any protections in place to prevent fraud. In the absence of this, I agree with WorldPay that it wouldn't be fair to hold WorldPay responsible for the vulnerability of R's website.

I don't agree with R that WorldPay was under an obligation to alert them rapidly to any suspicious activity. I say this notwithstanding what any other merchant acquiring firms might do. I would expect such an obligation to be documented in the contract and I haven't seen that it was in this case. Rather, the contract says (in the Merchant Services Agreement) that the merchant (in this case R) is "solely responsible for establishing and applying adequate security systems and procedures" - and the merchant is "responsible for all losses resulting from any unauthorised activity." I think this makes it clear that WorldPay cannot be held responsible for attacks on the security of R's payment arrangements.

Having said all that, the decision for me is whether it's fair and reasonable for WorldPay to exercise their rights under the contract (to charge a 25p transaction fee) in the very specific circumstances that apply in this case.

My starting point here is that I wouldn't consider it fair for WorldPay to profit from this fraud. The fraudulent activity was not foreseen by either party, and I do not believe it would be fair for Worldpay to be enriched by it. But I do accept that WorldPay incur a cost in processing transactions, even rejected ones, and I would consider it reasonable for them to cover their costs.

Our investigator asked WorldPay to explain why their transaction fee in this case was substantially higher than in other cases we've seen. WorldPay said that there were a number of variables in their pricing arrangements and there was considerable variation in how accounts functioned. In particular, WorldPay said that the vast majority of accounts were subject to daily settlement and invoiced monthly for commissions and fees. By contrast, R's account is one of a far smaller number that are batch-settled, with all fees subtracted from future settlements.

WorldPay also said that their pricing was a matter for their commercial judgement and hence not relevant to my considerations.

I accept that there are a lot of different and overlapping variables in pricing merchant services contracts. But, having reviewed the evidence provided by WorldPay, I consider it unlikely that the marginal cost per transaction to WorldPay in this case is anywhere near 25p. WorldPay have currently not provided any estimate of how much it cost them in R's case. I'm conscious that the card testing activity in this case has generated exceptionally high volumes of transactions that are clearly very different from what WorldPay expected when they set the transaction fee.

My current view is that the 25p fee is likely to reflect a low volume, low-profit account to WorldPay. I agree that this would generally be a matter for WorldPay's commercial judgement and may be perfectly fair for R in normal trading circumstances. But what has happened here is clearly not normal.

I will of course consider any evidence WorldPay choose to provide about how they set the level of the fee and their own costs, but my current view is that the incremental cost per transaction to WorldPay is substantially lower than 25p.

Therefore, my provisional conclusion is that, whilst WorldPay are entitled to cover their costs, it appears that they profited from the card testing activity on R's account, which is not fair. I am therefore minded to direct them to reduce their invoice to an amount that only covers their costs.

I am aware that in several other cases, WorldPay's transaction fee is set at 4.5p per transaction. WorldPay says that these are higher volume, daily-settled accounts, which should not be directly compared. But I don't currently have any other data on which to base my assessment.

My provisional conclusion is therefore that, in the absence of evidence to indicate otherwise, WorldPay should recalculate their fee for R at 4.5p per transaction for the transactions resulting from the August 2021 card testing activity. If this results in a refund to R, then WorldPay must arrange to make this refund, and add interest to it at 8% from the date the fees were paid by R to the date of settlement. This interest is compensation to R for being deprived of the funds for this period.

I fully appreciate the gravity of what's happened to Mr M. It threatens his livelihood and has had an impact on his mental health. I understand that this has left him feeling exposed and vulnerable and must seem deeply unfair, as crime so often does.

However, the complainant here is R, which is a limited company. Limited companies cannot be distressed and I don't have the power to award compensation for distress suffered by a director. I do have the power to award compensation for inconvenience to a limited company, but I am not currently minded to do so in this case.

Mr M accepted my decision, which he thought was fair and well balanced. WorldPay initially disagreed and made a number of further points for me to consider. However, they have since written to me to say that, whilst they still disagree with my assessment, they now accept my proposed outcome.

What I've decided – and why

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

Having done so, I haven't been persuaded to change my provisional decision. I'll explain why that is the case below.

First, I would like to make it clear that I agree with WorldPay that decisions concerning their pricing structure are solely a matter for them. My comments here should not be taken to refer to WorldPay's general pricing strategy, nor should they be taken to mean that I think WorldPay did anything wrong in the way it set the pricing for R's contract. My conclusion is simply that, in these very specific circumstances, where a high volume card testing attack out of the blue has coincided with a contract that loads much of the cost onto a high transaction fee, it wouldn't be fair or reasonable for WorldPay to charge R the full amount of the fee.

It may well be true that in normal circumstances, where no fraud has occurred, WorldPay would not make a great deal of profit on R's authorisation fee, bearing in mind that this fee may also cover other costs beyond simply authorisation. But WorldPay was happy to do business with R before the events of this complaint, so I think it is reasonable to conclude that they were making a profit they were satisfied with before the arrival of an unexpected card testing windfall.

As I set out in my provisional decision, I don't consider what has happened here can be considered normal activity between R and WorldPay. R's contract was set up anticipating low transaction volumes and the transaction fee agreed by R and WorldPay reflected that. Although the wording of the contract did envisage the possibility of some form of security breach, I don't believe the nature of this actual fraudulent event and the impact it would have on this pricing structure was foreseen.

WorldPay has said that the pricing structure in this individual case loads most of the costs onto the authorisation fee. I think this meant that the card testing attack resulted in a disproportionately high charge to R. I do not think it likely that this exceptional fee was built into any of WorldPay's calculations when they set their pricing structure for this product. If paid, in my view, it would therefore result in WorldPay being unfairly enriched by the fraudulent activity suffered by R.

It seems to me that this is a case of exceptional circumstances, which it is therefore fair and reasonable for WorldPay to reflect and reduce the transaction fee charged. I'm mindful here that as a regulated firm carrying on a regulated activity, WorldPay must comply with the Principles for firms set out by the Financial Conduct Authority. Principle 6 is "A firm must pay due regard to the interest of its customers and treat them fairly". I'm not persuaded that WorldPay would be treating their customer fairly, if they didn't reconsider the charges in the light of this exceptional event.

In deciding what would be a fair and reasonable outcome in this case, I need to be mindful that the fraudulent card testing wasn't WorldPay's fault, so it would be unfair for WorldPay to be out of pocket as a result. In other words, I don't think they should profit from these unfortunate circumstances, but neither do I think they should lose out.

WorldPay have argued that it isn't possible for them to provide evidence of their costs, because they aren't charged by the card providers in a way that separates their customers. I accept this is a difficulty. However, where I determine a complaint in favour of the complainant, section 229 of the Financial Services and Markets Act allows me to make an award against the respondent of such amount as I consider fair compensation for loss or damage. For completeness, section 229 also allows me to include a direction that the respondent take such steps in relation to the complainant as I consider just and appropriate.

I don't dispute that my proposal here was to apply a transaction price from a different product, involving different cost considerations and a different customer base. I took the view that it was better to apply pricing that I know WorldPay uses elsewhere than to come up with something entirely new. On balance, and in the absence of any other evidence or submissions from WorldPay on which to base a figure, I still think this is the fairest option. I think it's unlikely that this pricing would leave WorldPay making a loss. I say this partly because I'm aware of other cases where WorldPay has charged a much lower fee than 4.5p.

In summary, for the reasons set out above, I have concluded that it wouldn't be fair or reasonable for WorldPay to charge R the full 25p per transaction set out in their contract in the specific circumstances that have happened here. In the absence of any submissions from WorldPay on their costs in this case, I consider that 4.5p per transaction is a fair amount to charge in these circumstances.

Putting things right

WorldPay should recalculate its fee for R at 4.5p per transaction for the transactions resulting from the August 2021 card testing activity and provide R with a new invoice.

From the evidence I've seen, I think it's unlikely that this will result in a refund to R. But if it does, then WorldPay must arrange to make this refund and add interest to the amount of the refund at 8% from the date the fees were paid by R to the date of settlement. This interest is intended to compensate R for being deprived of the funds for this period. If, following this recalculation, R still owes WorldPay an amount, then no interest will be payable by WorldPay.

My final decision

I uphold this complaint and direct WorldPay Limited to take the actions set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 9 August 2023.

Louise Bardell
Ombudsman