

## **The complaint**

Mr and Mrs L complain that Bank of Scotland plc has declined to refund direct debit payments under the direct debit guarantee scheme.

## **What happened**

### ***How the complaint arose***

Mr and Mrs L have a joint personal account, which is at the centre of this complaint. The complaint has been run by Mr L. He also controls a company account, again with Bank of Scotland, and an account in Luxembourg.

For a few years Mr L has provided a subscription management service to customers of S, a well-known provider of subscription TV, internet and other similar services. Under that arrangement, individual customers of S pay a fee to the Luxembourg account. Mr L then transfers funds to the joint account to cover the invoices of his and S's mutual customers who wish to pay by direct debit.

Mr L has explained that, at the time this complaint arose, he managed around 350 accounts. Some payments to S were made by debit card, but there were more than 200 direct debits set up on the joint account. Claims under the direct debit guarantee scheme had been made in respect of around 20 customers.

In most cases, Mr L has said that he reconciles the direct debit payments from the account against information provided by his clients. But the direct debit references on his and Mrs L's bank statements are often no more than customers' account numbers with S.

From around 2022, Mr L raised a number of successful claims under the direct debit guarantee scheme. He says he has done so where he has been unable to reconcile direct debit payments with his own records of his clients' details and so he has disputed giving authority for direct debits to be collected from the joint account. Those claims total around £93,000 and go back as far as March 2018. Mr L says that the payments made in that time totalled some £680,000.

More recently, however, Bank of Scotland has declined claims he has made under the direct debit guarantee scheme. It has also closed both the joint account and the company account. Those actions are the subject of separate complaints.

Bank of Scotland declined to say why it would not refund the direct debit payments made to S. But it did say that, if Mr L thought that S owed him money, he should take it up with them. Mr S pointed out that, since he is not S's customer, that isn't possible. S won't provide him with information about its customers' accounts.

### ***Power to look at the complaint***

Mr and Mrs L referred the matter to this service. One of our investigators considered what had happened but concluded that we had no power to look at the complaint. Mr and Mrs L

were not, she said, acting as consumers. The joint account was facilitating the operations of Mr L's company. But the direct debits were not being paid from the company account.

Mr L did not accept that conclusion and asked that an ombudsman consider the matter. I did that and issued a provisional decision, primarily on the question of whether this service could consider the complaint at all. I concluded that, on that issue, the first investigator was mistaken. In setting up the direct debits and funding the joint account to cover them, Mr L was not acting as a consumer. He was however acting as a micro-enterprise, even though the account was a personal one. This service can consider certain complaints brought by micro-enterprises, and so I concluded that we did have power to look at Mr and Mrs L's complaint.

Although the primary purpose of my provisional decision was to address the question of this service's powers, I also commented on the merits of the complaint. In summary, I indicated that, based on the information which was available to me at that time, I did not believe that the complaint should be upheld.

### ***Subsequent events***

In response to my provisional decision, Mr L provided more information about his business. He explained that, contrary to my previous understanding, his clients were not given his account details and that he had set up all the direct debit instructions. Where he had disputed direct debit payments, it was because he had not recognised them as payments which he had authorised. He had maintained control of the direct debit instructions on the account.

The case file was then passed to a second investigator (the first having left the ombudsman service), to carry out a more thorough assessment of the case.

The second investigator did that and issued his assessment of the merits of the case. He did not recommend that it be upheld. In summary, he said that he had concerns about Mr L's claims, which I shall summarise:

- If Mr L alone, and not his customers, had his account details, it was not clear how anyone else could have set up a direct debit instruction.
- The operation of the account indicated that Mr L maintained it on an almost daily basis, suggesting that he would have been aware of the payments which were being made from it. The account balance was generally kept at a level which was enough to cover outgoing direct debits, but not much more.
- Mr L had declined to provide the information (mostly in the form of a spreadsheet) from which he reconciled his accounts. That meant that the investigator had no evidence to corroborate his statements that direct debits were not properly authorised.
- The investigator expressly did not conclude that there was any dishonesty involved, but he was not persuaded that Mr L's concerns were not the result of an auditing error.

### **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.

I explained in my provisional decision that the direct debit guarantee is, to some extent, a means of giving bank customers protection where money is taken by direct debit without proper authority. That's needed because it is the recipient of funds (in this case, S) which triggers the payment. The fact that payees must be registered provides further protection.

Up to a point, the guarantee is a "no questions asked" scheme. That is, refunds will generally be made without investigation of whether the customer owes anything to the payee. If a refund is made in those circumstances, any debt will remain and it is for the customer the supplier to resolve matters between themselves.

There are however situations where further investigation is merited before a refund is made under the scheme. I share the investigator's view that this is one of them. This is not a case where, for example, there is a dispute over a single payment. There are a number of complicating factors. They include:

- The direct debit payments from Mr and Mrs L's account to S were not in respect of money owed by Mr and Mrs L. They were in respect of money owed by more than 200 third parties.
- The money collected by S does not match the payments made to Mr L by his customers. He charges a fee which includes his own commission.
- As Mr L says, delay in making a claim is not, of itself, a valid reason to decline a claim under the direct debit guarantee. But in my view it does contribute to the complicated nature of the claims he has made.
- Mr L has limited information about S's customers, and still less about their accounts with S.

I accept that the direct debit guarantee scheme is not intended to provide a means by which customers of its participants and those participants can resolve disputes between themselves, but in the rather unusual circumstances of this case, I do not believe that I can fairly conclude that payments have been taken without authority. The factors I have summarised above make it almost impossible to say whether that is the case without much more information about the individual customers of S and their contractual arrangements.

I appreciate that this conclusion will be unwelcome for Mr L and that it leaves many issues unresolved. But I do not believe I can fairly conclude that Bank of Scotland should meet his claims.

Mr L has suggested that, if I were to uphold the complaint, the bank would not be out of pocket because it would be able to seek reimbursement from S. That is generally true where a payment is made under the direct debit guarantee. But it is at least arguable that reimbursement made as a result of an ombudsman's award would not be made under the guarantee, but in response to a binding determination.

Further, if S were to reimburse the bank, it might then itself seek payment from its own customer(s), who may already have paid Mr L. There is, however, not enough information available for me to know whether that might happen, but it does appear to me to be a real risk.

### **My final decision**

For these reasons, my final decision is that I do not uphold Mr and Mrs L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Mrs L to accept or reject my decision before 24 February 2025.

Mike Ingram  
**Ombudsman**