

## **The complaint**

A company which I'll refer to as P, complain that First Data Europe Limited (First Data) treated it unfairly when they withheld funds that belonged to P.

In bringing this complaint P is represented by its director who I'll refer to as Ms D.

## **What happened**

The background to this case is well known to the parties so, I won't repeat it in detail.

Briefly:

- In June 2022, First Data were unable to collect by direct debit, payments that were due from P comprising fees and charges of £237.71 and £65.57.
- According to First Data, P's bank declined their request saying P's direct debit mandate was inactive.
- As a result of this P's payments fell into arrears. First Data, therefore, diverted £827.08 from payments that were due to P to help clear those arrears and guard against possible future non-payment.
- On 5 August 2022, after P's direct debit was reinstated, First Data made the deductions of payments they were owed for June 2022. They also withheld £ 205.45 to cover July's service charge as that payment was also unsuccessful. First Data returned the balance that was then due to P of £ 318.35.

P didn't think First Data had treated it fairly. It said their actions had an adverse impact on its business - including being unable to pay the wages of its staff.

First Data on the other hand, didn't think they'd done anything wrong. They said because P's direct debit wasn't operating, that meant they were unable to take payment from P via an agreed payment method. In light of this, they said they acted in line with their terms and conditions which allow them to divert funds in circumstances where the agreed payment method fails.

As the complaint remained unresolved, it was referred to our service to look into.

Our investigator didn't uphold the complaint. He was satisfied that First Data had provided evidence showing that when they attempted to collect the direct debit payments in June and July 2022, they received notification that P's direct debit had been cancelled by the payer. He said generally, this could have meant either by the customer or by their bank.

In any case, he was also satisfied that when First Data diverted the £827.08, due to P, they were allowed to do so under section 17 of First Data's terms and conditions - which says under "Payments":

*"You agree that we may deduct all amounts due to us from amounts due to you in Settlement of Transaction including fees, charges, costs and Chargebacks due and payable pursuant to your Merchant Agreement or as set out in your Merchant Statement".*

P didn't accept the investigator's conclusions. On its behalf Ms D said she sent the direct debit forms back to First Data multiple times. She believed therefore, that the difficulties they experienced when attempting to collect the June and July payments were caused by First Data. So, Ms D has asked for an ombudsman to review P's complaint and it has been passed to me to do so.

### **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.

Where the evidence is incomplete or inconclusive (as indeed some of it is here) I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

It isn't disputed that First Data were unable to collect June and July 2022 payments from P and this led to arrears. And I'm satisfied from the evidence I've seen that the reason the payments failed was because P's direct debit mandate wasn't in place to enable First Data to collect those payments.

Given those circumstances, First Data in effect withheld funds that were due to P in order to settle those arrears. Like the investigator, in light of section 17 of the terms and conditions of P's agreement with First Data, as noted above, I'm satisfied First Data were entitled to take the action they did.

I am also satisfied that the balance returned to P in August 2022 of £318.35 was that which it was due after the deductions of the amounts First Data were properly owed.

But I've thought about Ms D's further representations, that in effect First Data were responsible for the issues faced regarding P's direct debit.

Ms D has told us that she sent P's direct debit mandate forms to First Data on a number of occasions.

First Data acknowledged they received such forms on 16 June 2022. But the evidence suggest it was around this date direct debit payments were generally collected. This suggest the possibility that in any event there wouldn't have been sufficient time for the direct debit to be put in place in time for June's payment.

It is First Data's case that they sent the direct debit forms to P's bank, and I have no reason to doubt that. In doing so, however, First Data acknowledge they would have used the references on the previous mandates. They didn't believe, however, that this was likely to have caused a problem because they said, they were only aware of one other bank where that approach led to difficulties getting the new mandate set up. The bank they identified was not the bank with whom P did its banking.

In light of that acknowledgement, I note our investigator did try to look into this further. He asked Ms D for details of P's bank in the hope of establishing from it whether they felt First

Data may have done anything wrong in connection with the mandate forms that led to the direct debit problems experienced in June and July.

Although Ms D has told us she believed First Data were the true cause of those problems, she was nonetheless unprepared to provide details of P's bank as the investigator requested.

I appreciate Ms D is not obliged to provide that information. And in particular, if as she explained she's uncomfortable sharing such sensitive information.

I note of course there were attempts to fix the problem in July 2022 with fresh mandate forms being completed by Ms D. But it seems P's bank weren't satisfied the signature on the forms matched its records.

Considering the circumstances overall, it is difficult on balance to conclude that First Data were at fault for P's direct debit mandate not being in place in June and July 2022. It follows therefore, that I've not been persuaded it was as a result of First Data's action that they were unable to collect P's payments in both these months.

In light of this, and although anticipating this will come as disappointing news to P, I do not find that First Data acted unfairly when they withheld the funds they did, to help settle the arrears caused by P's failed June and July 2022 payments.

### **My final decision**

For the reasons stated above, my final decision is I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 19 September 2023.

Asher Gordon  
**Ombudsman**