



<u>Decision Ref:</u>	2019-0345
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Direct Debit
<u>Conduct(s) complained of:</u>	Disputed transactions Failure to process instructions
<u>Outcome:</u>	Upheld

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

Background

This complaint concerns the Complainants' joint account held with the Provider. The complaint relates to an alleged refusal by the Provider to comply with rules set out under the SEPA Direct Debit Core Scheme.

The Complainants' Case

The Complainants have a current account with the Provider. On **10 April 2018**, the First Named Complainant contacted the Provider via telephone and requested that the Provider prevent any future direct debits being processed to a particular third party. The First Named Complainant had already cancelled the direct debit in question but was aware that the third party could simply submit a different direct debit mandate unless he instructed the Provider to block the third party and not to act on any direct debit requests from the third party.

The First Named Complainant submits that he was told by the Provider on **10 April 2018** that he could not prevent or limit a direct debit and that his only option was to request a refund once the direct debit had been taken from the Complainants' account.

The First Named Complainant states that he consulted the '*Banking & Payments Federation Ireland*' (BPMFI) website and the information contained therein confirmed for him that he had the right to instruct the Provider to refuse a SEPA direct debit and specify creditors who may

collect SEPA direct debits from the Complainants' account. The First Named Complainant states that following this consultation with the BPF website he then made a formal complaint to the Provider regarding the Provider's position that once a direct debit is authorised, the Provider could only refund money already taken through direct debit and could not block the originator of the direct debit requests.

On **16 August 2018**, the Provider agreed to block direct debit requests from the third party and to prevent the third party from taking any further direct debit payments from the Complainants' account.

An offer of €750 was made by the Provider to the Complainants on **20 December 2018** for the inconvenience and frustrations caused to the Complainants in relation to the issues involved in the complaint. This offer was subsequently increased to €900 on **10 April 2019**, as a result of the Provider's recognition of certain issues which arose when the First Complainant made contact with the Provider on 8 February 2019 requesting that a limit be placed on the amount of a direct debit being paid to a particular third party.

The Provider's offers have not been accepted by the Complainants.

In their initial complaint form dated **22 August 2018**, the Complainants wanted the Provider to comply with SEPA rules and follow the First Named Complainant's instructions in relation to the blocking of the direct debit coming from the third party direct debit originator. The Complainants also wanted compensation for any financial loss they may suffer and for the Provider to be fined and sanctioned if found to not be in compliance with SEPA rules.

By email dated **22 January 2019**, the First Named Complainant requested that this Office determine how the Provider will ensure that refusals to act on requests to implement SEPA direct debit core scheme rules, do not occur again. In this email, the First Named Complainant also contends that his instructions to the Provider in relation to his direct debit request were refused (as opposed to having been dealt with, but with a delay). Finally, the First Named Complainant states that his instructions via telephone on **10 April 2018** to the Provider were very clear and any suggestion to the contrary by the Provider is incorrect.

By way of email dated **12 February 2019**, the First Named Complainant stated that he did not accept the Provider's excuse that staff members of the Provider did not follow his instructions because they had simply not adhered to the Provider's policy regarding SEPA rules. Instead the First Named Complainant suggests that the reason his instructions were not complied with was because the Provider itself was not in compliance with the SEPA rules.

The First Named Complainant states that the resistance and stress that both himself and the Second Named Complainant have faced regarding the Provider's failure on this matter, gives rise to the possibility that other customers of the Provider have also been affected and have been refused their rights pursuant to SEPA rules. He expresses his hope that following this complaint and investigation no other customer is ever treated the way the Complainants have been treated

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On **16 April 2019**, the First Named Complainant confirmed that the Complainants still wanted the matter to proceed to adjudication.

The Provider's Case

The Provider states that the initial call from the First Named Complainant on **10 April 2018** was answered by a member of its telephony team before being transferred to a member of the Provider's customer care team.

The Provider states that a member of its customer care team told the First Named Complainant that it could cancel and recall a direct debit at the time it comes in, but that the Provider could not do anything more than that about an authorised direct debit.

The Provider accepts that during this phone call on **10 April 2018**, the First Named Complainant told the Provider that he had already cancelled the direct debit with the third party direct debit originator. The Provider submits that the information it gave to the First Named Complainant during the phone call on **10 April 2018** was correct in respect of the circumstances concerning the cancellation of a direct debit in accordance with SEPA rules, but it accepts that the First Named Complainant was not looking to cancel the mandate but was looking to block the third party and that this was not done at the outset.

The Provider wrote to the First Named Complainant on **16 April 2018**, stating that it would investigate his complaint. The Provider then wrote to the First Named Complainant on **30 April 2018** subsequent to an investigation into the complaint.

The Provider accepts that its letter of **30 April 2018** in response to the First Named Complainant's complaint deals with cancellation of a direct debit and not the blocking issue of the third party, which the First Named Complainant was concerned with.

By way of letter dated **16 August 2018**, the Provider confirmed to the First Named Complainant that it had blocked the third party and that this would prevent the third party from taking any further direct debit payments from the Complainants' account. In submissions to this Office dated **20 December 2018**, the Provider acknowledges that there was a delay by the Provider in taking this action.

In its submissions to this Office dated **20 December 2018**, the Provider accepts that the Complainants have a number of rights under the SEPA direct debit rules as listed on the BPF website:

“Under the SEPA Direct Debit Core Scheme Rules and Regulations 260-2012, consumers can:

- Use a single account to pay a SEPA Direct Debit in any SEPA country*
- Instruct their bank to refuse a SEPA Direct Debit*
- Prohibit the application of any SEPA Direct Debit to their bank accounts*

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- *Specify creditors who may collect SEPA Direct Debits from their bank accounts*
- *Specify creditors who may not collect SEPA Direct Debits from their bank accounts*
- *Limit a SEPA Direct Debit collection to a certain amount and/or period*
- *Request a refund for any SEPA Direct Debit within eight weeks from the date on which the SEPA Direct Debit was debited from their account. Within the eight week period their bank must refund on a 'no-questions asked' basis*
- *Request a refund for any unauthorised SEPA Direct Debit after 8 weeks and within 13 months from the date on which the SEPA Direct Debit was debited from their account."*

In the course of responding to the formal investigation of this complaint, the Provider made an offer of €750 on **20 December 2018** for the inconvenience and frustrations caused to the Complainants in relation to the issues involved. The Provider confirmed that this offer was open to the Complainants to accept at any stage of the process. By email dated **7 February 2019**, the Provider stated that it wished to reiterate its apology to the Complainants for the issues they have encountered and for the fact that they were provided with incorrect information. The offer of €750 was also reiterated in this email.

The offer for inconvenience and distress caused was subsequently increased to €900 by the Provider on **10 April 2019**, owing to further subsequent interactions between the Complainants and the Provider on 8 February 2019, when they had sought to limit the amount of a direct debit payment to a certain third party.

The Complaint for Adjudication

The complaint is that the Provider wrongfully failed to comply with its obligations pursuant to the SEPA direct debit rules.

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 Complainants were 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

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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 16 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, the final determination of this office is set out below.

This Office can only investigate and adjudicate a complaint from the Complainants against the Provider regarding the Provider's specific dealings with them. It is not the role of this office to give a comprehensive ruling of a general nature relating to the conduct of a Provider in its potential dealings with its other customers. The FSPO can adjudicate only upon the specific grievances raised by the Complainants regarding their interactions with the Provider. In this regard, I am cognisant of the judgment of the High Court in October 2007, in Quinn Direct Insurance Limited v Financial Services Ombudsman [2007] IEHC 323 where the Court was clear in its statement regarding the powers of this Office that:

"...a direction in a finding of the respondent given under s57CI(4)(a) may only relate to conduct of the financial service provider specifically relating to the consumer who is the complainant or its consequences for that person. The authority given by this section does not extend to similar conduct of the financial service provider in relation to other customers."

Therefore, this Office has no role in determining whether other customers of the Provider have been refused their rights pursuant to SEPA rules or whether the Provider is not abiding by SEPA policy generally in relation to its customers. Such a matter is for the Central Bank of Ireland, as the regulator of the Provider.

By way of background, the Single Euro Payments Area (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 Regulation (EU) No. 260/2012 (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"*.

The SEPA Regulation confers certain powers and rights upon consumers and I note that it is accepted by the parties to this dispute that these rights are listed on the BPFII website as outlined above on Pages 3 - 4 of this decision.

I note that the information given by the Provider to the First Named Complainant during the phone call on **10 April 2018** and in the letter of **30 April 2018** was correct in respect of the

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circumstances concerning the cancellation of a direct debit in accordance with SEPA rules but was incorrect in respect of the stated request of the First Named Complainant; namely to block the third party direct debit originator.

I also note that the initial instructions of the First Named Complainant, first delivered on **10 April 2018**, to block the third party, were not complied with until **16 August 2018**, a delay of approximately 4 months. This is in contravention of provision 3.3. of the Consumer Protection Code 2012 which requires that *“a regulated entity must ensure that all instructions from or on behalf of a consumer are processed properly and promptly”* and in contravention of provision 2.2 of the Consumer Protection Code 2012 which requires that *“a regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it acts with due skill, care and diligence in the best interests of its customers”*.

Furthermore, on **10 April 2019** the Provider wrote to this office advising that on **8 February 2019** the First Complainant had spoken with a staff member in the Provider’s telephony team. In the course of that call the First Complainant advised that he wished to limit the amount of a direct debit to an identified third party. The Provider acknowledged that the Complainant’s request was not taken forward by the staff member and rather the Complainant was directed back to the identified third party, to fulfil the request.

The Provider offered its apologies to the Complainant that his request had not been actioned on 8 February 2019. The Provider also confirmed that steps had been taken internally on foot of this matter to seek to ensure that staff members in the telephony department are aware of their obligations in respect of SEPA direct debits. The Provider also confirmed that if the Complainant still wished to limit a direct debit to a particular payee, the Provider could arrange for this to be taken forward for him on receipt of specific information, including the originator name, the limit amount and the date of the next payment.

The Provider indicated that as a tangible token of apology for the issues the Complainant encountered on 8 February 2019, it wished to increase the redress offer of €750 referred to in its letter of 20 December 2018, by €150, to a total of €900. It also advised that if there had been any financial detriment to the Complainants as a result of the issue that arose on 8 February 2019, the Provider would be happy to consider this and review matters on receipt of any information in that regard.

I am conscious that the Provider has indicated that the mistakes of April 2018 were as a result of a misunderstanding regarding the nature of the instructions from the First Named Complainant and, in particular, a misunderstanding as to whether he wished to cancel or block the direct debits originating from the third party. Whilst an understanding of that nature can of course happen, it is particularly disappointing that in this instance, when the First Complainant made contact again with the relevant division of the Provider on 8 February 2019, his clear request was again not actioned by the Provider and rather the First Complainant was referred back to the direct debit payee. One can understand in those circumstances why the Complainants have expressed concern that the Provider is not complying with the relevant SEPA rules. There may indeed be a requirement for the

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Provider to consider further ongoing training to its staff members within the telephony division with a view to avoiding issues of the nature which the Complainants have experienced.

Whilst it seems that the Complainants suffered no direct financial loss as a result of the dispute and the failure of the Provider to properly implement the First Named Complainant's instructions in April 2018, nevertheless it is disappointing that those issues which gave rise to the complaint being made to this office, were then followed by the separate similar issue which arose in February 2019.

In those circumstances, I consider it appropriate to uphold this complaint. Although the reasons for the Provider not following the Complainants' instructions have been explained as misunderstandings, certainly in my opinion, the Provider has a case to answer to the Complainants regarding the complaint in question.

Whilst I take the view that the level of compensation offered by the Provider is an adequate one, nevertheless in the circumstances outlined above, as I have found it necessary to uphold the complaint, I am directing below that the Provider make this compensatory payment to the Complainants. In addition, bearing in mind the nature of the issues raised and the potential for other customers of the Provider to have been affected in a similar way, I consider it appropriate to refer a copy of my decision in this matter to the Central Bank of Ireland for such action as it considers to be appropriate.

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)(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 Complainants in the sum of €900, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

8 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.