

5 April 2019

Final report by the Complaints Commissioner**Complaint number PSR00001***The complaint*

1. You complained to the PSR about how the BACS Direct Debit Indemnity Claim (DDIC) system works.

What the complaint is about

2. Your complaint arises from the fact that several payments made to your company under the BACS direct debit system were refunded to the payer under DDIC on the grounds that the amount paid or the date the payment was taken on had differed from the amount or date shown in the advance notice which had been sent to the payer (Reason Code 1). You allege that, in fact, the payment or date did not differ from the advance notice, and therefore the refund should not have been made.
3. You allege that BACS is responsible for your firm's financial loss because it did not take action to prevent/remedy the payer's Bank, Bank X, breaching its rules. If it were to be found that the rules were in fact not breached, you believe that DDIC rules are not fit for purpose.
4. You state that the system leaves payee businesses open to fraudulent claims. You set out five grounds which you believe support your argument that ultimately BACS is responsible for your losses.
5. You are especially concerned about the fact that Bank X made a refund payment without carrying out any due diligence to establish that the refund claim was valid.
6. You also state that a refund claim notification from the BACS DDIC system, while it was sent as it should have been, did not reach your firm because the

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email was sent to an account that belonged to a retired employee. You accept that you did not update your details on the system. Consequently, you only found out about the refund claim when the money was deducted from your account. You believe it should be BACS's responsibility to ensure that they have correct contact details for each service user.

7. You believe the process for challenging DDIC claims is poor and does not ensure transparency, and there are no statistics available about the level of fraudulent claims / successful counterclaims.
8. Finally, you are concerned that there is no appeal system or a viable alternative remedy for those who may miss the deadline for raising a counterclaim, and the banks hide behind the DDIC rules to justify their failure to ensure a claim has merit. You believe that larger service users have no alternative means of recovering their losses as they cannot use the Financial Ombudsman Service (FOS) due to their size and turnover and the court route is costly and may be futile if the payer is not financially viable or is acting fraudulently.

What the regulator decided

9. The PSR responded to you on 15 August 2018, stating that your complaint seems to be just a private dispute in respect of which it has no jurisdiction.
10. Following a further email from you dated 20 August 2018, the PSR went on to state "The PSR does not have evidence that the concerns you have raised with the Scheme are widely shared by other Scheme participants or service users, or that there is an imminent harm to them, or the payments services industry generally, as a result of the matters you have raised." The PSR did ask you to provide feedback directly to BACS about your concerns to feed into the review it was conducting at the time on the same issues.

Why you are unhappy with the regulator's decision

11. In your view, the PSR did not address your complaint points so they all stand.

Preliminary points

12. There are two separate issues I will deal with in my response to your complaint. One is the way in which the PSR handled your complaint, and the second is addressing the substance of your complaint.

My analysis

- i. The handling of your complaint
13. You raised your complaint on 10 May 2018, but you had no substantive response from the PSR and you had to send a follow-up email on 8 August, asking for an update. You were then sent an email on 15 August saying, “apologies that you did receive an interim response” and explaining that your complaint did not fall within the remit of the PSR.
 14. You emailed again on 20 August, stating that you had not received an interim update and reiterating why you believed the matters fell within the remit of the PSR.
 15. A follow-up email to you on 5 September confirmed that there was an error in its 15 August email as the PSR had actually intended to apologise for **not** responding to you sooner, and it stated this was an administrative oversight. However, the PSR’s view on the substance of your complaint remained unchanged.
 16. I have reviewed the PSR’s files on your complaint. It is clear that after you made your complaint some inquiries were made, but then your complaint had fallen off the radar, apparently due to a system migration programme. However, this was identified by the PSR in late June / early July. A chain of emails then followed, in which it was discussed whether the PSR should provide you with an update seeing as it had been a rather long time since you complained. Ultimately it was decided that you **would not** be given an update because it had been so long, you had not chased the PSR for a response and as you were pursuing the matters with BACS and your bank directly, you might have secured a resolution already.
 17. This course of action was clearly the wrong one to choose. You had made a complaint, the PSR sent an initial acknowledgement in which you were told that it would respond to you within 15 working days, and it failed to do so.
 18. Errors occasionally happen within organisations and deadlines or correspondence are missed. However, the PSR identified that you were not updated and chose not to respond to your correspondence. Furthermore, you were then told the long delay (three months at the time of your follow-up email)

was down to an administrative error. While this was the case initially, it then became a conscious decision not to contact you, albeit not with an intention to cause you detriment, but because it was decided that it was probably no longer necessary.

19. The PSR should not have told you that the long delay was due to an administrative error. The correct course of action, and good complaints handling practice, would have been to contact you when the error was identified to apologise for it and the delay and ask you if you still wished to pursue the complaint, rather than hoping that it would fall away. Failing that, the PSR should have confirmed in its response of the 15 August or 5 September that it had decided not to contact you again on the grounds cited.
20. Finally, the PSR has had its Complaints Scheme set up since 1 April 2015 and it clearly sets out on its website (<https://www.psr.org.uk/complaints-against-psr>) what the complaints process is and that complainants have the right to refer their complaints to me, should they be dissatisfied with the outcome. You were, however, not at any point formally entered into the Scheme, properly informed about the process, or provided with information about your right to refer your complaint to this Office, as the PSR is required to do under paragraphs 6.7 to 6.9 of the Complaints Scheme.
21. While you have done your research and referred the matter to me in any event, not informing you of this right was a serious oversight by the PSR and one that could disadvantage some complainants if repeated.
22. I **recommended** the PSR ensure that its complaint handling processes are reviewed and brought up to date and that it sends me a report (within three months of the date of this report) to demonstrate the steps it has taken to ensure that such a situation does not arise again. The PSR has accepted this recommendation.

ii. The substance of your complaint

23. You believe that Bank X either did not comply with the rules of the DDIC or if it did, these rules are not fit for purpose as they leave Service Users exposed to blatant fraud with no viable recourse to recover their losses.

24. The PSR expressed a view that this is merely a private dispute between your firm, the firm that initiated the refund request, your respective banks and possibly BACS, if you believe their rules were breached or are not fit for purpose.
25. The PSR did not, however, set out under which paragraph of the Scheme (3.4, 3.5 or 3.6) it excluded your complaint as it was supposed to do. In fact, its responses make no reference to the Scheme at all.
26. It also identified internally, following your email of 20 August, that as the refund request was made under Reason Code 1, your firm did not have a valid ground for a counterclaim – there is no counterclaim option under this reason code, the refund must be paid without delay. There are no rules in place that require paying banks to routinely carry out checks to verify the validity of the refund claims they receive either. If there is no reason to doubt the payer's information, the bank may accept their word that there was an error with the payment of the direct debit. The PSR should have explained both of these points to you to provide some clarity and possibly allow you to focus your complaint.
27. The PSR's response to you said that 'we do not have powers that enable us to investigate individual complaints such as these'. This is not strictly correct. It is true that the PSR is not responsible for resolving individual complaints, but it can investigate concerns arising from such complaints if they suggest that there may be a problem in the way in which the system is operating.
28. In my view, the PSR ought to have recognised that your complaint might raise wider concerns about the apparent lack of a requirement for a paying bank to verify the validity of a refund claim. If your allegations are true:
 - a. The payer made a clearly invalid request for a refund, which you state you can evidence with the advance notice matching the details of the payment;
 - b. The payer's bank did not make a simple factual check before claiming the refund;
 - c. Because you did not query the claim within 14 days, even if you had a valid ground for a counterclaim, there is no means for you to reclaim the money, other than to go to court.
 - d. It ought to have addressed your complaint points.

29. Your allegation is that firms and individuals, through fraudulent activities, exploit DDIC, a system which allows for unlimited refund claims going back years without verifying the validity of the claim, and the payee stands to shoulder the loss. You have provided some supporting evidence to suggest that this problem is known within the banking industry.
30. In its response to you on 15 August 2018, the PSR stated that in May 2016 it had written to BACS and asked it to review the direct debit refund and counterclaim rules which led to BACS broadening the grounds under which a refund may be challenged within the permitted time. Furthermore, the PSR says that it is continuing to monitor the effectiveness of these changes. It also stated that after the overhaul of the refund claim process about 1000 claims a month are cancelled following a successful challenge.
31. It is not the role of this Complaints Scheme to consider policy issues, but it is important that complainants are reassured that concerns which they have raised are taken seriously. You were left with the impression that the PSR is not concerned about an apparently significant failing in the BACS system, which might be particularly problematic for SMEs.
32. As such, I recommended that the PSR reconsider whether the facts of your complaint suggest that there is a significant weakness in the current DDIC system – that is, that the combination of a payer’s ability to claim a refund apparently without simple factual checks being made by the banks, coupled with a very short period in which the claim can be challenged by the payee and with no subsequent system for redress, other than the courts, which may not be a viable alternative for various reasons.
33. In its response to my preliminary report the PSR acknowledged that it ought to have given an explanation for why they do not believe there are significant issues with the way the DDIC system operates and provided some evidence to support their position:

“In 2018 there were 4.3 billion Direct Debits (DDs), of which only 0.1 billion were business-to-business DDs (of the remaining DDs, 0.5 billion were subscription services – for example, road tax, charity donations, 1.6 billion

were for utilities and household bills, 0.8 billion were for insurance premiums, and 1.3 billion were for other payment types).

In 2018 there were just over 800,000 DDIC claims, averaging around 70,000 a month, which is under 0.02% of all DD transactions. In a typical month over 1,000 of these 70,000 claims are challenged by the organisations from whom the refund claims are being made, with most of the challenges being upheld (and the refund request being cancelled).

We appreciate, as detailed in her correspondence, that [the Complainant's] firm had an unfortunate experience with the DDIC system. However, when this is viewed against the 800,000 DDIC transactions which occurred in 2018 it does not suggest to us that there is a significant weakness in the system."

iii Miscellaneous points

34. Whilst some of the points raised by you in your response to my preliminary report do not fall within the remit of this Scheme, I would like to address them briefly.
35. You state that Bank X has now admitted that while Reason Code 1 was used when it originally logged the refund request, on reflection it is now apparent that it should have used Reason Code 2, which would allow you to challenge the request. You had in fact submitted a challenge according to the rules, but it was not considered at the time due to the reason code used by the bank. You state that the way this was handled by the paying bank is in breach of the rules.
36. However, in the letter from Bank X, attached to your response, it is stated that "In the circumstances, **we are unable to accept your challenge** (my emphasis). We are satisfied the Bank has acted appropriately with regards to processing the DDIC and reviewing the case upon receipt of your challenge."
37. I read this paragraph to mean that Bank X has considered your challenge but still believes that the refunds were justified. It also appears that you submitted your proof to BACS but not to the paying bank.
38. It is unclear to me why you have been denied access to the "Paying Bank's Guide", as it might have made it easier for you to understand the decisions made by the paying bank, however, I can confirm that I have had sight of the relevant extracts of this document.

39. There is nothing in these Rules or Guidance, either in 6A1, 6A2 or the flow-chart, that requires a paying bank to carry out checks before authorising the refund and investigations are only to be made when the responses given to the bank's questions in assessing the refund claim do not seem reasonable and justified. If a bank deems the responses sufficient, it must usually make the refund on the same business day.
40. Based on the information available to me, it appears that the paying bank's view is that the reasons for the refund request were justified and the best way to resolve this matter is to ensure that the paying bank has your evidence about the correct direct debit mandate with the right amounts and dates having been provided to the payer. Should this have been done already, your option would be to pursue the matter through the courts. I understand that this is not your preferred option but nonetheless it is still available to you.

My decision

41. As set out above, I **recommended** that the PSR reviews its complaint handling processes and sends me a report within three months from the date of this report. I also **recommended** that it pays you £300 for the distress and inconvenience caused by the delays and its failure to adhere to the rules of the Complaints Scheme as well as failing to inform you of your rights to refer the complaint to me. As stated above, the PSR accepted these recommendations.
42. I note that in your response to my preliminary report, dated 20 March 2019, you requested a higher level of compensation as a result "of the delay of nearly 12 months, the seriousness of the issues and the value of [our] loss".
43. Your complaint was received by the PSR on 10 May 2018. You were sent an interim response on 15 August and a final response, taking into consideration your comments, on 5 September 2018. While there was a delay and failures in handling your complaint, it was not up to 12 months and I believe the payment of £300 is the appropriate amount in these circumstances. I cannot take the value of your loss into account because that occurred as a result of your dispute with another firm and the actions of the paying bank; a matter in which neither the PSR nor my office can intervene.

44. I appreciate that this may not be the outcome you were hoping for, but I hope you understand why I reached it.

Antony Townsend

Complaints Commissioner

5 April 2019