



<u>Decision Ref:</u>	2019-0325
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Banking Online Facility
<u>Conduct(s) complained of:</u>	Accessibility issues Dissatisfaction with customer service
<u>Outcome:</u>	Upheld

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

Background

The Complainant took out a motor insurance policy through an insurance broker. Following this, the Complainant was required to take out a Running Account Credit Agreement (Agreement) with the Provider against which this complaint is made, so that payments could be made for the motor insurance through the Provider (by way of monthly direct debit). The complaint relates to this Agreement with the Provider.

The Complainant's Case

The Complainant submits that he was unable to set up direct debit payments with the Provider from his online bank account to pay for his motor insurance in May 2016.

The Complainant submits that he had originally set up the direct debit to be paid from another account and he subsequently sought to update his bank details so that the direct debits could be paid from a different bank account. The Complainant submits the bank account was with a European Bank trading in Ireland under the Single European Payment Area (SEPA). The Complainant submits that the Provider did not accept these bank details and therefore the direct debit could not be set up.

The Complainant submits that in a call with the Provider's representative, he was told that the Provider only accepts bank details from banks in Ireland and the United Kingdom. The

Complainant states that he told the Provider's representative that this was not how SEPA worked. During this call, an internal complaint was filed because the bank details were not accepted.

The Complainant submits that whilst the complaint was in progress, he received correspondence from the insurance broker stating *'following your arrears payment your bank details remain invalid, without valid bank details further instalments cannot be taken from your account. Please contact [the Provider] urgently to confirm valid bank details. Failure to do so will result in further default charges and the termination of your direct debit agreement.'* The Complainant submits that he had not been notified by the Provider prior to a payment being due that the direct debit had not been sorted out.

The Complainant submits that in another call with the Provider's representative, he attempted to make his insurance payment manually over the telephone. He submits that he was told by the Provider's representative that his bank card details were incorrect or that the issue was with his bank, and that he would need to contact his bank. The Complainant submits that on contacting his bank, it confirmed that there had been no requests on his card and that nothing had been rejected. The Complainant states that he called the Provider again to make the payment and he states that *'I paid with my card through the automated system which was successful'*. The Complainant submits that he always had funds in his account to pay for his motor insurance and that his bank details were correct.

In another call with the Provider's representative, the Complainant submitted that if the Provider was asking customers to fill in a SEPA direct debit mandate, that it should be able to accept his bank details. The Complainant also states that *'the agents at [the Provider] said that while they try and sort out his Direct Debit that I should pay multiple months in advance with my card'*, despite the broker advising that it holds the right to cancel the insurance policy at any time.

By email dated 7 May 2019, the Complainant submits that he tried to use two different BIC and IBAN numbers from his bank, but that these were not accepted by the Provider. The Complainant also states that *"I wanted [the Provider] to follow European law and if they have not followed European law to get adequate punishment from the state."*

As the Complainant's bank details were not accepted by the Provider in order to set up the direct debit, manual payments had to be made over the telephone on a monthly basis. The Complainant asserts that the Provider is not compliant with its obligations under the Single European Payment Area (SEPA).

The Complainant is seeking for his Direct Debit to work.

The Provider's Case

In its final response letter dated 5 August 2016, the Provider states that *"we fully recognise and accept the difficulties this matter has caused; however, it is still not possible to accept the bank account from which you have requested instalments to be taken."*

/Cont'd...

Please be assured that feedback has been given to all appropriate parties to identify the cause of this technical problem and avoid similar issues in the future.” The Provider offered compensation to the Complainant in the sum of €65 due to the inconvenience caused.

By letter to this office dated 23 January 2019, the Provider submits that it cannot specifically state as to why the Complainant’s SEPA direct debit mandate was not accepted. The Provider states that *“due to the Complainant’s bank operating from Germany, the specific IBAN reference may not have been compatible with our system at that time and as such, we were unable to setup the mandate”*. The Provider further notes that generally it only accepts a mandate from region-specific customers (i.e. Irish bank account details for an Ireland customer and UK mandate for a UK customer). The Provider states that for this reason, its position remained that these details (i.e. Irish bank details) were required. The Provider states that feedback was provided to its administration departments to ensure that this situation did not arise again, and to attempt to rectify the matter by understanding the technicalities behind the failure to set up the mandate.

In respect of the Complainant’s submission that the Provider’s representative informed him that the issue may be with his bank and to contact the bank, the Provider states that *“our customer service team would have referred the customer to their bank to understand what possible problems could arise when attempting to setup a mandate as we were unable to identify the problem at the time, and the customer’s bank may have been able to shine some light on the problem”*.

The Provider states that the Complainant was made aware that the direct debit could not be setup and as such, he would have to make a manual card payment each month. The Provider submits that this was arranged through the customer service team who contacted the Complainant on a number of occasions to collect payment, ensuring the agreement ran as smoothly as possible given the circumstances. It further states that the issue with setting up the direct debit mandate was not clear to the Provider at the time and therefore it could not have provided specifics as to when this would be rectified.

In respect of the Complainant’s submissions about the failed payment over the telephone (when the Complainant was asked to contact his bank), the Provider states that *“manual card payments may fail for several reasons including that the debit card information may be incorrect, or the payment may have been rejected by the [Complainant’s] bank for security reasons. I cannot comment on whether the information provided was incorrect however; this may lead to a potential failed card payment on our system”*.

The Complaint for Adjudication

The complaint is that the Provider failed to facilitate the Complainant’s direct debit payments from his bank account and failed to advise him correctly in this regard from May 2016. The Complainant asserts that the Provider is not compliant with its obligations under the Single European Payment Area (SEPA).

/Cont’d...

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 13 September 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, I set out below my final determination.

Obligations under SEPA

Before embarking on my analysis, it will be useful to set out the background to the SEPA initiative and to set out the relevant parts of Regulation (EU) No. 260/2012 (the "SEPA Regulation").

The SEPA initiative creates an integrated market for euro-denominated retail payments and allows customers to make electronic payments to payees located anywhere in the SEPA area under the same basic terms and conditions. The principal EU legislation covering SEPA is the SEPA Regulation. The description of the SEPA Regulation in its title is instructive; a regulation "*establishing technical and business requirements for credit transfers and direct debits in euro*". Statutory Instrument No. 132 of 2013 gave effect to the SEPA Regulation in Ireland.

/Cont'd...

The SEPA Regulation applies an equal charging principle for cross-border and national payments in euro to all transactions. SEPA does not cover payments via debit or credit cards or payments via mobile phone or other means of telecommunication or digital or IT devices (Recital 6). It merely applies to credit transfers and direct debits. SEPA establishes a technical platform so that a payment service provider which provides domestic credit and debit payment transactions, may provide those services on a European Union-wide basis and it ensures that payment schemes are inter-operable.

The system operates through the use of International Bank Account Numbers (IBANs) which provide identification requirements for EU payment service providers. SEPA encompasses a SEPA Credit Transfer Scheme and a SEPA Direct Debit Scheme, each of which is subject to a Rulebook that sets out the applicable rules for participation.

The SEPA Regulation prevents any payee within SEPA wishing to initiate a SEPA direct debit transaction from specifying where the payer must maintain their payment account (i.e. an Irish company initiating a SEPA direct debit payment cannot insist that the payer open or maintain an Irish bank account for this purpose).

IBAN discrimination is where an IBAN from another SEPA country is not accepted by either the payer or the payee for a direct debit or credit transfer payment.

The relevant Articles of the SEPA Regulation in relation to this complaint are as follows:

- *Article 3 (2): A payer's PSP which is reachable for a national direct debit under a payment scheme shall be reachable, in accordance with the rules of a Union-wide payment scheme, for direct debits initiated by a payee through a PSP located in any Member State; and*
- *Article 9 (2): A payee accepting a credit transfer or using a direct debit to collect funds from a payer holding a payment account located within the Union shall not specify the Member State in which that payment account is to be located, provided that the payment account is reachable in accordance with Article 3.*

The SEPA Regulation was due to come into force on 1 February 2014 in Ireland, however a six month grace period was given and it came into force on 1 August 2014. From this date, it was mandatory for businesses to migrate all electronic payments to the SEPA standards. The European Union Commission has made SEPA migration mandatory and therefore businesses, regardless of size, had to make adjustments to their processes to ensure they comply with SEPA on credit transfers and direct debit payments.

The SEPA Regulation applies to Payment Service Providers. As the Provider is a Payment Service Provider, it must comply with the SEPA Regulation. It is my view that the Provider in the present case, is in breach of its obligations under SEPA. I consider that the Provider has discriminated between domestic IBANs and an IBAN in another EU member state.

The Agreement

The Provider has submitted a copy of the Agreement between the Complainant and the Provider, which was entered into on 19 May 2016.

I note that section 2 of the Conditions attached to the Agreement provide as follows:

“.....

2. Minimum monthly payments: You must pay to us by Direct Debit a minimum monthly payment as referred to on the front page of this Agreement. We do not have to send you a separate demand. You must maintain a Direct Debit Instruction in respect of the minimum monthly payment due for the duration of this Agreement....”

The Provider has also submitted a copy of its letter to the Complainant dated 25 May 2016 outlining the payment schedule for the direct debit instalments. This letter is titled ‘Confirmation of the set-up of your SEPA Direct Debit Mandate, including future payment schedule’.

It is clear that the payment method of direct debit was a condition of the Agreement. The Provider makes it clear in these documents that the instalments *must* be paid by direct debit.

The Provider has submitted a recording of the telephone conversations between the Provider and the Complainant. The Provider has also submitted a document labelled ‘Account contact notes’ which includes a summary of the telephone calls with the Complainant. I have considered the content of these telephone calls and set out the relevant information from the calls in the paragraphs below.

I note that the Complainant attempted to set up a direct debit mandate with the Provider in a number of these telephone calls.

Telephone call on 13 June 2016

On 13 June 2016 (in a call from the Complainant to the Provider), the Complainant informed the Provider’s representative that he wished to update the bank details for the Direct Debit payment. The Complainant outlined that the bank, which held the account operates in Ireland but is based in Germany and therefore it does not have an Irish BIC and IBAN number. The Complainant was informed by the Provider’s representative that “*we do need the accounts to be set up on an Irish bank account*” and “*it is a German account, but it is under SEPA control, but our system, it does need to be an Irish account*”. The Complainant was also informed that the direct debit could not be set up with these bank details and that the BIC was not valid. The Complainant queried what the policy was on SEPA and he was informed that “*we have SEPA Direct Debits on Irish accounts only*”. An internal complaint was logged during this telephone call.

I note that by insisting on an Irish BIC and IBAN number and by not accepting the European bank details, that this constitutes a breach of Articles 3 and 9 of the SEPA Regulation.

/Cont’d...

Telephone call on 22 June 2016

On 22 June 2016 (in a call from the Complainant to the Provider), the Complainant informed the Provider that he had escalated the issue in respect of the direct debit as a complaint and that since the last call, he had not heard anything back from the Provider. The Complainant outlined that he had read over the direct debit mandate form and that it was a SEPA direct debit mandate form. The Complainant stated to the Provider that he would like to send another direct debit mandate form so that it could access money in his bank. The Complainant states that *“when I have money in my bank, I should be able to pay my insurance”*.

After being on hold, the Provider’s representative advised the Complainant that it should be able to set up the direct debit over the phone and that if it did not work, it would send out a mandate form. The Provider also advised the Complainant to contact his bank to see what the issue was. The Complainant informed the Provider that he had already contacted his bank and that the bank informed him that it did not get any requests on their side. The Complainant provided his bank details and attempted to set up the Direct Debit Mandate over the telephone. The Complainant was advised that the BIC was not valid and the bank details were not accepted. The Complainant requested that a direct debit mandate form was sent to him and the Provider confirmed that it would send it out.

It appears to me that during the course of this call the Provider’s representative did not provide any explanation as to why the bank details from a European bank could not be accepted by the Provider. The Provider’s representative directed the Complainant to the third party bank, even though the Complainant had already indicated that he had contacted his bank. At this point, there did not appear to me to be any effort on the part of the Provider to ascertain the real reason why the account details were not being accepted by the Provider’s system. I am of the view that this was a shortcoming on the part of the Provider, in particular where the Complainant had raised this as a complaint in his earlier call with the Provider.

Telephone call on 29 June 2016

On 29 June 2016 (in a call from the Complainant to the Provider), the Complainant informed the Provider’s representative that he had received an email from his insurance company which stated that the Provider had informed the insurance company that the agreement was in arrears and that the Complainant was asked to contact the Provider urgently to ensure that his bank details were valid and up to date. The Provider’s representative advised the Complainant that when it tried to collect payment on 9 June and 23 June 2016, that it came back unpaid as there was no up to date account details to collect the payment.

The Complainant explained that he tried to update the details on the phone and that these were not accepted as it was not an Irish bank. The Complainant informed the Provider’s representative that the bank details were SEPA compliant.

/Cont’d...

I note that the Complainant was able to make the outstanding payments manually over the telephone on that date. The Complainant confirmed that he had returned the SEPA direct debit mandate form on 22 June 2016. The Complainant was informed that he should leave this with the Provider to sort out the account details and that a note would be left on the account. The Provider stated that if the Complainant has not heard back from 15 July, to give the Provider a call.

Telephone call on 22 July 2016

At the outset of the telephone call on 22 July 2016 (in a call from the Complainant to the Provider), the Complainant refers to a telephone call twenty minutes earlier. This office has not been provided with a copy of that earlier call. This is disappointing.

It is understood that the Complainant had attempted to make the payment manually over the telephone in the previous call, and that he was told on that occasion that the bank was rejecting it. The Complainant indicated that he was advised on the earlier call to contact his bank and that he had done so.

The Complainant advised the Provider that he had contacted the bank and the bank had confirmed to him that there had been no attempt to withdraw money from the bank account within the last 24 hours. The Complainant further informed the Provider's representative that he called back in the meantime and had successfully made the manual payment through an automated service. The Complainant stated that he was confused as to why he could make the manual payment through the automated system but not on the telephone in the earlier call. The Provider stated that it could not listen to the previous telephone call as it is muted when the customer provides bank details.

The Complainant questioned the Provider's representative as to why he was not able to input his bank details on the Provider's system for the direct debit and that it was false advertising for the Provider to use a SEPA Direct Debit Mandate Form.

The Provider's representative advised the Complainant that a response to the complaint would be provided within 8 weeks from when the complaint was made. The Complainant stated that he was not advised by the Provider that the direct debit payment had not been taken after he had sent the form in and that he only knew about this when he got an email from his insurance broker to inform him that he was in arrears.

It is most disappointing to note that the Complainant was not advised directly by the Provider that the direct debit had failed after he had sent in the updated SEPA direct debit mandate form and that the Complainant only became aware of this when he received an arrears letter from his insurance broker.

By virtue of the Provider's inability to process the SEPA direct debit payment the Complainant was placed in a situation where he had to continuously contact the Provider to establish the position in respect of the direct debit (following arrears letters from his insurance broker). I can see no valid reason as to why the Complainant's bank details were

/Cont'd...

not accepted for the Direct Debit payment under SEPA. It appears to me that by this time, the Provider remained non-compliant with Articles 3 and 9 of the SEPA Regulation.

At this point in time, the Complainant was placed in the somewhat confusing situation whereby the Provider's automated service could accept his card payment but the agent could not. It is clear that this added to the overall confusion, inconvenience and stress for the Complainant, who had to make three calls to the Provider on this particular date to process the payment.

I note that the Complainant also had to make a call to his third party bank, even though it should have been clear at this point, that there was no issue for the third party bank's side.

Telephone call on 11 August 2016

In this telephone call, the Provider's representative advised the Complainant that it had received the SEPA Direct Debit Mandate form on 27 June 2016. The Complainant was advised that his bank details could not be accepted for the direct debit as the system was rejecting it. The Provider stated to the Complainant that it was still trying to find a solution. The Provider informed the complainant that this was a 'unique case' and that it would inform the insurance company.

Upon questioning from the Complainant as to why the bank details could not be accepted, the Provider's representative was not able to provide a reason why the details could not be accepted apart from that its system was not accepting it. I accept that it was frustrating for the Complainant that he was not given an adequate response as to why the bank details were not accepted, in particular where the issue had been ongoing for some three months at this time.

I note that this was the first time that the Provider accepted that it was its own internal system which was the problem and that the issue was not with the third party bank.

Analysis

Having considered all the evidence before me, I accept that the Provider failed to facilitate the Complainant's direct debit payments from his bank account and failed to advise him correctly in this regard. The Provider was unable to provide the Complainant with an adequate reason as to why his bank details could not be accepted and it was not able to deal with the Complainant's queries in respect of whether the Provider was SEPA compliant. This undoubtedly caused confusion and inconvenience for the Complainant as to why his bank details were not accepted when they were from a European Bank.

I note that in the course of investigating this complaint, the Provider has also not provided this office with a clear reason as to why the bank details could not be accepted for the direct debit.

/Cont'd...

As the bank details were not accepted for the direct debit, the Complainant then had to continue to pay for his motor insurance manually over the telephone each month between June 2016 and January 2017.

I accept that this caused unnecessary inconvenience and stress to the Complainant. This inconvenience was exasperated by the fact that the Complainant received numerous letters from his insurance broker indicating that he was in arrears on his insurance payments.

I am of the view that it was unacceptable for the Complainant to be put in a position where he was at risk of losing his insurance cover, when he had furnished the Provider with a SEPA Account for the Direct Debit to be set up. I note that if the direct debit had been facilitated, the Complainant would not have received these arrear letters. The failure to facilitate the direct debit payments had consequences for the Complainant, including the risk of his insurance being cancelled and this undoubtedly caused frustration, inconvenience and distress.

It is important to note that it was a condition to the Agreement that payments were made by direct debit. The Provider failed to facilitate this.

As I have referred to above, I am of the view that the Provider was in breach of the SEPA Regulation. The Provider did not facilitate the direct debit transfer on the basis that the IBAN was from a bank based in Germany (an EU member state) and was not from an Irish bank. The Provider advised the Complainant on a number of occasions in the telephone calls that the Provider only accepted Irish bank details in Ireland and UK bank details in the UK. The Provider also noted this in its letter to this office dated 23 January 2019. I am of the view that this is unacceptable. The Provider fell short of the standards expected and required by failing to ensure that it was SEPA compliant in order to facilitate the Complainant's direct debit payment.

I note that Article 4 (2) provides that *"the participants of a retail payment system within the Union shall ensure that their payment system is technically interoperable with other retail payment systems within the Union through the use of standards developed by international or European standardisation bodies. In addition, they shall not adopt business rules that restrict interoperability with other retail payment systems within the Union."* In addition, Article 4 (3) provides that *"the processing of credit transfers and direct debits shall not be hindered by technical obstacles"*.

Although the Provider did make endeavours to *"feedback"* information to its administration department, it remains the case that the Provider not have the appropriate systems to allow for SEPA direct debit transfers at the time when it was required to do so.

I accept that the initial customer service provided to the Complainant was poor as the Provider was unable to furnish the Complainant with an adequate reason as to why the direct debit could not be facilitated. This meant that the Complainant had to telephone the Provider on a number of occasions. As the Provider was live to the issue in respect of the failure of the direct debit, it is disappointing that the Provider did not make an effort to contact the Complainant when the direct debit payments failed. This meant that the

/Cont'd...

Complainant was not aware of this until he received arrears letters. I would have expected the Provider to have made contact with the insurance broker sooner to explain the position or to contact the Complainant sooner to inform him of the failed payments, rather than allowing a situation to arise where the Complainant received arrears letters, through no fault of his own. It is clear to me from the content of the telephone calls that the Complainant was worried about losing his insurance cover because of this issue.

In addition, I appreciate the Complainant's frustration when he was told on a number of occasions to contact his own bank in respect of the failure to set up the direct debit, when it is clear to me that this was a systematic issue on the part of the Provider. I accept the Complainant's assertion that his own bank informed him that no payments were rejected from their side and that no attempts had been made to take payment.

This being said, in respect of customer service, I do note that since the Provider's final response letter was issued, the Provider made efforts to improve the situation. The Provider tried to make the process of manual payments easier for the Complainant (between 24 August 2016 and 27 January 2017), as the Provider telephoned the Complainant on a monthly basis (rather than the Complainant having to make the call each time). In addition, the Provider liaised with the insurance broker so that no further letters were sent to the Complainant in respect of arrears. I accept that the Provider made efforts to reduce the inconvenience to the Complainant during this time.

For reasons set out above, I uphold this complaint. I note that in his complaint to this office, the Complainant simply sought for the direct debit to work. However, as the insurance policy is no longer in place, this is no longer applicable. I direct that the Provider pay a sum of €2,000 in compensation to the Complainant for the inconvenience sustained as a result of the conduct complained of.

In light of the systematic issue on the part of the Provider and the lapse in customer service outlined above, I intend to bring this matter to the attention of the Central Bank of Ireland.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld, on the grounds prescribed in **Section 60(2) (a), (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 €2,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant/s 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.

/Cont'd...

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

9 October 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.