



<b><u>Decision Ref:</u></b>	2020-0044
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	ATM
<b><u>Conduct(s) complained of:</u></b>	Accessibility issues Non-receipt of money
<b><u>Outcome:</u></b>	Rejected

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

The complaint relates to the Complainant's current account and his dealings with the Provider between November 2016 and May 2017.

**The Complainant's Case**

The first element of the complaint is that, having notified the Provider of his intention to travel to Asia during November 2016, the Complainant says that when he was in Asia he was unable to withdraw funds from his account using his debit card. He states that he made a number of attempts to do so and that each attempt was refused. The Complainant states that this left him in "*a compromising position*" and that as a result he incurred hardship and expense and suffered loss of earnings and damages. The Complainant views the Provider's offer of compensation in respect of this matter as "*totally inadequate*".

The second element of the complaint is that during a subsequent trip to Asia in March/April 2017, about which he had also notified the Provider, the Complainant states that he was again unable to withdraw funds from his account using his debit card. He states that he again incurred hardship and expense and that he suffered loss of earnings and damages. He says that having complained to the Provider again, no offer of compensation was made on this occasion.

The third element of the Complainant's complaint relates to a lodgement by him on 21 December 2016 of what he describes as a "sizable amount in the form of a UK Sterling cheque" to his account with the Provider. He states that he was told by staff members on 9 and 16 January 2017 that this cheque would be cleared by 21 January 2017, but that this did not happen.

He says that, even though his bank statement dated 13 January 2017 showed the cheque in question had been lodged, he was unable to access funds from his account on three separate dates; 21, 22 and 23 January 2017. The Complainant complains that this put him in a compromising position and caused him to suffer damage, loss of earnings and incur expenses.

The Complainant also expresses his dissatisfaction that the Provider failed to respond to his letter of complaint dated 25 November 2016 in a timely fashion.

The complaint is that the Provider wrongfully impeded the Complainant's access to funds in his current account while he was on two separate trips to Asia in November 2016 and in March/April 2017 thereby causing him to incur hardship and expense and to suffer loss of earnings and damages. The complaint is also that the Provider failed to clear a Sterling cheque lodged by the Complainant in December 2016 within the timeframe it had set out to the Complainant, causing the Complainant damages, loss of earnings and expenses. The Complainant also complains about the Provider's failure to respond to his letter of complaint dated 25 November 2016 in a timely fashion.

In his Complaint Form, when asked how he would like the Provider to put things right, the Complainant stated as follows:

*"As I always conducted my business with the bank in a correct way, i.e. announcing details of my travels to [Asia] prior to departure, made sure funds in my account were adequate a.s.o., I will be looking for compensation to cover my damages, compromises, loss of earnings and expenses?"*

### **The Provider's Case**

With regard to the Complainant's claim to have been unable to withdraw money from his account while in Asia in November 2016, the Provider, in its Final Response Letters dated 23<sup>rd</sup> March 2017 and 30<sup>th</sup> June 2017, refers to an earlier letter dated 13<sup>th</sup> December 2016 wherein it says that it apologised to the Complainant for his inability to access funds and it offered a goodwill gesture of compensation, which was subsequently increased.

With regard to the Complainant's claim to have been unable to withdraw money from his account while in Asia in March/April 2017, the Provider maintains that the evidence would suggest that this was a problem with a local bank/ATM machine rather than the fault of the Provider.

With regard to the clearing of the sterling cheque, the Provider, in its Final Response Letters dated 23<sup>rd</sup> March 2017 and 30<sup>th</sup> June 2017 has said that the cheque at issue did not clear until close of business on 23<sup>rd</sup> January 2017, as per the standard process, and that funds were available to the Complainant on 24<sup>th</sup> January 2017.

### **Decision**

Certain issues relating to what is described as the Complainant's joint Mortgage "*holding account*" are referred to in the Complainant's correspondence to the Provider and in the Provider's Final Response Letters, but, as these matters relate to a joint account and as they have not been included in the Complainant's complaint as stated in the Complaint Form submitted to this Office, they do not form part of this investigation.

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 21 January 2020, 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 first two aspects of the Complainant's complaint relate to his inability to withdraw funds from his account whilst in Asia in November 2016 and March/April 2017 respectively.

/Cont'd...

The Complainant notes, and the Provider accepts, that in advance of his departure to Asia on both these occasions, he notified the Provider of his travel plans.

### First Complaint

In respect of the November 2016 trip, the Complainant highlights three occasions on 20 November 2016 when he was unable to withdraw money while in Asia. The Provider apologised for this matter in its letter of 13 December 2016 in the following terms:

*I have investigated the matter for you and I can confirm that our Agent put a note on your Account to say that you would be travelling; however due to the county that you were travelling to, an additional security note needed to be included which was never done. I would like to sincerely apologise for any inconvenience caused by this and I assure you I have raised this as a training issue with the Agent involved.*

The letter noted that the card was blocked by the Provider on November 20<sup>th</sup> and was not unblocked until the next day when the note on the file was read by the appropriate personnel. The letter also offered a “gesture” in the form of an offer of compensation in the amount of €50. The Complainant responded indicating that the amount offered was “not adequate” following which the Provider, in a letter of 29 December 2016, increased the offered amount to €75. The Complainant responded indicating that the increased offer was “totally inadequate”. This resulted in a further increased offer of €125 communicated in a letter of 30 January 2017 which remained unsatisfactory to the Complainant. In its response to this Office, the Provider has offered a further increased offer of €500.

The Provider has accepted its failings in respect of this aspect of the complaint and has offered an apology. Accordingly, my function is restricted to an analysis of the sufficiency of the compensation offered. The Complainant was deprived of access to his funds for a day (a Sunday) whilst on holidays. The Complainant states that this caused the necessity for him to cancel a tour which he had booked for himself and his wife “at great extra costs, borrowing money from a friend?” and prevented him from being able to make purchases at a Sunday market. The Complainant does not however identify at the any point the nature or extent of the “great extra costs” rendering it impossible to quantify same. The Complainant also refers to borrowing money from a friend which somewhat obscures the extent of actual losses. The Complainant does not comment on whether his wife was in a position to access money on the day in question.

The Provider remedied its mistake reasonably promptly ensuring within 24 hours that the Complainant was in a position to access his account. In the circumstances, I accept that the revised offer by the Provider of €500 (combined with the earlier apology) represents adequate compensation for the Complainant.

/Cont’d...

### Second Complaint

In respect of the March/April 2017 trip, the Complainant highlights five occasions over three days (1, 22 and 24 April 2017) on which he was unable to withdraw money while in Asia. The Complainant provided ATM receipts to the Provider in respect of certain of these failed transactions.

The Provider responded to this matter stating that it was “unable to locate any errors or transaction declines” on the Complainant’s account during the period in question. The Provider also analysed the receipts provided by the Complainant and responded as follows:

*In relation to the receipts you provided in your email of 4<sup>th</sup> May 2017, the Fraud Department have advised that on your receipts dated 1<sup>st</sup> April 2017 which occurred at 12:58 and 13:00, it seems the reason the transaction declined was due to the transaction timing out “Transaction timed out” as stated on the receipt. The transaction timing out, would be an issue with the merchant you were dealing with at that time and not an issue with [the Provider].*

The Complainant’s response to this explanation was to point out that the ATMs in question appeared to be dispensing money to other users.

I am not satisfied that the Complainant has substantiated this aspect of his complaint. The Provider has provided a credible explanation for the failure of the transactions which is printed on the receipts furnished by the Complainant. This is in marked contrast to the position regarding the November 2016 trip when the Provider was in a position to identify (and subsequently acknowledge) that transactions were declined because of action taken by the Provider. The printout of transactions for March-April 2017 which records no attempted foreign transactions is in my view, persuasive.

### Third Complaint

The third aspect of the Complainant’s complaint relates to a cheque lodged to his current account on 21 December 2016 in the amount of £6,620STR (€7,691). The Complainant states that he attempted to withdraw certain of these funds on 9 January 2017 only to learn that the cheque had not cleared. The Complainant states that he contacted his Bank Manager to discuss this matter and was told that the monies “would not be available until 21<sup>st</sup> of January” 2017. The Complainant states that, on 16 January 2017, he received a bank statement dated 13 January 2017 which recorded the funds as present in his account. The Complainant states that he immediately sought to withdraw certain of the funds only to be advised that the monies would not be available until 21 January 2017. The Complainant states that, thereafter, he sought to withdraw certain of the funds on 22 January and 23 January 2017 only to be refused access to the funds again.

/Cont’d...

The Provider has stated that the cheque cleared as of close of business on 23 January 2017. In its letter of 23 March 2017, the Provider stated as follows:

*It is Bank policy in accordance with the terms and conditions for a cheque or bank draft in a foreign currency or euro cheque or draft drawn on a bank outside Ireland to place a clearing period of 25 clearing business days from the date of the lodgement. This is to ensure that there is a fair period where the Bank and the customer are protected in the event of cheques being returned unpaid.*

In its response to this office dated 22 August 2018, the Provider stated as follows:

*As the one month hold expired on 21 January 2017 which was a non-business day the hold expired at the close of business on the next working day (23 January 2017).*

The Provider points out that the date on which the cheque cleared was the 20<sup>th</sup> working day after the lodgement and the funds were available thereafter on the 21<sup>st</sup> working day after lodgement.

The Provider states that the Complainant would have been advised at the time that the cheque was lodged that it would take 21 working days for the cheque to clear (a statement from the teller involved dated 12 September 2018 has been provided in this regard). The Complainant disputes this. I am of the view however that I do not need to resolve this factual dispute in order to come to a decision on this matter.

In the first instance, it is normal in the industry to allow for an extended period for foreign cheques to clear albeit that the precise period can vary considerably. In this regard, the Provider highlights the current terms and conditions which refer to a “normal clearing period” of 25 business days for cheques drawn in a foreign currency. Insofar as the complaint relates to a general grievance about the extent of time required for the cheque to clear, I do not uphold the complaint.

The Complainant however relies on specific advice he says he was given. The Complainant maintains that he was advised by the Branch Manager, in or around 9 January 2017, that the monies “would not be available until 21<sup>st</sup> of January”. I understand this to mean that the hold-period would expire at that point in time. The fact of the matter is that 21 January 2017 was a Saturday and, accordingly, I accept that the Provider was entitled to extend the hold-period until the next working day which was 23 January 2017, the date on which the funds cleared. This was within both the period which the teller claims to have advised and the period stipulated within the current terms and conditions. In the circumstances I am not of the view that the Complainant has substantiated sufficient grounds to subtend a finding against the Provider.

/Cont'd...

#### Fourth Complaint

The last aspect of the Complainant's complaint relates to his letter to the Provider of 25 November 2016 and the Provider's failure to respond thereto in a timely fashion. The Complainant hand delivered this letter to a staff member in a branch of the Provider on 25 November 2016. It was addressed to the Branch Manager. The Complainant, having received no response to this letter, wrote again on 5 December 2016, referring to this earlier letter and re-outlining his grievance.

The Provider's initial response of 13 December 2016 stated that the Provider "*never received the first letter*". The Complainant wrote again to the Provider one of 15 December 2016, wherein he highlighted that the earlier letter had been hand-delivered.

The Provider, in a letter of 29 December 2016, corrected its earlier statement that the letter had not been received. The Provider stated as follows:

*"I have followed up with your Branch regarding the matter and they have advised me that a letter was hand delivered by you to a staff member in the [local] Branch on 25<sup>th</sup> November 2016 marked for the attention of the Manager. When we initially enquired with the [local] Branch this staff member was on annual leave and therefore they gave us incorrect information. Unfortunately this letter was not acted upon at the time and the Branch apologises for this. They have taken steps to ensure that this will not occur again".*

In its response to this Office, the Provider further clarifies that the Branch Manager was not in work on 25 November 2016 and the letter was "*retained for his attention until he returned to the office the following week*" thereby seeking to explain the delay in acting on the letter.

I accept that the explanation offered is reasonable. However, more importantly, I am satisfied that the Provider dealt with the Complainant's complaint in a prompt manner and within the timeframe specified in Consumer Protection Code 2012. The Complainant made his complaint on 25 November 2016. A substantive response was provided on 13 December 2016 (albeit in response to the Complainant's second letter). This response was furnished within 12 working days of the original complaint. In my view this was reasonable. I accept that the Provider's apology in its letter of 29 December 2016 adequately dealt with this matter.

For the reasons set out above, and on the basis that the offer of €500 made by the Provider in its letter of 22 August 2018 will remain open for acceptance by the Complainant, should he wish to accept it, I do not uphold this complaint.

#### Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

/Cont'd...

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**

13 February 2020

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.