



<u>Decision Ref:</u>	2019-0272
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Maladministration
<u>Outcome:</u>	Rejected

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

Background

This complaint concerns the Provider's administration of a direct debit instruction to his current account.

The Complainant's Case

The Complainant had a direct debit payment to his credit card company returned as "unpaid" from his current account with the Provider, and subsequently the Provider applied a €10 fee. The Complainant stated *"the calumny reflects negatively on my long and positive relationship with [the credit card company] and is not acceptable"*.

The Complainant states that he checked his account balance on the morning of 22 January 2018 and *"saw the subject direct debit paid and noted this left a debit balance on the account"*. He asserts that he then *"immediately went directly to the branch and made a lodgement thus leaving a credit balance"*. He goes on to say that he was *"shocked to find the direct debit had been returned unpaid despite [his] account being in credit"*.

The complaint is that the Provider has incorrectly charged the Complainant an *"unpaid fee charge"*, and negatively affected his relationship with the credit card company.

The Complainant wants the Provider to “*rectify and recompense for this totally unacceptable slander and [its] immediate correction of the false report given to [the credit card company]*”.

The Provider's Case

The Provider states that despite the Complainant making a lodgement to the account on 22 January 2018, “*due to pending transactions for [€122.63] there were insufficient available funds by close of business to allow the direct debit to clear*”.

The Complaint for Adjudication

The complaint is that the Provider has incorrectly charged the Complainant an “*unpaid fee charge*”, and negatively affected his relationship with the credit card company.

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 8 August 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, within the period permitted, the final determination of this office is set out below.

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The Complainant holds a current account with the Provider, which he opened on **11 August 2014**.

The terms and conditions applicable to the Complainant's account contain the following provisions, relevant to this complaint:

*"We will accept and endeavour to implement any instructions received by us in respect of payments from your Account provided that:
[...]
You have sufficient, cleared funds in your Account to meet the instruction concerned..."*

"While we currently operate a real-time on-line system, which enables immediate updates to Accounts [on the Provider's online platform], the time necessary to complete the processing of instructions and requests may vary depending on whether they can be immediately processed and the nature of the instruction or request. Accordingly the User acknowledges that account balance information given through the [Provider's online platform] is as up-to-date as our systems permit at the time of the User's enquiry but it may not reflect transactions that are in hand, but which still have to be processed or verified."

"You acknowledge that the information given through the [Provider's] App is as up-to-date as our systems permit at the time of your use or enquiry. We will not be liable for any loss suffered by reason of any information not being accurate or up-to-date."

"ADDITIONAL FEES & CHARGES APPLICABLE TO ALL ACCOUNTS

[...]

Unpaid Items

-Cheque, direct debit, or standing order presented on your account €10.00"

The Complainant states that he checked his balance on his mobile phone on 22 January 2018 and noted that the direct debit for his credit card had gone out of his account – a payment of €1,866.32. He noted that this had resulted in his account balance being displayed on screen as a debit balance of €498.72. He therefore went to a branch and made a cash lodgment of €500, with the intention of putting his account back into credit.

However, and as the Provider has explained in its response to this complaint, the balance that the Complainant appears to have been relying upon was not the "cleared" or "available" balance.

The Provider has set out a chain of lodgments and payments which were "pending" on the account, such that the balance displayed online to the Complainant, was not the available balance on his account at the given point in time.

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The Provider states that on 19 January 2018, the Complainant made two cheque lodgments, one for €900 and another for €100. These cheques were subject to a clearing cycle, explained in the terms and conditions as a period of 5 days. The proceeds of these cheques had not been cleared by 22 January 2018, when the direct debit was applied for.

The Provider has also explained that there were 2 payments pending, one for €60 for a payment made by card on 19 January 2018, and another for €62.63 made by card on 21 January 2018.

Accordingly, there were credits of €1,000 and debits of €122.63 waiting to be applied.

Analysis

There is no doubt that the Provider is entitled to apply charges for returned direct debits under certain circumstances, as set out in the terms and conditions of the account.

In this complaint, when the Complainant checked his balance on his mobile phone, the debit balance he saw did not reflect the “pending transactions”. This is a matter which is provided for in the terms and conditions governing the use of the Provider’s online banking platform. It can, nevertheless, give rise to inconvenient results.

Where a customer sets up a direct debit from his/her account, it is that customer’s responsibility to ensure that there are sufficient funds in the paying account to satisfy the direct debit request when it is applied for by the payee (in this case, the credit card company).

In this instance, there were not sufficient cleared funds in the account to meet the direct debit.

If the direct debit was wrongly returned unpaid (ie if there were in fact sufficient funds to meet it when it was applied for) the Complainant would have every right to feel aggrieved. There is no evidence however, upon which I can ground a finding that the direct debit was wrongfully returned unpaid. When payment of €1,866.32 was applied for by way of direct debit by the credit card company, there was less than €1,866.32 of cleared funds in the account. The fact that the account was returned to a credit balance quickly thereafter, is not sufficient to fix the Provider with wrongful conduct.

The information which was received by the credit card company (ie that the direct debit has been returned due to insufficient funds) was factually correct – when the direct debit was applied for, the account balance was less than €1,866.32.

The Provider notes that the “current balance” and “available funds” are displayed separately on its online platforms, of which the Complainant is a regular user.

The Provider has explained that if the Complainant had wished to avoid the direct debit being returned unpaid, he would have had to restore the account to a cleared credit balance

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before the close of business on 22 January 2018. Due to transactions that were still pending (ie the 2 cheque lodgments and the 2 point of sale payments), the Complainant in fact needed to make a cash lodgment (or perhaps a SEPA transfer the day before) of nearly €1,500 (rather than €500) if he had wanted his account to have a cleared balance in credit by close of business on the 22nd.

The primary reason for this was the fact that the 2 cheques lodged on the 19th had not yet cleared. This was not outside the timescale advised for clearing cheques (5 days). Furthermore, it seems that the Complainant made his cash lodgment by way of lodgment machine rather than at a counter, so he was unable to seek the advice of a staff member regarding the level of lodgment necessary to ensure that the direct debit payment could be met.

The Complainant in this complaint has been unfortunate in that he has fallen in between various clearing cycles for cheque lodgments and payment instructions, all of which conspired to create a situation where, when a direct debit was applied for, there were insufficient funds to meet it.

I am satisfied that all of the transactions in or around the relevant dates have been processed in accordance with the account terms and conditions. Once there were insufficient funds to meet the direct debit, the Provider was entitled to reject it, and notify the recipient (credit card company) accordingly.

While I can sympathise with the Complainant's frustration, there is no evidence of wrongful conduct on the part of the Provider at any stage of the process, such that it would be appropriate to 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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

30 August 2019

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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.

