



<u>Decision Ref:</u>	2019-0425
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Money Transfer (between accounts/between banks/3rd)
<u>Conduct(s) complained of:</u>	Disputed transactions
<u>Outcome:</u>	Partially upheld

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

Background

This complaint relates to a current account and the Provider's alleged maladministration, and poor customer service.

The Complainant's Case

The Complainant has a current account with the Provider. The Complainant states that he tried to transfer the sum of Stg£500 (€580.82) from his current account held with the Provider on **19 March 2018** to a beneficiary account in his name provided by a third party provider in the UK. The Complainant states that the funds did not arrive into this beneficiary account until **19 April 2018**. The Complainant complains that this is an inordinate length of time for the transfer to take place.

In addition to the foregoing, the Complainant states that during the above period, he received a very poor level of customer service from the Provider. He states that he had made a number of attempts to get an explanation and clarification from the Provider about the status and whereabouts of the funds transfer and the funds in question but was made to wait for long periods of time to speak with anyone in the Provider and that the Provider was unable to provide him with an adequate explanation within a reasonable period, or at all.

The complaint is that the Provider failed in its duties to the Complainant by being guilty of a significant delay in effecting the funds transfer by the Complainant to his beneficiary account in the UK and in providing him with a very poor level of customer service during the time when he was trying to find out the whereabouts of his funds.

The Complainant is seeking compensation in the amount of €3,000 to compensate him for the time wasted and the stress caused to him.

The Provider's Case

The Provider has submitted that cross-border electronic payments are considered on a payment by payment basis and each under its own merit. The Provider submits that it has a regulatory obligation to screen incoming and outgoing cross-border electronic payments and messages. The Provider explains that this is common practice in the financial industry and plays an integral part of restricting the movement of funds/services which potentially are connected/used for terrorism and terrorist activities.

The Provider explains that as a result of the foregoing, genuine and legitimate customer activity, such as the Complainant's, can be caught up or potentially delayed as a result of institution screening applications.

In its response to this complaint, the Provider has quoted from the terms and conditions applicable to current accounts, that were effective from November 2016. In particular, it has referred to the following provisions:

6.6 If (a) a payment into your Account is PSR-regulated; and (b) we receive your payment instruction before the relevant cut off time, we will process the payment from your Account on the banking day ("D") that we receive it (unless you have requested that it should be paid on a date in the future). If the payment is in euro, we will ensure that the financial institution of the payee will receive the payment within one banking day of D (D+ 1). If it is a cross-border payment in sterling, or other EEA currency (non-euro) we will ensure that the financial institution of the payee will receive the payment within three banking days of D (D+ 3). The processing time for a paper Account transaction will be an extra banking day ((D+2) and (D+4)). Any non-PSR regulated payments may take longer to process.

16.3 we may take whatever action we consider appropriate under any law (Irish or otherwise) (a) against fraud, money laundering or terrorism; or (b) concerning financial and other sanctions against people, organisations or states. For example investigating and stopping payments into and out of the Account. This may delay or prevent us from obeying an instruction you give us concerning the Account. You acknowledge and agree that we are not liable for any loss, damage or liability suffered by you or anyone else which arises as a result.

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I note however that it was the Provider's terms and conditions which were amended in March 2018, which were in effect on the date of the transaction giving rise to this complaint. I note that the equivalent Clause 6.6 prescribes as follows:-

"If we receive your payment instruction from the relevant cut-off time, we will process the payment from your Account on the banking day ("D") that we receive it (unless you have requested that it should be paid on a date in the future). If the payment is in euro, and the financial institution of the payee is located in the EEA, we will ensure that the financial institution of the payee will receive the payment within one banking day of D (D+ 1). If it is a cross border payment in sterling, or other EEA currency (non-euro), and the financial institution of the payee is located in the EEA, we will ensure that the financial institution of the payee will receive the payment within three banking days of D (D+ 3). Where the payment instruction is submitted on paper, the processing time may be an extra banking day ((D+ 2) and (D+ 4)). Any other payment instructions may take longer to process."

I note that Clause 16.3 of the March 2018 terms and conditions, is in the same terms as the November 2016 edition, alerting customers to the risk of a transfer of funds being delayed, by virtue of the Provider's various legal obligations to adhere to anti-money laundering, anti-fraud or anti-terrorism requirements.

The Provider disputes any wrongdoing in the manner in which the funds transfer was processed or in respect of any delay in executing the funds transfer. It accepts that there was a downfall in the level of customer service that the Complainant was entitled to and it has made an offer of €500 as a goodwill gesture to acknowledge the poor customer service received by the Complainant, which remains open to him to accept.

The Complaint for Adjudication

The complaint is that the Provider was guilty of significant delay in effecting the Complainant's funds transfer to his beneficiary account in the U.K. and in providing a very poor level of customer service during the time when he was seeking to locate the whereabouts of his funds.

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.

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

This office will not investigate the details of any claims of discrimination, racism or fraud which are not issues which come within the jurisdiction of the FSPO. This office will determine the complaint in relation to the provision of a financial service as described by the Complainant.

The documentation submitted to this office demonstrates that following the instruction received from the Complainant on Tuesday **20 March 2018**, the transaction underwent a screening process but was ultimately processed by the Provider on Monday **26 March 2018** and at that stage it was released from the Provider's sanctions department. The Provider has also furnished documentation in the form of, *inter alia*, SWIFT messages, that suggest that the transaction was subsequently put on hold by the Complainant's third-party provider in the UK pending a compliance review and a number of queries were raised by that third party provider in around **9 April 2018**. The Provider submits that it cannot be responsible for any delay caused by the payee service provider and that the Provider has no responsibility or liability to the payee notwithstanding the fact that in this particular case the payer and the payee are one and the same person. In this regard, the Provider relies on **Section 112** of the **European Union (Payment Services) Regulations 2018** which came into effect on 13 January 2018 and which provides, *inter alia*, that:

- (1) *Where a payment order is initiated directly by a payer, the payer's payment service Provider shall, without prejudice to Regulations 95, 111(2), (3) and (4), and 116, be liable to the payer for correct execution of the payment transaction, unless the payer's payment service Provider can prove to the payer and, where relevant, to the payee's payment service Provider that the payee's payment service Provider received the amount of the payment transaction in accordance with Regulation 107(1) and (2);*

(2) Where, in accordance with paragraph (1), the payer's payment service Provider can prove to the payer and, where relevant, to the payee's payment service Provider that the payee's payment service Provider received the amount of the payment transaction in accordance with Regulation 107(1) and (2), the payee's payment service Provider shall be liable to the payee for the correct execution of the payment transaction.

Having regard to all of the evidence and submissions, I am satisfied that the Provider adequately and reasonably carried out its obligations regarding the processing of the money transfer. Clearly, a sterling transfer to a jurisdiction outside Ireland is an international transfer. Whilst I note that the Complainant expressed shock that this transaction was classified as international, Ireland and the U.K. are different countries, although both are currently within the EU.

The preponderance of the evidence shows that the transfer was processed by the Provider on 26 March 2018. The SWIFT messages clearly show that further queries were raised by the third party provider which then operated to further delay the transfer. This office makes no determination or comment on the reasonableness of the delay on the part of the third party provider, but I am satisfied on balance that there was no significant delay on the part of the Provider beyond that anticipated in its Terms and Conditions, and accordingly, noting that the funds were released by the Provider on Monday 26 March 2018, I do not consider it appropriate to uphold this aspect of the complaint. I note however, that based upon the Provider's own timeline of events, a full 7 days elapsed between its receipt of SWIFT message providing a set of queries from the Complainant's third party payee bank in the UK, and the Provider's response to these queries by SWIFT message on Monday 16 April 2018. This period of time does not appear to me to be a reasonable one.

I believe that it must have been particularly frustrating for the Complainant during these interactions, that he was unable to secure specific information regarding the whereabouts of his funds. I also note that the Provider's timeline of the issues raised in this dispute, confirms that on 10 April 2018, the Complainant was advised that the funds had been released by the Provider on 24 March, as indeed incorrectly confirmed by the "*proof of payment*" letter sent to the Complainant on 5 April 2018. The Provider has since confirmed that the funds were in fact released on Monday 26 March 2018.

The Provider does not dispute that it was guilty of failing to provide an adequate level of customer service to the Complainant. Firstly, it appears that the Complainant was wrongly advised at the date of the processing of the transfer and secondly the Provider has conceded that there was a downfall in the customer service that the Complainant received during the telephone calls to the Provider's direct services and during his further attendances at the Provider's branch while he was trying to establish the outcome of his transfer.

In the context of a number of errors, the Provider has made an offer of €500 in recognition of its downfall in this regard. Having considered the submissions of the Provider and the Complainant and the audio recordings of the telephone calls, I am not satisfied that this offer is a reasonable one in all of the circumstances. On the basis of the evidence available,

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I consider it appropriate to uphold the second aspect of the Complainant's grievance surrounding the poor customer service made available 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 partially 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 Complainant in the sum of €750, 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.

**MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

4 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.