

The complaint

Mr H and Ms N have complained that Santander UK Plc (“Santander”) declined their Direct Debit indemnity claim.

Mr H and Ms N also complained that Santander failed to make reasonable adjustments for them in insisting that they attend a branch.

What happened

Mr H and Ms N submitted a Direct Debit indemnity claim for historic Direct Debit payments that had been taken from their account. However, Santander declined their claim on the basis that the claim related to a contractual dispute between them and the originators - which is not something covered by the Direct Debit guarantee scheme.

When responding to the claim, Santander said that Mr H and Ms N would need to either visit branch with ID, or contact Santander over the phone.

Unhappy with this Mr H and Ms N complained to Santander. In summary, they said that their indemnity claim was not contractual, as they say that they never had a contract in place with the originators. They also said that Santander had failed to make a reasonable adjustment for them and asked for compensation for Ms N’s hurt feelings.

Santander issued its final response letter on 23 October 2023 and did not uphold Mr H and Ms N’s complaint. Santander said that the Direct Debit guarantee scheme does not cover contractual or legal disputes between the consumer and the originator i.e. the company taking the payment.

Unhappy with Santander’s response to the complaint, Mr H referred the complaint to this service.

One of our investigators assessed the complaint, they issued an initial assessment addressing the merits of the complaint. They concluded that Santander’s declination of the Direct Debit indemnity claim was reasonable, for the same reasons that Santander gave in its final response to the complaint. However, they did think that Santander failed to make reasonable adjustments for the consumers. They thought that documents could’ve been sent to the consumer by post or email. And so they recommended that Santander pay Mr H and Ms N £150 for the distress and inconvenience caused by not taking more reasonable steps with Mr H and Ms N’s claim.

In response, Santander agreed to pay £150 to Mr H and Ms N. Mr H and Ms N also accepted this aspect of the complaint. But they maintained that they had a valid indemnity claim.

As Mr H and Ms N disagreed with the investigator’s conclusions, the matter was referred for an ombudsman’s decision.

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.

All parties have accepted the investigator's recommendation that Santander pay Mr H and Ms N £150 compensation regarding Santander's request that they either attend branch or get in contact by phone. As such, I see no need to address that aspect of the complaint. So, this decision will focus on Santander's decision to decline Mr H and Ms N's Direct Debit indemnity claims.

As Santander and the investigator have explained, there are limits on what the Direct Debit guarantee covers. The purpose of the guarantee is to ensure the correct amounts are collected on the correct dates. But the Direct Debit guarantee does not cover situations where there is a contractual or legal dispute between the consumer and the originator i.e. the company taking the payment. This is explained on the Direct Debit scheme's website which says:

"What the Guarantee doesn't do is affect the contract you have with a biller. For example, if you make a monthly payment for a mobile phone, and the biller takes the wrong amount, you can claim that money back but you will still owe the biller for the calls you've made and the data you've used, or for the amount you agreed to pay."

Mr H and Ms N have claimed for a number of historical Direct Debit payments that they made to various originators a number of years ago.

Looking at the specific arguments that Mr H and Ms N have made, it seems that they have read something that has led them to believe that there was no enforceable contract in place with the originators. Or alternatively, they say that there was no legal basis for the originators to be able to charge them when they did.

For example, Mr H and Ms N made claims, such as saying utility companies are not actually suppliers of energy and are in fact credit brokers selling government debt – and so this invalidates any Direct Debit Mandate that may've been in place. They also say they do not live in a dwelling for the purposes of liability for council tax, and so are asking (amongst other things) for historical Council tax Direct Debits to be refunded too.

As such, I'm satisfied that the arguments Mr H and Ms N have put forward, as to why they believe the Direct Debits should now be refunded, are contractual disputes between them and the originators taking payment. This is not something that the Direct Debit guarantee covers. This means they will have to take up their disputes with the individual originators should they wish to reclaim the amounts that they have paid.

So, I think that it was fair and reasonable that Santander decline Mr H and Ms N's indemnity claims.

Putting things right

As both parties have accepted the investigator's recommendation regarding Santander's request that they either attend branch or to phone Santander, I require Santander to pay Mr H and Ms N £150 compensation (if it hasn't paid it already) for the distress and inconvenience caused in insisting on them attending branch or getting in contact by phone.

My final decision

Because of the reasons given above, I uphold this complaint in part, and require Santander UK Plc to do what I have outlined above to put matters right, in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Miss N to accept or reject my decision before 1 August 2024.

Thomas White
Ombudsman