



<u>Decision Ref:</u>	2019-0423
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Complaint handling (Consumer Protection Code) Failure to process instructions in a timely manner Maladministration
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Complainant's attempt to transfer funds from his account to a recipient in Pakistan.

The Complainant's Case

The Complainant holds an account with the Provider. On 14 August 2017 he called to his local branch of the Provider where he instructed the Provider to transfer funds in the amount of €5,681.82 from his account to a nominated bank account in Karachi, Pakistan. The Complainant was advised that the monies would reach the recipient account within 3 working days. Contrary to this advice, however, the allocated sum did not reach the recipient's account until 27 September 2017.

The Complainant explains that the funds were being transferred to pay for the purchase of a plot through instalment. When the funds did not arrive as anticipated the intended recipient contacted the Complainant to advise him that the plot would not issue until payment was received. The Complainant states that he immediately brought the matter to the attention of his local branch; however, the issue was not resolved. The matter was then escalated to the Provider's complaints handling centre in December 2017. The Complainant

submits that he requested a refund of the monies to enable the funds to be transferred in a different manner.

The Complainant states that the issue has yet to be resolved. His request for a refund of the transferred funds has not yet been actioned despite the involvement of the complaints department. The Complainant states that it is now his intention to cancel the plot.

The first complaint is that the Provider wrongfully failed to transfer monies in a sufficiently timely manner (or in accordance with the timeline for international monetary transfers that was represented to him by the Provider).

The second complaint is that the Provider failed to rectify the issue in a sufficiently prompt and efficient manner, once the Complainant brought the issue to its attention.

The Complainant would like a refund of the amount transferred, and compensation for his loss which he calculates at €50,000 to €70,000.

The Provider's Case

The Provider states it implemented the Complainant's instructions, and the monies left his account on 14 August 2018. Its position is that any delay in the receipt of those funds at the recipient end was not due to any failure on its part.

The Provider has furnished the following history of this transaction.

The Complainant requested the transfer of USD\$6,550.00 to an account in Karachi, Pakistan. A confirmation of this transfer dated 14 August 2017 was provided to the Complainant. The euro amount to be debited from his account was €5,681.82.

The typed reason set out in the transfer form was "to buy furniture". A handwritten note on the copy furnished to this office by the Complainant states "Plot Instalment Payment".

The Complainant's account was debited on the same day – 14 August 2017.

The Provider states that where an international transfer is being effected through different currencies, an intermediary bank may be necessary for the transaction to be effected. A wire transfer consists of crediting and debiting accounts held by the "Originating Bank" (in this case the Provider), the "Intermediary Bank", and the "Beneficiary Bank" (in this case, the intended recipient's bank).

The Provider outlines that the entire process will usually take 1-2 days (if an urgent transfer is requested) or 2-4 days (if a standard transfer is requested).

In this case, the Provider states that it transmitted payment to the Intermediary Bank on 15 August 2017 and that this is confirmed by the SWIFT payment copy that has been furnished to this office. Once this transfer took place, the Provider states that the matter is out of the

/Cont'd...

Provider's hands. It is up to the Intermediary Bank and then the Beneficiary Bank to complete the transaction.

The Provider in its submissions to this office has explained that the Intermediary Bank did not transfer the funds onwards to the beneficiary bank within the standard time period. It submits that the Intermediary Bank may have had its own reasons for not doing so, but that is a matter the Complainant would have to take up with the Intermediary Bank.

The Provider has stated in its submissions to this office that, on investigation, the funds at issue reached the beneficiary account on 27 September 2017 – about 6 weeks after the funds left the Complainant's account.

From February 2018 the Provider, on instructions from the Complainant, attempted to recall the monies sent to the account in Pakistan. However, and despite multiple efforts and lines of inquiry to attempt to recall those monies the situation is, in essence, that a refund is a matter between the Complainant and the person to whom he instructed that the payment be made.

The Complaints for Adjudication

There are two complaints as follows:

that the Provider wrongfully failed to transfer monies in a sufficiently timely manner (or in accordance with the timeline for international monetary transfers that was represented to him by the Provider) and

that the Provider failed to rectify the issue in a sufficiently prompt and efficient manner, once the Complainant brought the issue to its attention.

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

/Cont'd...

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 13 November 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.

Analysis

The Complainant has furnished figures that he claims as a loss due to the wrongful conduct of the Provider.

However, the Complainant effected a transaction that, by its very nature, depends on the conduct of the Provider, an intermediary bank, and a beneficiary bank.

While I accept that the funds did not arrive in the recipient's bank account until some 6 weeks after the transfer was effected by the Complainant, there is no evidence to suggest that this was due to any wrongful conduct on the part of the Provider.

Similarly, effecting a refund of such a transaction involves the original beneficiary bank, the intermediary bank, and the Provider, and indeed the intended recipient of the funds. Again, there is no evidence to suggest the Provider has acted wrongfully in its efforts to procure a refund. I accept that a refund is now, a matter between the Complainant and the recipient.

The Complainant has, at all times maintained that he carried out this transaction in a branch of the Provider.

However, there are a number of aspects in relation to the Provider's conduct in terms of its lack of assistance to the Complainant and the communication surrounding the transaction relating to this complaint and the handling of the complaint where I believe the Provider has a case to answer.

I note in its response to this Office, the Provider states that the Complainant requested a transfer of funds... *"via his [online] account"*.

The Provider went into great detail in its submission to this Office to explain that the Complainant conducted the payment himself online and concluded by stating:

"Had the Complainant chosen to attend a branch to conduct the transaction, rather than process the transaction online, then Appendix A (iii), being [Provider] Applied

/Cont'd...

Form R01 would have been used. However, as outlined above, the transaction was requested by the Complainant via his [online] bank account.

When this response was exchanged with the Complainant, he provided evidence that he had in fact conducted the transaction in his local branch of the Provider. The Provider eventually accepted this and apologised for its error.

However, it was only after the Complainant had produced further evidence that the Provider accepted that the transaction was conducted through its branch using the Complainant's Chip and Pin debit card.

The Provider, in its response to this Office, also stated:

"It is unclear from the Complainant's allegation whom it was in [the Provider] that told him the funds would reach the beneficiary account in 3 days".

As noted in the Provider's response to Question 3, above, the Complainant did not conduct the transaction in a branch of [the Provider]. Rather, he arranged the transaction himself through his [online] account login.

Accordingly, there is no record to show that the Complainant received the above alleged information from a member of staff in [Provider].

I find it difficult to understand why the Provider is querying the Complainant's version of events and seeking to undermine the Complainant's evidence in this regard.

This is particularly so given that the Bank's responses and the information available from its online services state that a standard transfer takes 2 to 4 working days and an urgent transfer 1 to 2 working days.

Furthermore, I note that the agent the Complainant dealt with in the Provider's branch gave the Complainant a Foreign Payment Confirmation dated 14 August 2017 14:43 p.m. when he conducted the transaction in the branch. This states as follows:

"Beneficiary credit date (estimate) 15 August 2017 standard – 2 – 4 bank days"

I have no reason to doubt the Complainant's version of events as supported by the documentation provided to him in the branch and I accept that he was in fact informed by the Provider that it would take an average of 3 working days.

It is of concern that the Provider would again seek to undermine the Complainant's version of events in the manner in which it did given it was in full possession of the facts and evidence that supported his recollection of these events.

/Cont'd...

I note the Provider, in its response to this Office, stated:

“There is no record to show that the Complainant raised this with a branch of the [the Provider] prior to his raising his complaint with the Bank’s dedicated Complaint Handling centre in December 2017 ... some four months after he requested the payment via his [online] account.

The Complainant’s responded to this as follows:

“I visited my [Provider Local Branch] many times and asked Transmitted Swift copy of MT103, which was asked me [recipient] to trace my funds transfer transaction properly.

[Local] Branch Staff member, rang to their Head office to trace the funds transfer transaction few times, but all in vain.

Staff Members of [Provider’s Local Branch] did not know that what are the meanings of MT103???

*They gave me the Ref. No. [****606] and later on [****928] which was mention on Payment Debit Advice, which was received me via post from [Provider] **(Copy Page 6 attached)**.*

Once Staff member rang to their Head office to clarify the meanings of MT103, on my request, but she can not get any reasonable reply. I visited my [Local] branch around three months to sort out this issue, finally branch staff gave me the contact number and address of [Provider] Complaint Handling centre to contact them directly.

*Finally on my phone call to Complaint Handling Centre, my complaint was registered by [Provider] on 14th December, 2017 and they wrote me a letter **(Copy Page 7 attached)**”.*

Again, I have no reason to doubt the Complainant’s version of events. It is most disappointing that the Provider has no record of his attempts to resolve the issue through his local branch and that it has further tried to undermine his version of events.

Of serious concern also is the Provider’s efforts to distance itself from the transaction and its unwillingness to accept that it had a responsibility to the Complainant to assist him in endeavouring to establish where the money he had requested it to transfer had gone.

A sum of €5,680 is a significant amount of money and it was bound to cause the Complainant considerable distress and inconvenience when it did not arrive to the intended recipient within the timescale that he had been advised by the Provider.

/Cont’d...

I accept that 2 to 3 days was only an estimated timescale. However, having to wait six weeks for a transaction that is estimated to take 3 days with no information on what is happening is unacceptable.

Because of my concern with this aspect of the Provider's conduct, I wrote to the Provider on 13 May 2019 requesting information in relation to its relationship with the Intermediary Bank, given that the Provider had stated that the Intermediary Bank "*did not transfer funds onwards to the beneficiary account for reasons known to that bank*". In that correspondence I also asked what queries were raised or requests made to the Intermediary Bank. The Provider, by letter dated 22 May, replied that it has no agreement with the Intermediary Bank and went on to say:

"It was not the Bank's remit to query or challenge the reasons why the [Intermediary Bank] was delaying in the onward transmission of funds to the Beneficiary Bank. [The Provider] cooperated fully in the process of information to [the Intermediary Bank], which subsequently resulted in action being taken by the latter to release funds to the [Beneficiary Bank]".

I was surprised by the Provider's statement. In circumstances where it had, on the instruction of its customer, transferred money to an account and that money had not arrived in the nominated account, I would have expected the Provider to, at the very least, question, on behalf of its customer, why this was so and where the money had gone.

For this reason, I wrote again to the Provider on 27 May 2019 and asked as follows:

"Can you please elaborate on this statement. In circumstances where a customer has engaged the services of the Provider to transfer money to a Beneficiary Bank and that money has not arrived in the Beneficiary Bank, can you explain why you believe 'it was not the Bank's remit to query or challenge the reasons why [Intermediary Bank] was delaying in the onward transmission of funds to the Beneficiary Bank?'"

Does the Provider feel it has no responsibility for ensuring funds transferred, using its services, reach the intended beneficiary?"

The Provider, by letter dated 10 June 2019, responded, among other things, as follows:

"It is the responsibility of [the Provider] to key the payment requested by the customer in a correct and timely manner thus ensuring that the payment request is sent through to the chain of banks involved as expeditiously as possible.

In relation to the responsibilities of our Correspondent Bank [third party bank] the onus is on that Bank to forward the funds and payment instruction to the Beneficiary Bank. [Third party bank] must ensure that funds had been taken up from their end – the onus is on the next bank in the chain to forward the funds and payment as appropriate. Please note that all banks are within their rights to hold onto payments in order to perform necessary security checks.

/Cont'd...

On this point it should be noted that the payment instruction passed from [the Provider] to [the third party bank] in turn passed it to [the Intermediary Bank]. It was the [Intermediary Bank] which required certain information to be supplied by [the Provider] before it passed the payment onto the next bank in the chain. There is where the delay derived. When [the Provider] received the request for information from [the Intermediary Bank] it acted promptly in responding to the request, thereby allowing [the Intermediary Bank] to accept the payment and pass it to the next bank in the chain”.

It is disappointing that the Provider did not provide a direct response to my specific question as to whether the Provider has *“no responsibility for ensuring funds transferred, using its services, reached the intended beneficiary”*.

However, I accept from its responses and actions that it does not accept any responsibility. I believe this is not acceptable. At the very least I would have expected the Provider to use its best endeavours to provide information to its customer, the Complainant, to establish where the money was and why it had not reached the intended beneficiary account.

Instead, the Provider furnished information such as *“the Intermediary Bank ... did not transfer funds onwards to the beneficiary account for reasons know to that bank”*.

In its response to this Office, the Provider has states:

“The Bank respectfully suggests that the Complainant has mis-directed his complaint to [the Provider]. The Bank believes that the Complainant should have directed his complaints to the following parties. We hope that the explanations and evidence included in this report will enable the Complainant to take the matter forward with the correct parties should he wish to do so:

- a Delay in remitting funds to the Beneficiary Account – direct complaint to [the Intermediary Bank] being the financial institution responsible for forwarding the US dollars to the beneficiary account in Pakistan.*

...

The Complainant responded as follows:

“[The Provider] can use his rights and put up this matter, with [Intermediary Bank] regarding delay of transferring funds, transfer of funds in different account and in different Bank, and also then ask for delaying funds back to [Provider].

I am the customer of [Provider] and I have a right to ask them about my money, as per their written confirmation, that money will be transferred in accurate account within specific time. [Provider] is also responsible of my loss occurred in this regard, and I am entitled compensation in this respect.

/Cont'd...

I am not legally allowed to speak with [Receiving Bank] to sort out this issue on behalf of [Provider]”.

I accept the Complainant’s assertion that he is not in a position to speak to any bank other than his own bank (the Provider) in relation to this matter. He has no relationship with those banks and it is clear that they will not engage with him on the matter. This is further complicated by the fact that those banks are located in the United States.

Therefore, I believe it is not reasonable of the Provider to simply refer him to third party banks when clearly they will not provide him with any information, I believe the Provider could have made much greater attempts to provide information and an explanation as to where the Complainant’s money was and why it had not arrived in the intended recipient’s account.

I am satisfied that the Final Response Letter which issued to the Complainant on 8 February 2018 did not sufficiently explain the nature of the international wire transfer, and the various parties involved in effecting it. Its contents stand in marked contrast with the more detailed response given to this office in relation to the complaint, notwithstanding the errors in that submission.

That said, I am most disappointed to note the many inaccuracies in the response given by the Provider to this Office and the refusal to accept the Complainant’s version of events which, on investigation, proved to be the correct version of what happened.

There is no doubt that the fact that the money did not transfer to the recipient within the estimated timeframe was a source of great frustration and inconvenience to the Complainant. I am also in no doubt that the poor and inadequate communication by the Provider to the Complainant and this Office greatly exacerbated this.

The Consumer Protection Code 2012 (CPC) requires that a regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

2.1 acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;

2.2 acts with due skill, care and diligence in the best interests of its customers;

...

2.6 makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer;

...

2.8 corrects errors and handles complaints speedily, efficiently and fairly;

4.1 A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.

4.2 A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following: a) the urgency of the situation; and b) the time necessary for the consumer to absorb and react to the information provided.

It is my view that the manner in which the Provider has dealt with the Complainant's transfer of funds and subsequent complaint falls short of what is required of it under the CPC.

I note the Complainant is seeking compensation for loss which he estimates to be in the order of €50,000 to €70,000. However, I have not been provided with any evidence to support these losses.

I believe that had greater assistance, better communication and clarity been provided to the Complainant in relation to the transfer of his money and to this Office in relation to the investigation, the Complainant would have suffered much less stress and inconvenience.

For the reasons outlined above, I uphold this complaint and direct the Provider to pay a sum of €7,500 to the Complainant.

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) (c) and (f)**.

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 €7,500 to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant 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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

5 December 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.