



<u>Decision Ref:</u>	2019-0057
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Accounts
<u>Conduct(s) complained of:</u>	Disputed transactions
<u>Outcome:</u>	Partially upheld

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

Background

This complaint relates to a lodgment to a current account.

The Complainant's Case

The Complainant alleges that on 10 February 2014, she lodged a sum of €5,000 in cash to her account (Account Number *****053) with the Bank. She submits that during a visit to the Bank in July 2014, a staff member of the Bank confirmed that the lodgment had been credited to her account. She states that she then received a bank statement for her account in July 2015 which indicated that no such lodgment had been made to her account in February 2014. It is the Complainant's case that the Bank wrongly failed to credit a lodgment of €5,000 to her account in February 2014.

The Complainant also states that the Bank's negligence in failing to provide the Complainant with any statements of account between 2007 and 2015, and in incorrectly advising her in July 2014 that the lodgment of €5,000 had been credited to her account, is the reason for the delay in her discovery that the sum had not been credited to her account.

The Complainant complains that this delay is the reason for which it has not been possible for her to locate a receipt in order to prove the lodgment.

The Complainant also complains that the Bank failed to adequately investigate or consider the subject matter of her complaint or to carry out any proper inquiry into what happened to her money. She now seeks return of her money from the Bank.

The Complainant states that she brought a sum of €5,000 in cash to the Bank on 10 February 2014, having withdrawn this sum of money from an account she had with a third party bank directly beforehand, at approximately 3pm. The Complainant states that, upon entering the Respondent Bank at approximately 3.30pm, she approached the customer services desk to check her bank account number before approaching the counter to make her lodgment. The Complainant states that she inquired with customer services about her account number because she rarely used that particular account and was not familiar with the account number.

The Complainant states that she then queued for the bank teller, and that she told the teller how much she was lodging, and confirmed the number on the lodgment slip, before handing over an envelope containing the money. The Complainant states that she remembers that the teller counted the money in the envelope and checked the account number on the lodgment slip. The Complainant states that she then left the Bank satisfied that she had completed the transaction and that she had no reason to be concerned that anything was wrong, or that the money had not been lodged safely into her account.

The Complainant states that, despite exhaustive searching, she cannot now locate her receipt for this lodgment. She is uncertain whether this is because she has since misplaced the lodgment receipt, or because she did not receive a lodgment receipt from the Bank in the first place. The Complainant states, however, that she is certain that she would not have left the Bank without a lodgment receipt.

The Complainant states that, on 16 July 2014, she made enquiries about the balance on the account into which she had lodged the €5,000 while on a visit to the branch to complete other banking business. The Complainant states that it appeared that the female bank teller with whom she was dealing could not see, from the computer screen in front of her, that the lodgment of €5,000 from February 2014 had been credited to her account.

The Complainant states that a more senior female bank official was consulted and that when she came to the counter to look at the computer screen, she was able to re-assure the Complainant that she could see the lodgment of €5,000 credited to the account, while commenting that the Complainant had withdrawn a significant amount of money from the account since that date.

The Complainant states that this incident, together with the Bank's negligence in failing to provide her with statements of account during this period, was the reason for the considerable delay in the Complainant becoming aware that the sum of €5,000 which she had lodged in February 2014 had never been credited to her account. The Complainant states that, because of this delay, she did not find out until July 2015 (upon requesting that a statement of account be issued to her) that there was no record of the lodgment of €5,000 to her account in February 2014 and that, because of this delay, she has found it extremely

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difficult to locate the lodgment receipt to prove to the Bank that she did make the lodgment in question.

The Complainant states that she has been informed by the Bank that the reason she did not receive any statements of account between 2007 and 2015 was because a letter issued to the Complainant by the Bank in 2007 was returned to the Bank undelivered. The Complainant states that she has been told by the Bank that statements were temporarily suspended until the Complainant updated her postal address in June 2015. The Complainant does not accept this explanation from the Bank. She contends that she had in fact updated the details of her postal address in or around 2009, and that all transactions since that date have been processed using her current address.

The Complainant states that the address which was updated in June 2015 was in connection with a couple of defunct accounts containing very little money which the Complainant had used while living at a different address in the 1980s. The Complainant submits that there was no reason, other than the Bank's negligence, for the Bank's failure to issue her with the appropriate bank statements in relation to the account in question.

The Complainant submits that, initially, upon complaining to the Bank about the missing lodgment that she discovered in July 2015 subsequent to receiving a statement of account, she was informed by a representative of the Bank (Mr T, Assistant Manager) that there had only been one lodgment of €5,000 to an unrelated third party account received by the Bank on the date in question, 10 February 2014, and that this had been a lodgment by cheque.

The Complainant states that the Bank has subsequently, upon referral of the matter to this Office, reported that two lodgments of €5,000 were in fact received by the Bank to unrelated third party accounts on 10 February 2014, one by cheque and one in cash. The Complainant questions this as follows:

"Why was I given false information about the records of lodgments? I handed in €5,000 in cash together with my completed lodgment slip, yet no trace was found of either my money or the accompanying documentation. The fact that such an exact lodgment in cash was lodged to a different account on the same day, and that this wasn't disclosed to me by the Bank, raises serious questions for me."

The Complainant submits that she is deeply unhappy with the Bank's response to the issue of her missing lodgment. The Complainant submits that the Bank has been dismissive of her complaint and has shown no interest in discovering the truth of the matter. The Complainant states that the Bank has made no serious effort to find out what happened to her lodgment of €5,000, did not seek to trace the members of staff concerned, and never invited her to a face to face meeting to listen to her account of events.

The Complainant maintains that the Bank has failed to act fairly or in her best interests in this matter.

The Provider's Case

The Bank maintains that no evidence of a lodgment of €5,000 to the Complainant's account has been found, and that the Complainant has been unable to produce a receipt for the lodgment.

The Bank submits that all documentation and transactions completed at the Branch on 10 February 2014 have been examined by the Branch and its Customer Relations Department during the course of investigating the Complainant's complaint. The Bank states that two staff members in the Customer Relations Department separately examined the dockets from 10 February 2014 to establish if there was any evidence of the lodgment.

The Bank states that no evidence of a lodgment of €5,000 to the Complainant's account was found. The Bank states that the Complainant, for her part, has been unable to produce a receipt for the lodgment.

In response to the Complainant's comments that she was advised by a Bank representative (Mr T, Assistant Manager) in July 2015 that there had been only one lodgment in the sum of €5,000 on 10 February 2014 in that branch, and that this was by cheque, the Bank states that it has spoken to Mr T regarding the matter and that he is unable to recall the exact details of the conversation which took place with the Complainant in this regard. The Bank has stated, however, that on 10 February 2014 there was one cash lodgment of €5,000 and one cheque lodgment of €5,000 in that branch, that the dockets for these lodgments have been checked by the Bank and that the Bank has confirmed that both lodgments were credited to the correct third party accounts for the correct amount.

The Bank has submitted that, due to the passage of time, it is unable to comment on the Complainant's query why one staff member was unable on 16 July 2014, upon looking at the computer screen, to confirm the lodgment into the Complainant's account, while a second staff member on the same occasion and upon looking at the same computer screen was able to confirm that the lodgment had been credited to the account.

Upon enquiry by the Complainant, the Bank has advised that CCTV footage of the Branch in question for 10 February 2014 or 16 July 2014 is no longer available.

The Bank makes reference to a telephone call that took place between the Bank and the Complainant on 8 April 2014, a recording of which has been submitted in evidence, during this call the Complainant indicated that there was a balance of about €1,500 in her account. The Bank submits that this balance would not be reflective of a deposit of €5,000 having been made just two months previously.

On the issue of annual account statements, the Bank states that its records indicate that post which issued to the Complainant in 2007 was returned to the Bank undelivered and that, for security reasons, annual statements were temporarily suspended thereafter.

The Bank submits that its records show that the Complainant updated her correspondence records on 11 April 2011, but that in error the correspondence hold was not lifted at that

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time. The Bank states that the Complainant clarified her details again on 19 June 2015 and that the issuing of statements re-commenced after that date. The Bank acknowledges that if a statement had issued to the Complainant in August 2014, the Complainant may have noticed that there was no lodgment of €5,000 made to her account on 10 February 2014. In recognition of the Bank's error in failing to lift the correspondence hold in April 2011, the Bank has offered the Complainant an *ex gratia* payment of €250.00 as a gesture of goodwill.

The Bank submits that, in responding to the Complainant's complaint, it followed the guidelines under the Consumer Protection Code 2012 ("**the CPC**") but acknowledges that the 5 day and 20 day holding letters were issued late. The Bank has offered the Complainant an additional *ex gratia* payment of €250.00 as a gesture of goodwill for this lapse.

The Bank has expressed its regret that it cannot provide the Complainant with a more favourable response to her complaint, but highlights that, according to the statement and history of her account, there was no lodgment of €5,000 made to the Complainant's account on 10 February 2014.

The Bank submits that if at any stage the Complainant is in a position to provide a copy of the lodgment slip, or any additional details in respect of the transaction, it will look into the matter further.

The Complaints for Adjudication

The complaint is that the Bank wrongly failed to credit a lodgment of €5,000 to the Complainant's account in February 2014 and the Bank was negligent in failing to provide the Complainant with any statements of account between 2007 and 2015, and it incorrectly advised her in July 2014 that the lodgment of €5,000 had been credited to her account.

The Complainant also states that the Bank failed to adequately investigate or consider the subject matter of her complaint or to carry out any proper inquiry into what happened to her money.

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.

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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 20 February 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.

The Bank's position is that, having examined the records of all the transactions carried out at the Branch office on 10 February 2014, and also on 11, 12 and 13 February 2014, no evidence of a lodgment of €5,000 to the Complainant's account has been found.

In the normal course of events, upon receipt of a lodgment of a sum of money from a customer, a bank will provide the customer with a written acknowledgement of the transaction in the form of a lodgment receipt.

The lodgment receipt bears the details of the completed transaction and is dated and stamped by the bank. This receipt is the customer's proof of the completion of the financial transaction in question.

The Complainant recognises the difficulty presented by her inability to provide a lodgment receipt in support of her claim that she made the disputed lodgment. While she feels certain that she would not have left the Bank on 10 February 2014 without obtaining a receipt for her lodgment, she has been unable to locate this receipt, despite searching for it. She is uncertain whether this is because she has since misplaced the lodgment receipt, or because she did not receive a lodgment receipt from the Bank in the first place.

In circumstances where the Complainant is unable to provide a receipt for the disputed lodgment, consideration must be given to other circumstances, or evidence, which would tend to support the Complainant's claim that she made the lodgment in question.

Having examined the submissions made by the parties to this complaint, I note that the Complainant has submitted a copy of a withdrawal slip dated 10 February 2014 which shows the withdrawal of a sum of €5,000 on that date from a third party bank with which the Complainant held an account. I note that the withdrawal slip bears no identifying name and no identifying account number. It is, however, supported by a bank statement showing the transaction history for the Complainant's third party bank account for the period 22 August

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2013 to 22 August 2014, which shows that the Complainant withdrew a sum of €5,000 from her account with the third party bank on 10 February 2014.

The Complainant states that directly after making that cash withdrawal of €5,000 from her third party bank account, she brought this sum of money straight to the Bank concerned in this complaint and lodged it into her account.

The Complainant relies on her own recollection of the events in question in seeking to establish that she made the lodgment in question.

The Complainant is adamant that her account of the circumstances of the lodgment of €5,000 on 10 February 2014 is *"a truthful and accurate account of what happened. I did hand €5,000 to the teller in person together with the completed lodgment slip."* The Complainant is adamant that, despite the absence of any documentary evidence of the lodgment, she made the lodgment on 10 February 2014 and that the Bank took possession of her money on that date.

The Bank, in response, submits that there is no documentation on file to support the Complainant's case that she made a lodgment of €5,000 to her account with the Bank on 10 February 2014. The Bank has furnished a copy of the statement of account for the Complainant's account for the period 1 January 2012 to August 2016.

This statement documents all transactions in and out of the account for the period in question. Having considered the content of this statement of account, I accept that it contains no record of a lodgment to the Complainant's account on 10 February 2014, or indeed any transaction on the account during the month of February 2014.

The Bank has submitted that a cash lodgment of €5,000 did take place to a third party unrelated account at the branch on 10 February 2014 and that it holds the docket for this transaction. Upon enquiry by this office, the Bank advised in response, on 16 March 2018, that this lodgment was made at 10.09am and that the account name, the sort code and the account number bore no similarity to those of the Complainant's account. The Bank submits that this lodgment was correctly made to a third party account on 10 February 2014, a number of hours before the Complainant's alleged deposit. In the absence of any evidence to the contrary, and given the time at which this lodgement was made, I accept that this cash lodgment of €5,000 was separate from and unconnected to the Complainant or the Complainant's account.

During the investigation of this complaint, the Bank advised that CCTV footage for the Complainant's local branch for 10 February 2014 is no longer available.

In these circumstances, this Office requested that the Bank confirm from its records the identity of the staff members who attended customers at the Branch counter on the date in question, 10 February 2014, during the period 3pm to 4pm. The Bank was requested to obtain statements from each of these staff members responding, to the best of their ability, to the Complainant's contention that on 10 February 2014, between 3.30pm and 4.30pm, she presented a staff member at the counter with an envelope containing €5,000 in cash, which was taken from her by the staff member and counted, that the account number on

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the lodgment slip was checked by the staff member as being correct, and that the money was lodged to that account.

In response, the Bank submitted, in a letter to this office dated 11 July 2017, that it had no record of the Complainant attending the branch on 10 February 2014 and that *“according to the statement and the history of the account, there was no lodgment of €5,000 to the account on the 10 February 2014.”*

In addition, the Bank submitted that *“due to the passage of time the names of the staff members that attended customers in our [local] branch on 10 February 2014 cannot be established with any degree of accuracy. Therefore, we are unable to confirm same.”*

Upon further enquiry by this office on 7 February 2018, the Bank carried out further investigations and, on 16 March 2018, submitted the names of eight staff members who had conducted financial transactions at the Branch in question on 10 February 2014. The Bank further identified the two staff members, one female and one male, who had conducted transactions at the public counter between the times of 3pm and 4pm on the day in question.

In circumstances where the Complainant has stated that the cashier to whom she handed her lodgment was female, the Bank has submitted a statement from the female employee who was on duty at the cash counter at the time in question.

This statement, dated 20 April 2018, is as follows:

“To Whom It May Concern,

In relation to the above complaint I can confirm that I do not recall taking an envelope from this customer at the times specified in her comments, and that I do not recall interacting with this customer on 10 February 2014.”

The Complainant has at all times refused to accept the Bank's position that the staff members who attended customers at the Bank branch at the given times on 10 February 2014 could not be identified.

She has at all times submitted that it must be possible, given the information which she had provided the Bank, to identify these individuals and to interview them in respect of the subject matter of her complaint.

In her response to the Bank's submission to this office dated 19 April 2018, enclosing statements from the eight staff members identified as having conducted financial transactions at the counter on 10 February 2014, and in response to the Bank's submission dated 20 April 2018 enclosing the specific statement of the female staff member who attended the branch's public counter on 10 February 2014, between the hours of 3pm and 4pm, the Complainant commented as follows (10 May 2018):

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“The statements of individual staff members in relation to any possible recollection of the events I described are disappointing but, I believe, not hugely surprising, in light of the fact that at this stage more than four years have elapsed since the date of my lodgment. The correct time for the bank to have questioned staff members and to have taken statements would have been when details of my missing lodgment were first given to the bank...” (mid 2015).

The Bank has made reference to, and submitted a recording of, the content of a telephone call between the Complainant and the Bank, which took place on 8 April 2014. The Bank states that during this telephone conversation the Complainant indicated that the balance in her account was approximately €1,500. The Bank states that the balance in the account on 8 April 2014 was €1,618.37. The Bank states that the Complainant did not refer to any discrepancy on her account at that time.

The Complainant has sought to explain this reference to a balance of €1,500 in submissions to this office dated 16 December 2016 and 10 May 2018. The Complainant states that the purpose of that telephone call had been to enquire how to purchase Australian dollars.

The Complainant states that she did not confirm, during this telephone call, that the balance of the account was €1,500, as alleged by the Bank. She states that this was simply a “thinking aloud remark,” when her focus was on reassuring herself that she had sufficient funds to meet the need, as she had been told that the transaction had to be processed through her bank account, rather than by purchasing the currency in cash.

The Complainant states that her account number was not established during this call, and that she did not know it herself. The Complainant states that the conversation in question was not, in any event, about her account balance, but was about how to obtain Australian currency in preparation for her trip. She states that:

“Had the account been located and had I been questioned about recent lodgments as a means of checking my identity, I would of course have then focussed my attention on the account, would have recalled my transfer of money from my [third party] account and I would have given a fairly accurate estimate of the funds in it.”

The recording of this telephone conversation has been made available to the parties and I have considered it as part of the adjudication of this complaint.

I accept that there was no reference to the Complainant’s account number during the conversation which took place, but that the Complainant did refer to her deposit account and to the balance of €1,500 with reference to that account, and that this was the only account held by the Complainant with the Bank. I also note that the Complainant was not asked for her account balance, but that she volunteered this information herself.

The Complainant states that the Bank’s negligence in incorrectly advising her in July 2014 that the lodgment had in fact been credited to her account, and failing to provide her with appropriate statements of account was the reason for the considerable delay in the Complainant’s discovery that the sum of €5,000 had not been credited to her account.

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The Complainant states that, because of this delay, she did not find out until July 2015 (upon requesting that a statement of account be issued to her) that there was no record of the lodgment to her account in February 2014 and that, because of this delay, she has found it extremely difficult to locate the lodgment receipt to prove to the Bank that she did make the lodgment in question. I will now deal with those aspects of the complaint.

Incorrect advice in July 2014 that the lodgment was in fact made

The Complainant seeks to rely on her account of a visit to the Bank branch on 16 July 2014, some five months after the alleged lodgment was made to her account, during which visit she states that she was assured by a senior staff member, upon checking the Complainant's account history on the computer screen in front of her, that the lodgment of €5,000 had been credited to the Complainant's account.

In its letter to the Bank dated 21 June 2017, this office requested confirmation from the Bank of the identity of the two members of staff (one described by the Complainant as a junior staff member, the other as a more senior staff member) with whom the Complainant dealt upon her visit to the Branch on 16 July 2014, and the discussions which took place with the Complainant in relation to her account balance, upon her attendance at the counter to carry out her banking business on that date.

The Bank, in its response dated 11 July 2017, informed this office that it had established the identity of two staff members who attended the Complainant at the branch counter on 16 July 2014. The Bank stated that the junior male staff member in question was employed for the duration of the summer season 2014 only and that this individual no longer worked for the Bank. The Bank has since notified this office that its efforts to contact this staff member have been unsuccessful, that the individual in question no longer resides in Ireland, and that he is currently working abroad.

The Bank has identified the second member of staff who attended the Complainant at the branch counter on 16 July 2014 as a senior male employee. The Bank submits that this individual is an experienced member of staff, very familiar with the Bank's IT system and that he would not have advised that a lodgment had been made to an account on 10 February 2014 in circumstances where no such lodgment had been made.

The Bank has submitted a statement from the senior staff member in question, but indicated that the passage of time has prevented him from recalling the exact details of the conversation he had with the Complainant on 16 July 2014. The statement of the senior staff member in question dated 5 July 2017 is as follows:

"I authorised two drafts on 16 July 2014 as requested by the cashier at the time. I have no recollection of the events after but any customer query on a transaction would be reviewed and the customer would be advised of transactions as per [the Bank's IT system]."

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The Complainant, in response, submitted that this statement was *“entirely irrelevant as I had no conversation with him.”* The Complainant stated that she had no interactions with the male senior staff member identified by the Bank, who she states might have signed the bank drafts for the teller but did not speak to the Complainant.

The Complainant states that the senior staff member with whom she spoke on 16 July 2014 and who checked her account on that date and confirmed her lodgment of €5,000 was a female member of staff, described by the Complainant as *“in her thirties, slim, with short hair, as I remember.”* The Complainant contends that she has made this clear since she first initiated her complaint with the Bank and queries why the Bank has *“sought to now portray a man who happened to sign the bank drafts for the teller, as the person who gave me information which later proved to be false, on my account, despite the fact that they are aware that it was a female member of staff to whom I spoke?”*

The Complainant also disputes the junior male staff member identified by the Bank. In a submission to this office dated 4 April 2018, the Complainant states as follows:

“I wish to categorically state that the person I dealt with on 16 July 2014 was not [Mr X]. The person in question was female, blond haired, young...”

The bank is now claiming that [Mr X], who is living abroad, was the younger employee who dealt with me and with whom I initially disputed the accuracy of my balance. This is absolutely untrue. I do not know who [Mr X] is, or what work he was doing on that day. What I do know is that the young employee who gave me my balance was as I described her above, and I have a very clear recollection of the interactions with staff with regard to my account balance on the day in question. This employee was witness to the fact that I was given incorrect information at that time.”

It is the Bank’s position in response that, due to the passage of time, it is unable to identify with absolute accuracy each staff member referred to by the Complainant. In a submission to this Office dated 19 April 2018, the Bank stated as follows:

“... this matter has been discussed at length with all staff members at [local] branch, and regrettably no staff member can specifically recall interacting with the Complainant on 16 July 2014.

As it was suggested previously by the Complainant that the staff member involved was junior, the Bank established the identity of its junior summer staff of July 2014 accordingly. Again I can assure you the Bank made every effort to fully investigate these events in an effort to clarify matters.

Furthermore, the identity of each staff member at [local] branch in July 2014 has been established by the Bank’s HR department. I have discussed the Complainant’s comments and detailed descriptions... with all staff still employed by the Bank. Again, I regret to advise that the staff were unable to recall the events of 16 July 2013 as described by the Complainant.”

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The Complainant has stated that the person who confirmed that the lodgment was visible on the screen also commented that the Complainant had withdrawn a significant amount of money from the account since that date.

In that regard, I note the following transactions on the account between January 2014 and the date in question:

Date	Details	Withdrawn	Paid In
10 APR 14	Lodgment		194.92
10 APR 14	AUD/700.00/1 403100	498.90	
01 JUL 14	Credit Interest		0.05
01 JUL 14	DIRT at 41pc 0.02		
09 JUL 14	CHECK		13334.15
09 JUL 14	Withdrawal	600.00	

I note on the date in question, 16 July 14, the following transactions are recorded:

Date	Details	Withdrawn	Paid In
16 JUL 14	Lodgment		
16 JUL 14	Draft 050359	5000.00	
16 JUL 14	Draft 050360	5333.00	

Bank statements

In July 2015, the Complainant received an account statement from the Bank showing a history of the transactions on the Complainant's account. This statement indicated that no lodgment of €5,000 had been credited to the Complainant's account on 10 February 2014.

The Complainant states that this incident of failing to provide her with statements of account during this period, was the reason for the considerable delay in the Complainant becoming aware that the sum of €5,000 which she had lodged in February 2014 had never been credited to her account.

The Complainant states that she has been informed by the Bank that the reason she did not receive any statements of account between 2007 and 2015 was the fact that a letter issued to the Complainant by the Bank in 2007 was returned to the Bank undelivered. The Complainant states that she has been told by the Bank that statements were temporarily suspended until the Complainant updated her postal address in June 2015. The Complainant does not accept this explanation from the Bank. She contends that she had in fact updated the details of her postal address in or around 2009, and that all transactions since that date have been processed using her current address.

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The Complainant states that the address which was updated in June 2015 was in connection with a couple of defunct accounts containing very little money which the Complainant had used while living at a different address in the 1980s. The Complainant submits that there was no reason, other than the Bank's negligence, for the Bank's failure to issue her with the appropriate bank statements in relation to the account in question.

On the issue of annual account statements, the Bank states that its records indicate that a post which had been issued to the Complainant in 2007 was returned to the Bank undelivered and that, for security reasons, annual statements were temporarily suspended after that. The Bank submits that its records show that the Complainant updated her correspondence records on 11 April 2011, but that in error the correspondence hold was not lifted at that time. The Bank states that the Complainant clarified her details again on 19 June 2015 and that the issuing of statements re-commenced after that date. The Bank acknowledges that if a statement had been issued to the Complainant in August 2014, the Complainant may have noticed then that there was no lodgment of €5,000 made to her account on 10 February 2014.

In recognition of the Bank's error in failing to lift the correspondence hold in April 2011, the Bank has offered the Complainant an *ex gratia* payment of €250.00 as a gesture of goodwill.

The Complainant does not appear to have enquired with the Bank between 11 April 2011 (the date on which she updated her correspondence) and July 2015 (the date on which she first enquired about her statements) as to why she was not receiving statements.

Adequacy of Bank's investigation

The Complainant submits that she is deeply unhappy with the Bank's response to the issue of her missing lodgment. The Complainant submits that the Bank has been dismissive of her complaint and has shown no interest in discovering the truth of the matter.

The Complainant states that the Bank has made no serious effort to find out what happened to her lodgment of €5,000, did not seek to trace the members of staff concerned, and never invited her to a face to face meeting to listen to her account of events.

The Bank submits that all documentation and transactions completed at the Branch on 10 February 2014 have been examined by the Branch and its Customer Relations Department during the course of investigating the Complainant's complaint. The Bank states that two staff members in the Customer Relations Department separately examined the dockets from 10 February 2014 to establish if there was any evidence of the lodgment. The Bank states that no evidence of a lodgment of €5,000 to the Complainant's account was found.

In response to the Complainant's comments that she was advised by a Bank representative (Mr T, Assistant Manager) in July 2015 that there had been only one lodgment in the sum of €5,000 on 10 February 2014, and that this was by cheque to a third party account, the Bank states that it has spoken to Mr T regarding the matter and that he is unable to recall the exact details of the conversation which took place with the Complainant in this regard.

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The Bank states that on 10 February 2014 there was one cash lodgment of €5,000 and one cheque lodgment of €5,000, that the dockets for these lodgments have been checked by the Bank and that the Bank has satisfied itself that both lodgments were credited to the correct third party accounts and they have no connection to the complaint.

The Bank submits that, in responding to the Complainant's complaint, it followed the guidelines under the Consumer Protection Code (CPC). The Bank maintains that it has acted honestly, fairly and professionally in compliance with Provision 2.1 of the CPC. The Bank submits but acknowledges that the 5 day and 20 day holding letters were issued late. The Bank has offered the Complainant an additional *ex gratia* payment of €250.00 as a gesture of goodwill for this lapse.

In a letter to this Office dated 16 December 2016, the Complainant outlines as follows:

"I would like to ask if it is common practice in [the Bank] to take no notes of serious complaints by customers of the Bank, to investigate a notification that a substantial sum of money lodged had apparently gone missing and never reached the account in question, and to record nothing of the complaint or the findings on an initial investigation into this... I find it totally extraordinary that [Mr T] noted nothing of this in writing, but depended on his own memory to report on this meeting with me, and the results of his checks on the lodgments of that amount on the particular day, which he did in my presence..."

"Any proper investigation of what happened to my missing lodgment would have involved [staff member at the Bank] meeting and speaking directly to me, something which never happened."

In a response to this Office dated 4 April 2018, the Complainant stated that she was:

"Astounded to see from their recent correspondence that not alone are they able to identify the people on the counter during the course of the day, they are now able to name those on the counter at the time I lodged my money. As the cashier involved was female and as there is only one female name on that list was present at the counter at the relevant time, it would have been imperative in any investigation that the bank manager should have brought my complaint to the attention of the employees present at the time, and in particular the female employee, and should have questioned that employee as to her recollection of my transaction."

She also stated:

"The matter was first brought to the Bank's attention when I finally requested a bank statement and discovered that my money had never been credited to my account in the summer of 2015, a year and some months after I had lodged it.

At this time, a comprehensive, thorough and real investigation should have been instituted. Instead, the bank did a cursory check on documentation to ascertain whether they could find my lodgment docket, and having failed to locate it, they took

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no further interest in discovering what had happened to the money I had deposited with them. As I waited month after month...I firmly believed that the bank manager was carrying out interviews with staff in an effort to arrive at the truth of what happened to my lodgment. It is now abundantly clear that this most basic step never took place, not because they couldn't identify who was attending to the public at the counter when I was in the bank, but because they deliberately neglected to treat my complaint seriously."

In circumstances where the Complainant is unable to provide a receipt for the disputed lodgment, consideration must be given to other circumstances, or evidence.

In that context, I am conscious of, among other things:

- A withdrawal slip dated 10 February 2014 and bank statement which shows the withdrawal of a sum of €5,000 on that date from a third party bank with which the Complainant held an account;
- The Complainant's own recollection of the events in question in seeking to establish that she made the lodgment in question;
- The lack of documentation on the Bank's file to support the Complainant's case that she made a lodgment of €5,000 to her account with the Bank on 10 February 2014;
- A telephone call between the Complainant and the Bank, which took place on 8 April 2014 in which the Complainant indicated that the balance in her account was approximately €1,500, which does not reflect an amount that would have been inclusive of the alleged €5,000 lodgment made two months prior;
- The statement dated 20 April 2018 from the female employee who was on duty at the cash counter at the time in question.

Having reviewed all of the evidence, the above submissions and documentation, I accept that I have not been provided with definitive proof of lodgment on 10 February 2014 of €5,000 to the Complainant's account.

However, I am satisfied from the above that the Bank failed to adequately investigate or consider the subject matter of the complaint or to carry out any proper inquiry into what happened to the Complainant's money. It is my view that in July 2015, when the Bank became aware, through a conversation with the Complainant, of a serious complaint regarding a missing lodgment for a large sum of money, a comprehensive investigation should have occurred, to include, among other things, written notes of the conversation, details of the complaint, formal results of the investigation and results of the checks on the lodgments of the day. It is my view that, if such was done promptly when the Bank became aware of the issue, the likelihood is that staff members would have had a better ability to recall the events of the days in issue (10 February 2014 and 16 July 2014).

I am disappointed to note that most of the investigation undertaken and enquiries made were only undertaken on foot of the investigation by this office.

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Further, notwithstanding the fact that the Complainant could have enquired with the Bank at any stage during the four years between 11 April 2011 (the date on which she updated her correspondence) and July 2015 (the date on which she first enquired about her statements) as to the whereabouts of her statements, I accept that the Bank's negligence in failing to provide the Complainant with any statements of account between 2007 and 2015 is the reason for the delay in the Complainant's discovery that the sum had not been credited to her account. I note the Bank's recognition of its error in failing to lift the correspondence hold in April 2011, and their acknowledgement that if a statement had issued to the Complainant in August 2014, the Complainant may have noticed that there was no lodgment of €5,000 made to her account on 10 February 2014.

I also take into account the Complainant's disappointment that the Bank did not meet her face to face to hear her side of the events. This might have been helpful in bringing matters to a faster conclusion, particularly if it had happened at an early stage.

I do not feel that the €500 in compensation offered by the Bank is adequate in all the circumstances therefore I direct the Bank to pay a sum of €1,000 in compensation to the Complainant for the inconvenience caused.

For the reasons set out above, I partially uphold this complaint.

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) (b) and (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €1,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also 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**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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**

21 March 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.