



<b><u>Decision Ref:</u></b>	2019-0031
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Money Transfer (between accounts/between banks/3rd
<b><u>Conduct(s) complained of:</u></b>	Dissatisfaction with customer service Maladministration
<b><u>Outcome:</u></b>	Rejected

**LEGALLY BINDING DECISION  
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

**Background**

The complaint relates to a transaction executed by the Complainant in which he transferred funds to a Finnish Bank account in consideration for goods that were never provided.

**The Complainant's Case**

The Complainant states that he agreed to purchase livestock from a "herder" with whom he had made contact on the internet. The Complainant transferred €27,405.35 (via four separate transfers from September to November 2014) to a Finnish bank account however, on arriving in Finland to collect the livestock (having expended a further €12,000 on transport costs), he discovered that he had been "conned out of all the money". The Complainant is of the view that he is "eligible for his money back" from the Bank.

The Complainant also complains that it took the Bank over one year to complete a report pursuant to Section 19 of the Criminal Justice Act 2011. The Complainant states that he has "not been efficiently informed and dealt with" by the Bank.

The Complainant seeks the return of the €27,405.35.

### **The Provider's Case**

The Bank notes that on 12 May 2015, the Complainant contacted it requesting a recall of the transfers, the most recent of which had taken place on 25 November 2014.

The Bank states that, given the delay involved, the prospects of a recall were very slim but that it used its best endeavours nonetheless. The recall was unsuccessful.

The Bank made a report pursuant to the Criminal Justice Act 2011 on 1 April 2016 but disputes that it was under any obligation to do so.

The Bank disputes that the Complainant is entitled to be reimbursed in respect of the stolen monies.

### **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 Complainant was 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 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 28 January 2019, 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, I set out below my final determination.

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Before embarking on my decision, it will be useful to set out certain relevant legislation.

### **Legislation**

Section 19 of the Criminal Justice Act 2011 provides as follows:

*19.— (1) A person shall be guilty of an offence if he or she has information which he or she knows or believes might be of material assistance in—*

*(a) preventing the commission by any other person of a relevant offence,  
or*

*(b) securing the apprehension, prosecution or conviction of any other person  
for a relevant offence,*

*and fails without reasonable excuse to disclose that information as soon as it is practicable to do so to a member of the Garda Síochána.*

### **Analysis**

The Complainant made four payments totalling €27,405.35 in September (one payment), October (one payment) and November (two payments), 2014, the last of which occurred on 25/11/2014, all for the purposes of purchasing 20 livestock. The Complainant states that he began to become suspicious almost immediately after making the final payment and that he travelled to Finland on 28/11/2014 to collect the animals only to return home empty-handed.

Notwithstanding the foregoing, the Complainant did not report the matter to the Finnish police until 10 March 2015 (according to his email of 16 April 2015 to the Bank) or until "January 2015" (according to his email complaint of 24 March 2016). Furthermore, the matter was not reported to An Garda Síochána until "June / July 2015" (according to the email of 24 March 2016) after the Bank had advised him to do so.

The Complainant did not make contact with the Bank until March 2015. On 16 April 2015, the Complainant requested copies of 'advice of payment' documents for provision to the Finnish police who had opened a criminal investigation. This material appears to have been provided on 20 April 2015. The email of 16 April 2015 was the first written notification by the Complainant to the Bank as to the perpetration of the financial fraud and the matter was referred to the Bank's fraud department on 12 May 2015. Thereafter, following a request made on 2 May 2015, the Bank made efforts to recall the funds transferred but these were unsuccessful due to the transferee declining to return the funds.

On 24 March 2016, the Complainant raised an "official" written complaint with the Bank. This complaint focuses on the actions of a particular Bank employee following an email said to have been sent from the Complainant to the employee on 24 September 2015, a reply of the same date and email from the employee to the Complainant of 16 March 2016.

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The Complainant has not provided copies of the emails of 24 September 2015 or of 16 March 2016 (notwithstanding that he undertook in his complaint to the Bank to forward them and no emails of those dates appear on the Bank's file.

The Bank's file does however include an email from the Complainant of 19 July 2015 which states as follows:

*Good afternoon [name]*

*I had an interview with Garda [name] on Friday 17<sup>th</sup> July at 21:00.  
He issued a crime reference [number] for [the Bank's] records.*

*Kind Regards*

A response was provided the same day by the Bank which states as follows:

*Perfect*

*I did try and ring Garda [name] twice but he was out in the car at the time,  
do I still need to contact him*

At no point in any of the correspondence I have been provided with in evidence does the Complainant request a Section 19 report from the Bank, nor have I been provided with evidence that any request for assistance was declined. A Section 19 report from the Bank, or indeed any other assistance that was declined. A Section 19 report was ultimately provided directly to An Garda Síochána on 1 April 2016 however the detail in this letter contains no information over and above the information contained in the 'advice of payment' documents other than confirmation that the attempted fund recalls were unsuccessful. All of the information in this report was information already known to the Complainant, and thus already known by the police authorities.

The Complainant is not entitled to the return of the monies from the Bank (he would certainly seem entitled to the return of the funds from the transferee). He has pointed to no wrong-doing or error on the part of the Bank nor to any provisions of the terms and conditions of his account such as might entitle him to the return of the monies. He acknowledges that he willingly and freely authorised the transfer of the funds to the account in question. The Bank cannot be held responsible for the actions of the recipient or for the delay in the Complainant advising it of the situation and requesting the recall of the funds.

With regard to the alleged delay in completing a Section 19 report, the Complainant did not request any such report at any point. All the information known to the Bank was known to the Complainant and indeed he had provided this information to the police authorities in the respective states. This is of central importance in considering the precise provisions of Section 19 and I am satisfied that no breach of that legislation has occurred.

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The Bank ultimately formalised the position with the provision of a formal report in April 2016 however the entirety of the content of this report was already known by the Gardaí and I cannot accept that the Bank was guilty of any improper failure to provide any such report at an earlier date.

In light of the entirety of the foregoing, and in the absence of evidence of wrongdoing by the Bank or conduct within the terms of Section 60(2) of the Financial Services and Pensions Ombudsman Act 2017 that could ground a finding in favour of the Complainant I do not uphold the complaint.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

**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**

25 February 2019

**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) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.**