



<u>Decision Ref:</u>	2019-0086
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Handling of fraudulent transactions
<u>Outcome:</u>	Rejected

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

Background

This complaint concerns disputed transactions carried out on the Complainant's account.

The Complainant's Case

The Complainant holds a Visa debit card for an account with the Provider.

From 2013 to 2017 the Complainant's account was debited with unauthorised online purchases. When he noticed the activity in December 2017, the Complainant cancelled his debit card and reported the issue. He states that the transactions continued even after he reported them as fraudulent. Ultimately, he was advised to close the account, which he duly did.

The complaint is that the Provider has debited the Complainant's account wrongfully and/or contrary to the Complainant's instructions. He would like to be refunded the entire value of the disputed transactions.

The Provider's Case

The Provider states that while a number of transactions have been refunded, it is not in a position to refund all of the transactions spanning the four year period. It notes that

customers are encouraged to monitor their own accounts and report fraudulent activity. The Provider points out that the Complainant was advised by its Customer Service agent in January 2014 to review his online banking and monitor his account going forward.

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 18 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.

This complaint arises out of an unfortunate sequence of events, whereby it appears the Complainant has been the victim of ongoing and apparently unauthorised transactions since as early as 2013.

The Complainant initially queried transactions in January 2014 and again on 7 December 2017, notifying the Provider of disputed transactions he had noticed on his statement. Since this, numerous suspicious transactions have been identified, the large majority of which appear to reflect payments made to online sites.

Article 58 of the Payment Services Directive (2007/64/EC) provides as follows:

"The payment service user shall obtain rectification from the payment service provider only if he notifies his payment service provider without undue delay on becoming aware of any unauthorised or incorrectly executed payment

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transactions giving rise to a claim, including that under article 75, and no later than 13 months after the debit date, unless, where applicable, the payment service provider has failed to provide or make available the information on that payment transaction in accordance with the title III”.

The disputed transactions are subject to the European Communities (Payment Services) Regulations 2009. Regulation 95 of which states as follows:

“A payment service user is entitled to rectification of an unauthorised or incorrectly executed payment transaction from a payment service provider only where the payment service user notifies the payment service provider without undue delay on becoming aware of any such transaction giving rise to a claim, including a claim under Regulation 112, and no later than 13 months after the debit date”

The card terms and conditions also place an onus on the cardholder to examine statements on a regular basis and report any unusual activity in a timely fashion (*“immediately”*).

In this complaint the substantive issue is whether or not the Provider has wrongfully or unfairly sought to rely on the card terms and conditions, and/or the applicable legislation in refusing to refund disputed transactions beyond the 13 month period prior to the Complainant notifying it of the disputed transactions.

The Complainant contacted the Provider by phone on 26 January 2014 when his card was retained by an ATM and he received an *“unauthorised transaction message”*.

A recording of the calls between the Complainant and the Provider have been provided in evidence. I have reviewed the content of the call of 26 January 2014. On this call the Complainant confirmed a transaction for VDP-FHPAY.NET in the amount of €22.53 and VDPHELPSDEPT.COM in the amount of €37.51 were genuine and carried out by him. The Complainant later disputed these transactions as not having been carried out by him. I note that on this call the Provider’s agent advised the Complainant to review his transactions on online banking to ensure he was satisfied they were his and to monitor transactions going forward.

Following the call, a standard disclaimer form was issued to the Complainant on 1 February 2014. This letter requested that the Complainant complete the form and return it to the Provider within 10 working days if the Complainant wanted to continue to dispute transaction as unauthorised. The Provider did not receive a response within the specified timeframe. The Complainant was advised by letter dated 20 February 2014 of re-debit of his account and the letter further advised that if he wished to proceed further with the dispute to send in a signed letter to the Provider stating that transaction was not authorised. The Provider did not receive any correspondence at that time in relation to that transaction.

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Analysis

When the disputed transactions were notified to the Provider in December 2017, it carried out significant work to find all disputed transactions for the thirteen month period back to November 2016. The Provider refunded numerous transactions that the Complainant himself had not flagged from the outset.

The Provider, in its response to the complaint, states that it has been working with the Complainant on all disputed transactions that were raised with it in December 2017. It reviewed and actioned the disputed transactions highlighted by the Complainant on those statements sent to it.

Following a subsequent complaint by the Complainant to this Office, all relevant statements included in the complaint to this Office were sent to the Provider for review. Following review of those additional statements, the Provider further refunded disputed transactions identified on those additional statements which we had not received by it up to that point.

The Complainant has suggested that the Provider's fraud prevention measures are inadequate. I do not have any evidence before me to support this proposition.

The Complainant had a responsibility to monitor his account. I note that the Provider did in fact take action in January 2014 to alert the Complainant to possible unauthorised transactions on his account. On that occasion, the Provider's assistant advised the Complainant to monitor his account going forward.

Furthermore, I note the Complainant was given the opportunity to complete a disclaimer form in 2014 to identify any transactions he believed to be unauthorised.

He appears to have chosen not to do so at the time. Thereafter, he does not appear to have monitored his account until he noticed the unauthorised transaction in December 2017.

Under the circumstances, I do not believe it would be reasonable to require the Provider to refund disputed transactions that are not notified to it for more than 13 months after they have occurred, as required by the Payment Services Directive.

Given that the Provider refunded all of the disputed transactions for the 13 month period, I do not 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 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**

14 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.