



<u>Decision Ref:</u>	2019-0037
<u>Sector:</u>	Banking
<u>Product / Service:</u>	ATM
<u>Conduct(s) complained of:</u>	Non-receipt of money
<u>Outcome:</u>	Rejected

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

Background

The complaint relates to the Complainants' inability to access their funds from an ATM over the course of several days.

The Complainants' Case

The Complainants state that the First-named Complainant attempted to withdraw €250 from an ATM on the evening of Thursday 11 May 2017 but was met with a message on the screen stating: "*cancelled transaction*". The Complainants contend however that the transaction was not in fact cancelled and the funds were removed from their account and not reimbursed until Tuesday 16 May 2017. The Complainants further submit that when the funds were reimbursed, their account statement failed to make any reference to the event and instead the transaction had been "*disappeared*".

The complaint is that the Complainants were inappropriately deprived of the use of the €250 over the 5-day period. The Complainants seek compensation.

The Provider's Case

The Bank states that, after the attempted ATM withdrawal, the transaction "*shadowed*" on the Complainants' account until 16 May 2017. The Bank explains that this reflects "*the posting of approved transactions on our database which are pending processing*".

In this case, the Bank states that the transaction was approved but "*due to the failure of the [third party bank] ATM, the funds were not received by the first named Complainant*". Arising from same, the Bank states that no "*clearing record*" ever followed (as would normally be the case) from the third-party bank confirming that the monies had been dispensed. Accordingly, after the passage of the standard period of time (3 working days) within which no clearing record ensued, the transaction "*fell off*" the account leaving no trace from the customer's point of view.

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 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 29 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.

Prior to considering the substance of the complaint, it will be useful to set out the relevant terms and conditions of the policy.

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Account Terms and Conditions

The Bank has expressly relied upon the following terms and conditions of the ATM/ Debit service:

4.0 *Making a payment with your card*

4.1 *When you carry out an ATM withdrawal or make a payment using your Card, we deduct the amount from your Account. You cannot stop a Card transaction.*

...

4.3 *When you make a payment using your Card, the balance (or any remaining balance of an agreed overdraft limit) on your Account will usually be reduced immediately by the amount of the transaction. The full details of the card transaction will only appear on the regular Account statement or eStatement we provide to you after it has been fully processed by us. However, a record of the Card transaction generally appears immediately on [the Bank's online banking service], ATMs and on statements which are printed using a branch statement printer.*

The Bank has also cited the following provisions from the terms and conditions of its online banking service:

9.0 Account Balances

9.1 *We will include the following things in the Account Balance that we provide on that Day of Access:*

9.1.1 *The amount in the Account at close of business on the Banking Day before the Day of Access; and*

9.1.2 *(for information only) the value of all payments in or out of your Account which are made (or where value is due to be paid) on the Day of Access.*

...

9.3 *We make every reasonable effort to ensure the information we give you about balances is accurate and compete. However:*

9.3.1 *The information we give you is not conclusive evidence of the state of your account (if you need a conclusive statement, please contact your branch);*

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9.3.2 *We will not compensate you or anyone else for any loss of expense which occurs as a result of any inaccuracy in information we give you regarding your Account balance.*

Analysis

The First-named Complainant's attempted transaction failed due a failure of the third-party bank ATM. I must now consider whether the system operated by the Complainants' bank subsequent to that failure is such as could give rise to a decision in favour of the Complainants.

It is common case that the First-named Complainant authorised the withdrawal of the €250. The terms and conditions of the account authorise the Bank to deduct an amount from an account upon an "ATM withdrawal". In this case, the withdrawal was authorised (insofar as the correct PIN code was used), but the actual cash was not dispensed. However, the Bank was not and could not be aware that the cash had not been dispensed at the time. In this regard, it was wholly dependent on the third-party bank's clearance reporting; the system which ultimately confirmed in this case that no cash had in fact been dispensed.

Accordingly, I accept that the Bank was entitled to treat the event as an 'ATM withdrawal' and to temporarily record the transaction as successful (using a "shadow file") pending confirmation by way of clearance reporting. From the information available to the Bank at that time it appeared that the transaction had been entirely successful. This remained the position until its system confirmed the contrary.

Recordings of telephone conversations have been provided in evidence.

It is noteworthy that the First-named Complainant was informed by the Bank in a phone conversation on 12 May 2017 that the clearing process may take several days for the funds to reverse into his account.

It is also important to note that the Bank's terms and conditions point out that, whilst every effort is made to ensure that account balances are accurate, the information provided on the systems that reflect the shadow filing system (i.e. balances available online and at ATMs, as opposed to formal statements of account) is not conclusive and that no liability for compensation will flow from any inaccuracies.

There is one further matter upon which I might remark. The Complainants have submitted that they were deprived of the use of the €250 over the course of the 5-day period. In response to this, the Bank has stated that the Complainants actually had access to significant funds in the period in question including a significant overdraft facility.

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Whilst I do not consider this to be a matter that could be determinative of this complaint, I feel it is important to note that there is no suggestion that the Complainants were unable to complete any other transactions owing to the failure of the €250 ATM withdrawal and the subsequent temporary reduction of their account balance.

I believe it would be unreasonable to hold a bank responsible for the acts of a third party bank. Indeed, if that was to be the case, it might be that the only way for a bank to avoid being held responsible for the actions of another bank would be to limit withdrawals to its own ATMs. I believe this would not be in the best interest of consumers.

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 Complainants, 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.