



<u>Decision Ref:</u>	2020-0047
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Cheques
<u>Conduct(s) complained of:</u>	Maladministration Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns a cheque drawn on the account of the deceased some weeks prior to his death in [date of death redacted] at the age of seventy nine. The complaint is maintained by the estate of the deceased, and for the purpose of this investigation the estate is referred to as ‘the Complainant’.

The Complainant’s Case

The Complainant says that a cheque dated **13 October 2017**, in the amount of [amount redacted] was written to a named third party, and contends that the Provider did not “*follow correct procedures*” when it identified unusual activity on the account. The Complainant submits that the Provider telephoned the deceased, the account holder, to “*confirm*” the amount of the cheque, but that he was “*bed-ridden and unable to communicate*”. The Complainant asserts that the Provider has “*no voice recordings of conversations*” with the deceased and states that the Provider “*didn’t provide any opportunity for [the account holder] to provide security passwords/information in order to privately reject the phone call or indeed prove his memory capability whilst being a late stage terminally ill customer*”.

The Complainant states that her father was “*not capable*” of answering the first call received from the Provider on **19 October 2017**, and that the return call to the Provider came from the named third party, who was the identified payee on the cheque, rather than from the deceased. The Complainant further states that the Provider’s second call to the deceased later that day was answered by the named third party and then “*passed to*”

the deceased. The Complainant asserts that the Provider should have identified that her father did not *“actually make or directly answer any of the telephone calls as he was confined to bed with a late stage terminal illness”*.

The Complainant also asserts that the signature on the cheque *“clearly”* does not match that of the deceased, and that the Provider should not have had *“any conversation”* with the third party in respect of the deceased’s account.

The Complainant submits that *“there was no due care and attention and no consideration for any form of coercion”*, and that the Provider was aware of the deceased’s age and *“his vulnerability”*. The Complainant further submits that in this regard, the Provider’s security measures were *“inadequate and not sufficiently targeted to the account holder”*.

The Provider’s Case

The Provider submits that a cheque was drawn on the deceased’s account on **18 October 2017**, and that a Provider branch was contacted by the Provider’s ‘Signature Verification Clearing’ section to request that a copy of the cheque be *“checked for examination as an additional safeguard against fraud”*. The Provider states that the signature was verified by branch staff and contends that, in addition, the branch was asked to verify the payee and the amount of the cheque by contacting the account holder.

The Provider states that the branch contacted the account holder using the *“Preferred Method of Contact”*, which was the account holder’s mobile phone number, but that the call was not answered. The Provider further states that the staff member who made the call left a voice message, asking the account holder to contact the branch, and that a short time later the Provider received a call from *“the account holder’s partner responding to a previously missed telephone call..... someone had rang the number looking to speak to the account holder”*. The Provider submits that during this call the customer service agent asked who he was speaking with, and that he was told it was *“the account holder’s partner”*. The Provider also submits that the customer service agent asked the caller whether the account holder was aware of the reason for the previous call from the Provider, and that the account holder (from the background) said that the call possibly related to a cheque. The Provider asserts that the caller (the account holder’s partner) then repeated to the staff member that the previous call probably related to a cheque made out to her. The Provider contends that its customer service agent advised the account holder’s partner, that he would contact the Provider branch which had made the previous call and *“get them to call back”*. The Provider submits that the account holder’s partner gave her own mobile phone number as the contact for the return call, but that the Provider branch did not use this number when calling again and that it used the account holder’s mobile number as it had previously *“as per [the Provider’s] procedures”*.

In its Final Response Letter dated **29 January 2018**, the Provider states that:

“In accordance with our procedures, a member of staff checked the signature on the cheque and also made contact by phone to the account holder. The staff member asked [the account holder] if he was happy for the cheque to be paid and he confirmed that he did, he confirmed that the payee was [a named third party], the amount of the cheque as [amount redacted] and that he had signed the cheque himself. [The Provider] noted the conversation on [the account holder’s] account and as we were satisfied that all was in order the cheque was subsequently paid”.

The Provider further submits that it *“acted in line with [its] procedures and followed [its] terms and conditions”*.

Allegations of Fraud are not a matter for the FSPO

When the complaint was originally made, the Complainant referred to the absence of any reason why the deceased would have written a cheque in such an amount and also indicated a belief *“the cheque not to have been signed by [the deceased]”*. The Complainant was advised at that point that this office has no jurisdiction to investigate fraud, and that fraud is a criminal offence requiring sanctions which fall outside the jurisdiction of the FSPO. This position has been long since confirmed by the courts, and indeed Mr. Justice Hedigan, in *Cagney-V-The Financial Services Ombudsman & Liberty Asset Management Limited & Bank of Scotland plc [2009] MCA 38* stated in that context:

“The mere statement by some graphologists to the effect that a signature is a forged signature will certainly not be allowed to stand on its own. It will invariably be hotly contested and probably contested by expert evidence on the other side. That, it seems to me, is classically not the Ombudsman’s function. It is classically a function for the Courts in plenary proceedings in which evidence is called in detail, experts are examined and cross-examined in great detail and ultimately a Judge experienced in these matters comes to a conclusion as best he or she can. It is something that I think is far beyond the role of the Ombudsman”.

The Complainant was advised in a letter from this office dated **22 August 2018** that the Ombudsman has no jurisdiction to consider matters relating to fraudulent activity, and reverted in her submission dated **28 August 2018** to confirm that no investigation of fraudulent activity was being requested and rather, the complaint was that the Provider had failed to follow correct procedures when it had identified unusual activity on the deceased’s account. This investigation has been undertaken on that basis.

The Complaint for Adjudication

The Complainant is that the Provider did not follow *“correct procedures”* when it identified unusual activity on the account holder’s account, the suggested unusual activity being that a cheque for [amount redacted] was drawn on the account.

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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 on **13 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.

Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

The Complainant makes the argument that the Provider did not follow "*correct procedures*" when a cheque for [amount redacted], a very substantial amount, was drawn on the deceased's account, made payable to his partner, prior to his death. In its formal response to this office dated **8 October 2018** the Provider outlined its procedure for the verification of "*high value cheques*" that are not drawn in accordance with the mandate held by the Provider, or where there is no mandate held, or where the value of the cheque is not consistent with the normal transactions on an account. The Provider submits that its procedure in such cases is as follows:

- *"A fax containing the detail of the amount to be debited will be sent to the branch requesting the branch to action/verify. In addition to the fax an email will be sent to the branch for the attention of the fraud official.*
- *The Branch must verify the signature on the cheque against the branch records.*
- *A copy of the fax, attachments and email must be retained at the branch for audit purposes showing it has been actioned and responded to. The Branch must then make contact with the account holder and verify the authenticity of the cheque and advise the [Provider's fraud unit] by 15.30 whether the cheque should be paid or returned unpaid.*

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- *If the Branch records differ, the branch should contact the customer to verify the signature and an updated signature requested from the customer where applicable.*
- *When the branch is satisfied with their investigation, they confirm..... that it is in order to pay the cheque."*

The Provider has submitted in evidence a copy of the **Terms and Conditions** pertaining to the account, which includes the following:

"We may, but shall not be obliged to, operate from time to time such security procedures as we consider appropriate including making call backs to you or your authorised representative. We reserve the right to delay or not permit a payment where we are suspicious that the security of the payment may be compromised or that it is unauthorised or fraudulent or, where it is intended to be funded by a credit line provided by us to you, that there is a significantly increased risk that you may be unable to repay the credit line. We shall not be liable for any delay or failure in making any payment as a result of such reasons".

"We have no obligation to establish the identity of the Payee or a cheque presented to us for payment provided that your name, account number and signature are consistent with the current signing instructions for your Account".

The Provider has also submitted in evidence, as requested by this office, a statement of recollection from the staff member who telephoned the account holder on **19 October 2017**. In this statement, the Provider states that it was the same staff member (*"the Accounts Controller for the Branch"*) who telephoned the account holder on both occasions on that date.

In her statement, the Accounts Controller states that the branch was requested by the Provider's Banking Support Services department to take actions to verify the payee and cheque details of the cheque which is the subject of this complaint. She further states that she *"initially actioned the request by verifying the cheque was made out correctly, in date and signed in accordance with customer instructions which [she] verified against the account signature image recorded on [the] file"*. The Accounts Controller submits that she telephoned the account holder, using the contact number on the Provider's system, and as the call was not answered she left a voice message. She also submits that the branch received an internal mail from the Provider's call centre which stated:

"Customer called to return a missed call. Unaware of the Call. Would like a call back again on above to his partner's phone [partner's name and phone number stated]".

The Accounts Controller states that she made a second call to the account holder, again using the contact number on the Provider's system, and that *"the call was answered by a lady"*. The Accounts Controller submits that the call *"was then taken by the account holder whose voice I immediately recognised having had dealings with him at branch over the years"*. The Provider states that this staff member *"did not ask any security questions as she was very familiar with the account holder for many years"* and further states that they discussed a *"very distinguishing"* garment worn by the account holder when he visited the

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branch. In her statement, the Accounts Controller submits that the account holder stated he had written the cheque in the amount of [amount redacted], and that he emphasised the cheque was made payable to his partner *“who he named as the payee of the cheque”*. The Accounts Controller contends that *“the account holder requested the cheque be paid in accordance with his wishes”*.

The Accounts Controller states that she and the account holder *“spoke for a while after the cheque details were confirmed during which time he informed [her] that he was ill with cancer”*. She also states that, having worked in banking for eighteen years, primarily in customer facing roles, she was *“very conscious”* of her obligations when dealing with any potentially vulnerable consumers. She submits that, in her opinion, the account holder was *“lucid, articulate and friendly whilst also noting that his speech was slightly slower but clear and precise”*, and that she did not believe that he was under any duress at any stage during their conversation.

The Accounts Controller contends that she was *“fully satisfied”* that she spoke to the account holder on the second call, and that she recognised his voice from her previous interactions with him in the branch. She asserts that, given the nature of the transaction, and having been informed of the account holder’s illness, that she took *“sufficient care and time during the call to ensure that [the Provider was] acting on the account holder’s wishes to pay the cheque to his partner, that he was capable of making that decision of his own free will and that the call details were then keyed in on [the Provider’s] customer contact screen”*.

The Provider has also furnished in evidence a screenshot of the account holder’s contact history with a note dated **19 October 2017** which states:

“cheque number [x] to be paid. all details verified with customer who is ill at the moment.”

The Complainant notes in her submissions that the Provider did not submit in evidence, transcripts of the telephone calls made from the branch. The Provider asserts that calls from its branches are not recorded. Given that the Provider was able to confirm the call made to its call centre by the account holder’s partner from his phone on that date, I accept that this call was in response to an earlier voice mail left by the Provider. I also acknowledge that the Provider has furnished evidence of having spoken to the account holder on the same day by submitting the screen shot of the account holder’s history for that date. Furthermore, the account holder’s illness is recorded on this note as a result of him mentioning it to the Accounts Controller during their conversation.

Taking the above into account, and in the context of the Provider’s procedures, terms and conditions, there is no evidence before me that the Provider did not follow its procedures as set out above, nor that it did not comply with the terms and conditions pertaining to the account. The terms and conditions provided in evidence state that the Provider has *“no obligation to establish the identity of the Payee or a cheque presented..... for payment provided that your name, account number and signature are consistent with the current signing instructions for your Account”*. The Provider submits that it contacted the branch

named in the submissions *“as an additional safeguard against fraud”*, and I accept that it was not required to do so under the terms and conditions of the account.

The Consumer Protection Codes set out that a regulated entity must act with due skill care and diligence in the best interests of its customers. Given that the Provider has evidenced that it followed its own procedures for verifying the cheque drawn on the Complainant’s father’s account, I accept that it acted with the due skill care and diligence required.

I also accept that the Accounts Controller who spoke with the account holder on **19 October 2017** was satisfied that he was capable of making the decision to pay the cheque to his partner of his own free will, and that the Provider was acting *“in accordance with his wishes”* by paying the cheque. It is important to note that under the Consumer Protection Codes, the Provider is required to *“ensure that all instructions from or on behalf of a customer are processed properly and promptly”*.

The Complainant contends that the Provider did not *“consider the circumstances of knowing [the account holder] was a vulnerable customer”*. Under the Consumer Protection Code 2012, the Provider’s obligations in this regard are as follows:

“Where a regulated entity has identified that a personal consumer is a vulnerable consumer, the regulated entity must ensure that the vulnerable consumer is provided with such reasonable arrangements and/or assistance that may be necessary to facilitate him or her in his or her dealings with the regulated entity”.

The *“dealings”* in this instance were carried out over the telephone. I am satisfied that *“reasonable arrangements and/or assistance”* was offered in the circumstances, as the Provider sought to ascertain whether the account holder had the ability to make a decision with regard to the payment of the cheque to the named payee. In this regard, the Provider submits that the Accounts Controller who spoke with the account holder during the second telephone call *“used her judgement and her many year of experience”* to assess whether the account holder was vulnerable, and that she deduced from their conversation that he was *“capable of making [the] decision of his own free will”*. The fact that the Accounts Controller recorded the account holder’s illness in the file note on his contact history demonstrates that she was aware of a potential vulnerability, and I therefore do not accept the Complainant’s submission that the Provider did not consider the deceased’s circumstances in this regard.

In the submissions, the Complainant also questions why the Provider’s customer service agent engaged with the account holder’s partner during the call to the call centre on **19 October 2017**. She states:

“Surely the practice should be to deal directly with the customer account holder”.

The Provider has submitted that this call was received by its call centre *“who answer telephone calls on behalf of the branches”*. In such circumstances, the Provider’s customer service agent would not have been in a position to assist the caller or the account holder as he was unaware of the reason(s) for the original call; his role was to contact the branch

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and ask that the account holder be telephoned again. Having considered the call recording submitted by the Provider, I note that the agent did not ask any questions about the account, only whether the account holder might be aware of the reason for the earlier call. I cannot agree with the Complainant's contention that this engagement between the agent and the account holder's partner was inappropriate, given that the agent's role was to answer calls on behalf of the Provider's branches. The Complainant submits that:

"This situation allowed [the account holder's partner] to maintain control in preparation for the return branch call".

I cannot agree that the Provider erred in receiving a returned call, which was made by the account holder's partner on behalf of the account holder, apparently in his presence and using his phone, or that it erred in trying to ascertain the reason for the original call before contacting the branch concerned. Given that the Provider's customer service agent divulged no information to the deceased's partner, I take the view that the Provider did not act inappropriately in the circumstances. Indeed, I note that when the next call was made by the branch, it did not use the mobile telephone number of the deceased's partner who had made that call to customer services, and who had requested that contact could be made by telephoning her own mobile number. Rather, the Provider acted in accordance with its own procedures and telephoned to speak with the deceased, using his own mobile phone contact details.

I have referred to the third party throughout as the deceased's partner. This is because his last will and testament, submitted in evidence, describes her as such. The Accounts Controller who spoke with the deceased on **19 October 2017** also stated that he clearly expressed his wish that the cheque be paid to his partner. It is important to note that the interpersonal relationships between the parties referenced in the submissions are not in question. Rather, it is the Provider's conduct that is at issue in this instance.

Taking all of the above into account, I am satisfied from the evidence available that the Provider did not act wrongfully in the actions it took when it identified unusual activity on the Complainant's father's account in **October 2017**. Rather, I believe that the Provider acted swiftly to seek clarification from the deceased, and it thereby satisfied itself that it was in order to let the payment proceed.

For the reasons outlined above, 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.

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 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.