



<b><u>Decision Ref:</u></b>	2019-0111
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Current Account
<b><u>Conduct(s) complained of:</u></b>	Dissatisfaction with customer service
<b><u>Outcome:</u></b>	Rejected

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

**Background**

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

**The Complainant's Case**

The Complainant is an account holder with the Provider. The complaint relates to certain transactions that occurred over a period of time on his current account that the Complainant believes were fraudulent in nature.

When reviewing his accounts, the Complainant states that he noticed a transaction he did not recognise as his. On further review he noticed suspicious transactions dating back to 29 May 2015 that he did not recognise. The Complainant states he contacted the Provider and they put him through to the fraud team where he was told it was a "consumer complaint". He states that, when he contacted the complaints team, he was referred back to the fraud team, but again the fraud team "would not take" his complaint.

The complaint is that the Provider has wrongfully failed to reimburse the Complainant the sum of the alleged fraudulent activity on the account. The complaint is also that the Complainant received an unsatisfactory level of customer service from the Provider upon notification of his claim.

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

The Provider has refused the Complainant's claim for reimbursement for the disputed transactions on the grounds that they took place over 14 months before the Provider was notified of irregular activity on his account.

The Provider responded to the complaint by letter dated 14 August 2017, stating:

*"We are unable to accept your fraud claim in relation to transactions which date back to May 2015. As we discussed we do expect our customers to review their own accounts and it is not the bank's responsibility to monitor your account"*

The Provider further states that a fraud prevention strategy was in place at the time of the alleged fraudulent transactions 14 months before the Provider was notified. The Provider states that if any of the disputed activity had *"fallen within current fraud trends at that time, the activity would have been blocked, whilst we contacted you to confirm if the activity was genuine or fraudulent"*.

The Provider's position is that its refusal to reimburse the sum of the disputed transactions was correct.

### **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 on 6 March 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

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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.

Following the issuing of my Preliminary Decision, both parties made further submissions as follows:

1. E-mail from the Complainant to this Office dated 25 March 2019.
2. E-mail from the Provider to this Office dated 1 April 2019.
3. E-mail from the Complainant to this Office dated 1 April 2019.
4. E-mail from the Provider to this Office dated 8 April 2019.
5. E-mail from the Complainant to this Office dated 12 April 2019.

I have considered these additional submissions, together with the evidence submitted by both parties and set out below my final determination.

The Complainant states that he was the victim of ongoing unauthorised transactions from soon after the opening of his account in May 2015.

The Complainant raised issue with the Provider in mid to late 2017, notifying it that there were transactions he had noticed on his statement that he believed were unauthorised.

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 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 were subject to the European Communities (Payment Services) Regulations 2009. Regulation 95 of which reads 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 “without undue delay”, “immediately”,

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and in any event no later than thirteen months after the disputed payment was debited from the account.

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 them.

### **Analysis**

The Complainant indicated that he had read and understood the card terms and conditions when he signed his acceptance of them on opening the account.

The Complainant feels that the Provider ought to have explained the card terms and conditions to him.

By signing his acceptance of the terms and conditions and continuing to use the account, he agreed to be bound by those terms and conditions.

The Provider has furnished evidence to show that the Complainant logged into his account online on a near daily basis – 5 or 6 times on some days.

I must accept that it is not possible for a provider to supervise all of the transactions on every customer's account, to the extent that the account holder does not have to check their statements at all, as contended for by the Complainant.

The Complainant has not made specific allegations about particular transactions on the account in question, stating only that over a period nearly two years, there are transactions he does not recognise. The Complainant does not specify dates, times or amounts for the Provider to scrutinise.

It would appear that the disputed transactions relate to a variety of on-line gambling web sites and on-line shopping outlets. The Complainant accessed his on-line account almost every day, occasionally more than once. There were up to six transactions on some days, comprising up to 23% of the funds available at the time in the account. I note that it is not disputed that the Complainant accessed the account on a near-daily basis. In that case, given the frequency, volume and value of the transactions, it is unclear how the Complainant did not notice the disputed transactions.

The Provider has pointed out, and it is evident from the statements supplied, that the number of refunds shown between June 2015 and June 2017 is significant. These are credited from various on-line platforms. It is difficult to understand why, following a fraudulent transaction to remove money illicitly from an account, additional money in excess of the amount stolen, is subsequently returned to the same account by the entity purported to have removed it without permission.

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An additional, difficult aspect of the complaint is the loss of several debit cards, their replacement and the subsequent alleged acquisition of the details of the cards for alleged fraudulent use at the same retail and online outlets.

Visa debit card ending in 7121 was reported lost or stolen in August 2015. Its details had been used both on-line and in physical transactions. In order to do so, the user required access to the numbers on both sides of the card for on-line use and physical possession of the card for use in stores.

The first replacement card, ending in 5261, was used in the same ways, and the user would have needed access to the same numbers or physical possession. This also applied to the card ending in 3235 issued in November 2015. No allegations of fraud or cloning were made. It is unclear how the confidential details from both sides of four different cards have been similarly used, through the same outlets, physically and on-line, over a period of two years without the Complainant noticing those transactions, particularly if the Complainant had kept the card details safe.

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, other than the allegation that a fraud occurred.

There is no evidence that the Provider has acted in any way unfairly or unreasonably in operating in accordance with the account terms and conditions. It is not unreasonable to expect a customer to dispute possible fraudulent transactions on an account within a reasonable amount of time, and certainly within 13 months.

The Complainant has taken issue with the manner in which his complaint was taken by the Provider initially, when he felt passed from pillar to post by the Provider's telephone agents. The Provider has accepted that its service to the Complainant in dealing with his initial complaint was sub-standard.

Prior to the Complainant lodging his complaint with this Office the Provider offered the sum of €40.00 plus €5.40 towards the cost of his phone calls. A recording of the telephone calls have been provided in evidence. I have considered the content of the phone call of 10 August 2017 and am satisfied that the Provider's agent dealt with the Complainant in a fair and courteous manner. Based on the Complainant's own account of the Provider's phone calls, I am satisfied that the sum of €40 fairly reflects the level of inconvenience that was caused to him.

I note that the Provider has subsequently offered €250 to the Complainant as a good will gesture, ostensibly on the basis of two clerical errors contained in their Final Response Letter (stating that he signed up for email statements in May 2015, as opposed to November 2015; and stating that the deadline for reporting fraudulent transactions was 14 months, as opposed to 13 months). Neither of these errors are material to the substance of this complaint.

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I accept that the Provider's actions have been reasonable in all the circumstances and I therefore 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**

29 April 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.**