



<u>Decision Ref:</u>	2018-0025
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Cheques
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service Delayed or inadequate communication
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint concerns a sterling cheque credited to the Complainants' bank account.

The Complainants' Case

The first Complainant lodged a cheque for £50,000.00 (pounds sterling) into the Complainants' account "*for clearance on 24/7/2015*". The Complainant states that the Provider credited their account in the sum of €69,803.16 "*rather than send the cheque off to the drawer's bank on a collection basis*". The Complainants state that the cheque was dishonoured and an amount of €71,177.24 was debited to their account. They state that on the 7 August 2015 the Provider explained the "*the loss was essentially the difference between the buy/sell spread that the bank employs in buying and selling foreign currency*". The Complainants state that this was not made clear to them and that they expected that the "*cheque would have to be cleared first and that the funds would then be credited to the account*". They state that "*the Bank failed in its duty of care*" to protect them from loss.

The Complainants contend that they suffered a loss of €1,374.08 because of the decision of the Provider. They submit that "*there was no currency exchange – the pounds sterling cheque was dishonoured. Yet the Bank made a buy/sell margin. Thus the Bank has profited at my misfortune at having the cheque dishonoured and is imposing the generating of that profit as a loss ... onto me*".

The Complainants are looking for the Provider to reimburse the sum of €1,374.08 "*less two dishonour fees of €10.00 and €8.89*" which they accept are reasonable.

The Provider's Case

The Provider states that when the cheque was lodged it outlined to the first Complainant that *"the cheque could be returned unpaid by the foreign bank for a number of reasons and that a charge would be applied if this applied."* It also states that its teller informed the Complainant that *"she could not advise you of an exact amount if the cheque was unpaid due to changes that would occur regarding the exchange rate"*. The Provider states that the cashier on the day *"referred the matter to her Manager for review and based on the information you provided as to the source of the cheque along with the length of time you have been an account holder ... a decision was made to lodge the cheque to your account that day rather than send it to the UK Bank for clearance on a collection basis"*. The Provider states that *"the clearance of a sterling cheque using the collection process can take a minimum of two weeks. By not sending the cheque for collection this meant that the funds were made immediately available to you"*.

The Provider states that when the cheque was unpaid its *"global Market Remittances Area"* were notified and it *"sought a negotiated rate"* in order to *"limit the loss incurred"* by the Complainants. The Provider states on the 24 July 2015 an exchange rate of 0.7163 was applied and on the 4 August 2015 a rate of 0.7027 was applied. A STG£10 charge was also applied by the UK Bank and the Provider applied a charge of €8.89. It states that had a *"beneficial rate not been sought The amount debited would have been €72,750.71 if the branch rate on that day of 0.6875 had been applied"*. The Provider states that *"a branch rate would never be applied to an unpaid cheque; a special rate would be sought in such circumstances"*.

The Provider submits that the difference in the amount lodged and the amount debited when the cheque was unpaid was due to the change in the market rates between the day the lodgement was made and the day that the cheque came back unpaid. It states that it is not liable for any losses pursuant to Section 4 of the Complainants' account terms and conditions.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also

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satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties 25 January 2018 outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, the final determination of this office is set out below.

The Complainants completed an application form to open their "*Demand Deposit Account*" with the Provider on the 14 April 2011, acknowledging that "*I/We received and read a copy of the Terms and Conditions and I agree to be bound by them*". The terms and conditions of the account include the following:-

"Part 2:General Terms and Condition

...

5. Cheques and paper payments

When you lodge a paper payment (for example a cheque) into your account, we ask the payer's financial institution to pay the amount to us on your behalf. When the payer's financial institution pays the amount to us, the paper payment is said to be "cleared for withdrawal". When you consider how much you can withdraw from your Account you should not count in the value of any paper payment lodged into your Account unless and until it has been cleared for withdrawal. It can take 5 Banking days to clear... It can take considerably longer to clear a paper payment from a financial institution in Northern Ireland or abroad ... If the paper payment is returned unpaid by the payer's financial institution we take the amount of the paper payment back out of your Account.

6. Foreign Cheques

*If you lodge a paper payment (for example a cheque) to your Account in a currency other than Euro we convert the amount to Euro using our exchange rate for that currency on the date we add it to your Account. **If the payer's financial institution returns the paper payment unpaid we calculate the amount we take back using our exchange rate for that currency on that date we take the amount back. We are not liable for any loss you may suffer or any expense you have as a result...***

[my emphasis]

The Provider states that its process for lodging non-Euro cheques "*is to enquire with a customer if they are aware of the source of the cheque and confident that it will not be returned unpaid.*" It states that it also offers "*the option for the cheque to be sent by collection*" and advises that customers that if the cheque is returned unpaid for whatever reason that "*this could potentially result in a loss due to exchange rate differences*".

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information into consideration when reaching the ultimate decision not to send the cheque for collection". The Provider states that the required procedures were followed in this instance.

On balance, from the evidence before me, I accept that the Provider followed its procedures and that Complainant was informed that her funds were at risk from fluctuating exchange rates if the cheque was returned unpaid. The terms and conditions of the Complainants' account clearly set out that if a foreign cheque is returned unpaid that the account holder will be liable if there are any losses due to the particular exchange rate on the day it is returned. Accordingly, I am not in a position to uphold the complaint in its entirety.

I am of the view, however, that in this instance in circumstances where the Provider accepted a high value cheque denominated in a foreign currency that it would have been good practice for it to have given the first Complainant a specific warning regarding the potential for large losses due to the combination of the variable nature of exchange rates and the magnitude of the cheque in question. While I accept that a general warning was given, there is no evidence that specific advice appropriate to the size of the cheque she was lodging, was given to the first Complainant. Accordingly, in light of the Provider's shortcomings in this respect I am satisfied that it is fitting for it to make a compensatory payment to the Complainants.

Consequently, it is my Decision that this complaint is partially upheld.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct that the Respondent Provider pay compensation in the amount of €400.00, as detailed above, to the complainants.
- Pursuant to **Section 60(6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, where the amount is not paid within 35 days of the Provider receiving account details from the Complainants.
- Pursuant to **Section 60(8)** of the **Financial Services and Pensions Ombudsman Act 2017**, the Respondent Provider is now required, not later than 14 days after the period specified above for the implementation of the direction pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017** to notify this office in writing of the action taken or proposed to be taken in consequence of the said direction/s outlined above.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

27 February 2018

Pursuant to *Section 62 of the Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

(b) in accordance with the Data Protection Acts 1988 and 2003.