



<u>Decision Ref:</u>	2020-0078
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Handling of fraudulent transactions Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Disputed transactions
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant is an elderly and vulnerable customer of the Provider and holds a bank account with it.

The Complainant's Case

The Complainant, who is approximately 80 years old and is partially sighted with hearing difficulties, is represented by her daughter, AB. AB states that it has come to her attention that there were multiple irregularities on the Complainant's current account of large withdrawals going back from at least January 2009. She states that they contacted the relevant branch of the Provider on 30 May 2016 to alert it to the problem and she was told that the Provider could not discuss the matter with her despite her then 78-year-old mother being present. AB states that she obtained a mini statement going back to February 2016 which verified their concerns in relation to unauthorised withdrawals on the account which she made known to the Provider at the time. AB states that she was given incorrect information that she required a power of attorney to be able to speak with the Provider on behalf of the Complainant which AB's solicitor said was not possible, as it was not feasible to obtain a power of attorney just to speak about the Complainant's account when the account holder was present.

AB states that in June 2016, she discussed the matter with the assistant manager of the branch, KC, and explained that the Complainant is vulnerable, partially sighted and hard of hearing and they needed to discuss the matter with them. AB states that KC looked into some transactions which he admitted did not look regular or normal for a 78-year-old pensioner.

AB states that they informed KC and showed him counter withdrawal slips made by a third party, DE, who is not a family member and has no power of attorney on the account. AB states that the documents show various withdrawals over the counter which were approximately €2,000 plus per month and far in excess of what the Complainant's expenses are which are approximately €600 per month and which were conducted without the Complainant being present and when she was not aware of the amounts being withdrawn from the account. AB states that as the Complainant underwent a hip replacement surgery some years earlier, she had not been to a branch of the Provider in person for the previous three years so they can only assume that the Provider allowed DE to withdraw money from the Complainant's account without her being present.

AB notes that on some withdrawal slips, counter staff of the Provider had written "customer known at branch" or customer known. AB states that it amounts to gross negligence on behalf of the Provider that anyone other than the Complainant was allowed to withdraw money from the account in this way with no knowledge by the family and without any legal power to do so. She states that there were also two very large withdrawals by JK which were understood from the assistant manager KC to have been done on the basis of letters of authority, one for €2,000, one from €8,000, and another cash withdrawal of €600 signed by JK. AB argues that this is in breach of the banking code and as the Complainant was not present, should be deemed as an unauthorised transaction.

AB argues that as the amount is in excess of €75,000, she finds it unacceptable that the Provider considers it to be normal spending for an elderly pensioner. AB argues that the fraudulent transactions took place between 9 January 2009 and 29 May 2016 and she states that she does not understand how anyone could have been allowed withdraw funds from the Complainant account without requesting this herself at the branch. AB argues that she understands that this is against the Provider's policy and regulations put in place to protect pensioners. She states that the matter has been reported to the Gardaí who are currently investigating due to the large sums involved. AB states that this has caused unnecessary stress to the Complainant to have to give statements and make numerous trips to the Provider and has resulted in having to take increased blood pressure medication.

AB argues that as the majority of the transactions took place without the Complainant being present by third parties who had no authority to do so, AB argues that the Provider has not protected the Complainant's funds in accordance with banking regulations and through gross negligence allowed funds to be withdrawn from her account with counter withdrawal slips and letters of authority, from which the Complainant's signature cannot be verified. She argues that the transactions are therefore not legally binding so the transaction amounts should be returned to the Complainant's account. The total amount is estimated to be approximately €75,000 with the information they have obtained.

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AB argues that the withdrawal slips show that three people continuously withdrew amounts in cash from the relevant branch ranging from €600 to €2,000. She argues that the slips and letters show that the Complainant was not present at the time of the withdrawals and that joint withdrawal slips were used even though it is not a joint account but that a second signature was supplied, mainly one DE.

AB further argues that the letters written on blank paper presented to the Provider as authorisation to withdraw funds from JK was not a legal document and should not have been accepted.

AB states that they have requested the Provider to have the signature checked by a handwriting expert with the Provider does not seem to want to do so and which she suggests indicates that the Provider can see that the signatures do not match. AB argues that they had to recover a debit card in the possession of the daughter of DE. They are unaware how this was obtained and used to withdraw funds.

In response to the statement of KC, the assistant manager of the relevant branch, MS argues that KC cannot simply state that the Complainant came to the branch every two or three weeks over a number of years and was known and recognised by staff. She argues that KC could not possibly verify which cashiers were serving over such a long period of time and that KC did not recognise the Complainant immediately until introduced to her. In relation to KC's statement that the Complainant would sit in the lobby of the branch and DE would present the signed withdrawal documents to the cashier, AB questions how KC would know this fact. She argues that if the Complainant had been able to walk into the branch from the car park, it does not make sense that she could not walk 10 feet to the cashier's desk and withdraw the funds herself.

AB argues that KC cannot verify his statement that the Complainant would have given DE a signed withdrawal docket and letter of authority to withdraw money when she was not present. She argues that the two notes allegedly requesting that the Provider would give DE funds were not officially addressed to the Provider. AB argues that this means that a large number of withdrawals were made by DE with no letters of authority. AB argues that KC's statement that DE is a customer known to staff has no bearing since he is not a relation or legal guardian of the Complainant.

In response to KC's query as to why they failed to provide specific information in relation to queried transactions, AB states that they requested a full copy of all transactions and signed withdrawal dockets as they informed KC that there were no bank statements at the Complainant's address and so it was very difficult to assess what transactions had been made. AB argues that KC was incorrect when he initially informed them that the Provider could not supply the relevant information as they required a power of attorney to do so. AB accepts that documentation was provided from the Provider in July 2016.

AB takes issue with the Provider's statement that the withdrawal amounts of €900-€1,500 per month is a normal living expense. She argues that the Provider could not know the Complainant's living expenses and that her outgoings are closer to €100 per week rather than the €240-€300 per week that the Provider has indicated. She further points out that the amounts increased from June 2012 to 2015. AB questions why the Provider would not see as suspicious the fact that a customer would attend at the branch to withdraw funds but not carry on to the cashier window herself when she was present in branch but instead that a third party neighbour withdrew the funds and signed the withdrawal docket when he had no authority on the account.

AB argues that there were 19 occasions highlighted by the Provider when the third party neighbour withdrew funds in circumstances where there was no letter of authority for these transactions. She argues that this was contrary to regulations but that the Provider has sought to blame the customer quoting statements were issued and the customer had an obligation to query transactions. AB argues that the complaint is partially sighted and would not have been able to see transactions on the statement if she had received them. She also argues that the withdrawal dockets were made out by a third party and that the Complainant would not have been able to see the amounts. AB argues that they cannot verify how much of the funds ended up in the Complainant's possession as a large part of the funds seem to have been put through a third party's hands with the Provider's knowledge. AB argues that the fact that the balance of the account was increasing does not provide a defence to the Provider in relation to suspicious transactions. AB argues that as the Complainant had hip replacement surgery and was housebound for a long period, this contradicts KC's statement that the Complainant was present in branch on a weekly or fortnightly basis.

AB states that the Provider is responsible for issuing an ATM card after a telephone conversation in which it was clear that the phone banking PIN number had been compromised as the Provider was speaking to a third party. AB argues that this demonstrates that the card was obtained to help the third-party remove funds and avoid being identified in branch. AB argues that the Complainant ought to have been referred to the branch in relation to the ATM, which should not have been a problem if the Complainant was there on a weekly basis in accordance with the statement of KC. AB argues that this shows the Provider's disregard for following security protocol and guarding a vulnerable customer's money. She argues that the ATM card should never have been issued as the Complainant was living alone and so statements, cards and pin numbers were intercepted and the card used by a third party. AB argues that it can be seen from the ATM withdrawals that multiple amounts, sometimes seven or eight per day, were not normal transactions.

AB argues that the Provider has allowed third parties to make withdrawals over a period of time based on the fact that the party was known to the Provider and not because the third party was authorised to do so. She further states that the Provider is now attempting to blame the Complainant for not reporting unusual transactions even though it acknowledges her vulnerability and poor eyesight. She argues that the Provider's request that findings be restricted to a 13 month period is unacceptable.

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The Provider's Case

The Provider argues that it wrote to the Complainant on 27 September, 11 November, and 19 December 2016 requesting that the Complainant provide it with exact details of the transactions on the account which are cause of concern, including dates and amounts of each queried transactions.

The Provider states that the Complainant has failed to provide any specific allegation in relation to particular transactions so the Provider had been left with no option but to endeavour to respond to each and every transaction on the account during the timeframe 9 January 2009 and 29 May 2016. The Provider argues that the allegations are excessively broad and nebulous.

The Provider states that the Complainant opened a current account for older persons on 11 June 1985. It states that the account was used by the Complainant for her personal needs including the management of daily living and household expenses from account opening to today. During the timeframe in question, the Provider states that average monthly lodgements have been €1,000 to €1,600 per month and average withdrawals between €900 and €1,500 per month.

The Provider states that from June 2012 to January 2015, the Complainant began to use withdrawal docketts in the branch. It states that around this time, the Complainant attended the branch every fortnight and withdrew approximately €500 to €600. The Provider states that this was in line with what she had previously withdrawn using the cheque method. During this time, Provider states that the Complainant attended the branch with a third party neighbour who withdrew funds on her behalf.

The Provider states that in February 2015, a third party telephoned it on behalf of the Complainant to order an ATM card. The Provider's representative asked to speak directly with the Complainant, which she did. The Complainant answered the call, verified her banking details and confirmed her home address. The Complainant gave the representative authority to speak to a third party on her behalf and a new ATM card was ordered for the Complainant at this point. From February 2015 to May 2016, the Provider states that there were no further in person withdrawals on the account and that all withdrawals were made by ATM. The Provider states that ATM withdrawals continued in line with what had previously been withdrawn from the account, albeit done over multiple transactions i.e. approximately €900 to €1,600 per month. The Provider states that this was in line with what was being lodged into the account against what was being withdrawn.

The Provider relies on several terms and conditions of the current account and in particular Clause 11.1 which advises a customer to inform the Provider of any transaction that the customer did not authorise as soon as possible but no later than 13 months after the date of the transaction.

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Clause 11.6 states that a customer is liable for the full amount of unauthorised payments if they were made because of any fraud by the customer or because the customer failed intentionally or behaved with gross negligence to fulfil her obligations under the terms and conditions.

The Provider argues that the Complainant has responsibility under Clause 6.1 to ensure that instructions to pay money into and out of an account are correct and accurate.

The Provider states that the Complainant was sent monthly and quarterly statements during the timeframe and did not raise any queries on any transactions relating to the operation of her account, including any withdrawals until May 2016.

The Provider submits that the timeframe of the complaint should be limited to 13 months prior to the date that the issue was first raised in May 2016 in accordance with clause 11.1 i.e. from April 2015 to May 2016 inclusive.

The Provider argues that each transaction on the Complainant's account was carried out by the Provider with an express mandate from the Complainant to do so. The Provider argues that there is clear evidence that each of the transactions was authenticated, accurately recorded and entered into the Complainant's account at the Complainant's request. It argues that the Complainant has failed to furnish the Provider with evidence to the contrary. The Provider further argues that the Complainant has failed to provide it with evidence to suggest that the Complainant did not receive the benefit of the funds. The Provider argues that the Complainant has failed to show any evidence of wrongful conduct on the part of the Provider and rather it is clear that if there were any losses or alleged fraud, this arose from the direct actions of the Complainant.

The Provider states that in the period January 2009 to June 2012, the Complainant attended the Provider in person with signed and endorsed cheques made payable to herself and she presented these to the cashiers in the branch for cash. On each of these occasions, the Provider states that it is satisfied that it followed its procedures relating to cash withdrawals in that the signature was valid, there were sufficient funds to meet the transaction amount, and that no stop instruction was held and the Provider was not on notice of any wrongdoing. In each case, the Provider states that the funds were handed directly to the Complainant at the end of each transaction.

The Provider submits that there can be no dispute whatever on any transaction where the Complainant presented to the Provider in person. The Provider argues that the Complainant is the person who is in control of the cheque book. It states that it the Complainant's responsibility not to sign cheques in advance and to ensure all cheques are accounted for. The Provider states that if the Complainant was in any way concerned about cheque use on the account, she should have contacted the Provider at the time. The Provider rejects that these withdrawals were in any way unauthorised as alleged.

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During the period June 2012 December 2015, the Provider states that the Complainant used its withdrawal docket in branch. It states the Complainant attended the Provider in person with the third party neighbour or her sister and completed the withdrawal slips. The Provider states that these were presented to the cashier in the branch. The Provider argues that the Complainant attended the Provider every fortnight around this time and would withdraw an average of €500-€600 on each occasion which was in line with what was previously withdrawn by cheque. The Provider acknowledges that there were periods when there are no withdrawals on the Complainant account which would be in line with and reflect any surgery and recovery periods the Complainant may have had in around 2013. The Provider notes that any withdrawals carried out by the third party neighbour on behalf of the Complainant were carried out during the period of August 2013 to January 2015, during the period the Complainant had surgery. The Complainant clearly advised KC in a meeting in June 2016 that a neighbour helped out at times.

Though the Provider accepts there were several periods between December 2012 and January 2015 when there were no withdrawals, the Provider states that it cannot accept the assertion that the Complainant was not in branch in person for a three-year period. The Provider's records suggest the contrary and further the Provider relies on a statement by KC, a customer services manager. The statement suggests that when the Complainant was unable to attend the cash desk, she would sit in the lobby and DE would present the signed withdrawal docket to the cashier on her behalf. When the Complainant was not present, she would have given DE a signed withdrawal slip or letter of authority to withdraw money on her behalf.

The Provider argues that the third party neighbour presented withdrawal dockets to the Provider on 19 occasions between August 2013 and January 2015 and on all occasions these dockets were co-signed by the Complainant. 17 of these transactions were in the sum of €600 and the other two transactions were €300 and €700 respectively. On 10 occasions during the relevant period, the Provider states that the Complainant attended the branch herself and signed withdrawal slips.

The Provider accepts that a withdrawal docket from 12 August 2013 was presented by the third party neighbour and states "*letter authority*" indicating that a letter of authority was provided at the time but the Provider cannot locate the letter of authority. It argues however that the withdrawal docket indicates that there was one received at the time. The withdrawal amount was €600. The Provider argues that on 26 May 2014 and 18 August 2014 when the third party neighbour presented withdrawal dockets for €600 signed by him and the Complainant, the Complainant provided a letter of authority to the Provider requesting that the cash be given to DE.

In relation to a withdrawal docket of €8,600 signed by the Complainant and her sister (JK) on 6 February 2014, the Provider argues that €8,000 was transferred to a deposit account in the name of the Complainant and €600 was provided to JK in cash.

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The Provider argues that the Complainant provided it with a letter of authority authorising JK to make withdrawals from the account on her behalf. Further on 29 September 2014 when a withdrawal docket for €2,000 was presented by JK and signed by the Complainant and JK, the Complainant provided a letter of authority to the Provider which requested that the Provider give the stated sum to JK.

The Provider argues that the third party neighbour never withdrew a sum in excess of €700 on behalf of the customer. It further argues that on the one occasion that the sister withdrew €2,000 on behalf of the Complainant, a signed letter of authority was provided for the transaction.

The Provider argues that withdrawals on the account followed its internal procedures. Further the withdrawal dockets were accepted in good faith on instructions from the Complainant to withdraw funds from the account. The Provider argues that the Complainant signed every withdrawal docket which was acted upon by the Provider and that it did not act on any withdrawal docket unless it was signed and authorised by the Complainant.

The Provider argues that the Complainant has provided it with no evidence that she was not present for each of the transactions apart from the five transactions which the Provider has outlined above. The Provider further argues that it has not been presented with any evidence to suggest that the Complainant did not receive the benefit of all withdrawals made on the account. The Provider further argues that the account opening balance increased from under €2,000 in January 2012 to over €9,000 in January 2016 which tends to disprove any allegations of fraud or unauthorised transactions on the account.

The Provider argues that from February 2015 to May 2016, there were no further in person branch withdrawals from the account. After an ATM card was issued on the account in February 2015, all withdrawals were made via ATM. The Provider argues that the ATM withdrawals continued in line with what was previously being withdrawn from the account, over multiple transactions. The Provider states that the Complainant confirmed in a meeting that she had given the ATM card and PIN to a neighbour who assisted her with shopping and would take funds out of the ATM on her behalf.

The Provider relies on the European Communities (Payment Services) Regulations 2009 (PSR 2009) and highlights certain terms and conditions governing the use of an ATM card. The Provider argues that the ATM card was issued to the Complainant at her home address in accordance with her request. It states that the PIN followed under separate cover to the Complainant's address. The Provider argues that when the ATM card was ordered via telephone, proper verification procedures were followed. It further argues that the Complainant admitted she gave the ATM card and PIN to a third party in an effort to assist with day-to-day expenses and management of same. The Provider submits that this allowed third party to carry out the transaction successfully. The Provider submits that the disputed transactions could not have been carried out by a third party had the Complainant not given her personal security details to that party.

The Provider submits that its records evidence that the transactions were executed using the Complainant's ATM PIN. The Provider argues that the Complainant failed to fulfil her obligations of taking reasonable steps to keep the personalised security features safe as required under Regulation 70 PSR 2009.

The Provider argues that the terms and conditions applicable to the ATM cards state that the card is issued for customer's sole use, to be used in accordance with the terms and conditions, and that the customer must keep the PIN secret and take greatest possible care to prevent anyone knowing the PIN or using the card without their permission. The Provider argues that the customer must contact it immediately if they suspect a card has been used without permission or the PIN becomes known to someone else. The customer will be responsible for any loss suffered if they fail to protect it. As a result, the Provider does not accept there has been any wrongdoing by it in relation to the TM transactions which took place. It argues that the Complainant had a clear obligation to notify it if she was suspicious of the ATM card being used without her permission. The Provider argues that it is not obliged under the terms and conditions of use of the card to monitor individual cardholder transactions. Instead it operates a fraud monitoring system designed to highlight possible fraudulent activity which may be "out of character" on customers' accounts. By divulging her personal account information to an unauthorised third party, the Provider argues that the Complainant acted in a manner that constitutes gross negligence.

The Provider confirms that it has a policy in place to protect vulnerable customers. The Provider accepts that its branch personnel were aware that the Complainant was partially sighted and has hearing difficulties and at all times sought to assist the Complainant with her banking affairs. The Provider accepts that it owes a duty of care to assist the Complainant in conducting her affairs and protect her from financial abuse. It confirms that it never permitted withdrawals on the account without the Complainant's express authority and consent. The Provider argues that it offered to meet the Complainant to discuss the concerns and allegations raised and provided her with the mobile telephone number of senior personnel. It further offered to meet her in her own home if this would be more convenient for her and that this offer remains open but that the Complainant has not responded to this offer.

The Provider contends that where a transaction is completed by being correctly authorised and executed, it is under a contractual obligation to pay out the sum demanded. In the present case, it argues that the use of the correct ATM card and PIN, the correct execution of cheques and the Complainant's authorisation on withdrawal slips in circumstances where the Provider had no notice that any transactions were unauthorised gave a mandate to debit the Complainant's account. The Provider strongly rejects the suggestion that it was on notice of any wrongdoing and that it had no notice that any transactions were allegedly unauthorised. Further the Provider notes that the Complainant has not made any specific allegation that the withdrawals on the account were not done in accordance with her wishes.

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The Complaint for Adjudication

The complaint for adjudication is that the Provider wrongfully permitted third parties to withdraw funds from the Complainant's current account between January 2009 and May 2016.

I must point out that this investigation and my Decision relates only to the conduct of the Provider in the matter. Serious allegations of fraud have been made against third parties who are not party to this complaint.

Allegations of fraud are a matter for the Gardaí Síochána and the courts and do not fall within the jurisdiction of this Office.

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 3 February 2020, outlining my preliminary determination 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.

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It should be noted that under section 51(1) of the Financial Services and Pensions Ombudsman Act 2017 (**FSPO Act 2017**), a complaint to this Office that does not relate to a long-term financial service must be made not later than 6 years from the date of the conduct giving rise to the complaint. Conduct that is of a continuing nature is taken to have occurred at the time when it stopped and conduct that consists of a series of acts or omissions is taken to have occurred when the last of those acts or omissions occurred; section 51(5)(a) FSPO Act 2017. The present complaint was received by this Office in October 2016. This Office is not in a position to investigate the complaint insofar as it relates to conduct that occurred prior to October 2010. The current account in question is not a long-term financial service and this Office is not satisfied that the conduct complained of is of a continuing nature.

The allegations being made in this case by AB on behalf of her mother, the Complainant, are very serious. They suggest fraud on the part of certain third parties, including a neighbour and a sister of the Complainant, without any indication of the attitude of those parties to the allegations made. Further, no statement has been provided in the matter by the Complainant herself. No statement has been provided by the Complainant that states that she did not authorise the impugned transactions and/or that she did not benefit from impugned transactions. Instead AB argues that the impugned transactions were not properly authorised by the Complainant as she could not have been present in the branch following surgery in 2013 or that there was no valid letters of authority allowing the third parties to withdraw money on her behalf when she was not present in the branch. She further argues that the Complainant's living expenses were less than the sums withdrawn over the relevant period, but again there is no statement from the Complainant herself to this effect.

The height of the allegation is that AB herself does not know what use was made of funds withdrawn from the Complainant's account but there is no suggestion that the Complainant has indicated that she did not benefit from the transactions or that the cash was withdrawn by other individuals.

As stated above, allegations of fraud are a matter for the Gardaí Síochána and the courts and do not fall within the jurisdiction of this Office.

In the circumstances, I am unable to come to any finding as to whether any or all of the impugned transactions were in fact unauthorised by the Complainant and I do not propose to comment on same. The Complainant is therefore free to bring any proceedings considered necessary in respect of the actions of third parties concerning her financial affairs or sums of money withdrawn from her account.

In the context of the present complaint, I simply propose to consider whether there is any evidence of wrongdoing on behalf of the Provider in executing the transactions in circumstances where it is common case that the Complainant is a vulnerable customer who is elderly and experiences difficulties with her sight and hearing.

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The Provider has furnished details from of all withdrawals made on the Complainant's account between January 2009 and May 2016. It appears that all transactions that occurred on the Complainant's account between January 2009 and May 2012 were in the nature of: (a) direct debit transactions, (b) a small number of cheques payable to An Post or insurance companies, and (c) cheques payable to the Complainant herself in sums of between €240 and €600. In relation to the cheque presented during the period payable to the Complainant, copies of these cheques have been provided in evidence. Each one appears to bear the signature of the Complainant.

There is no single transaction during this period that appears to be out of the ordinary in relation to the others and the total monthly withdrawals during the period were in keeping with one another. In short, there was no transaction up to May 2012 that could be regarded in and of itself as being suspicious. While I note that AB has argued that the Complainant's monthly outgoings should have been less than the total monthly withdrawals, this does not substantiate the complaint that the Provider should not have acted in accordance with the withdrawal instructions of the Complainant as they appear on the cheques in question. I find no basis to uphold any complaint in respect of withdrawals made from the Complainant account up to May 2012 as each transaction has been proven to have been authorised by the Complainant. Further there is no suggestion that the Complainant did not authorise each transaction or that the Complainant did not receive the funds withdrawn from the account.

From June 2012 to February 2015, the Provider's records indicate that the Complainant began to make cash withdrawals in branch rather than by cheque. These cash withdrawals were in sums of approximately €600 which correlates to the cash withdrawn by cheque prior to May 2012. The first in branch withdrawal in the sum of €600 appears to have taken place on 25 June 2012.

A withdrawal slip from the relevant date evidencing the transaction appears to have been signed by the Complainant. The next in branch withdrawal on 27 August 2012 in the sum of €600 also appears to have been signed by the Complainant. A withdrawal docket from 10 September 2012 in the sum of €800 bears the Complainant's signature. Withdrawal slips in the sum of €600 from 10 and 22 October 2012 bear the Complainant's signature. A withdrawal slip dated 3 December 2012 in sum of €500 also bears the Complainant's signature. The evidence suggests that these transactions were authenticated by the Complainant (as they appear to bear her signature) and there is no evidence that any other person was involved in these transactions, I find no basis to uphold any complaint in relation to the transactions set out.

According to a statement dated 30 November 2012, there were three further withdrawals during the previous three months – €700 on 21 September 2012, €500 on 5 November 2012, and €500 on 19 November 2012, all with the descriptor "*in branch*". No withdrawal slip or docket has been provided in relation to these withdrawals. The Provider has suggested that the withdrawal dockets in question are missing.

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While it is disappointing that no withdrawal docketts have been provided for these September and November transactions, there is no specific allegation from the Complainant that she did not withdraw the sums in question and there is no suggestion that any third party was involved in the withdrawal of these funds. Further the sums of money withdrawn are in accordance with the normal withdrawal history of the account in that year. On this basis, I find no basis to uphold a complaint simply because these three withdrawal slips cannot be located.

From 2013, withdrawal docketts bearing the Complainant's signature have been provided in relation to the following transactions:

- 4 March 2013 €500
- 20 March 2013 €600
- 2 April 2013 €600
- 2 May 2013 €600
- 13 May 2013 €600
- 27 May 2013 €600
- 10 June 2013 €600
- 26 August 2013 €600
- 7 October 2013 €600
- 22 October 2013 €600
- 18 November 2013 €600
- 31 March 2014 €600
- 14 April 2014 €600
- 9 June 2014 €600
- 5 August 2014 €600
- 1 September 2014 €600
- 20 October 2014 €600

There is no indication from those withdrawal docketts that any other person was involved in the transactions or received funds on behalf of the Complainant. The Provider's submission is to the effect that these transactions were conducted by the Complainant in person. As there is no evidence before me to the contrary, I find no basis to uphold any complaint in relation to the Provider in relation to the transactions set out. The fact that the Complainant appears to have had surgery on an unspecified date in 2013 does not to my mind preclude her from having attended at a branch and withdrawn funds between 2012 and 2015.

A withdrawal docket from 12 August 2013 in the sum of €600 bears the Complainant's signature and the annotation "*letter authority held*" and also appears to have DE's name written on it. The Provider has stated that this annotation means that a letter of authority would have been provided in relation to DE but that it cannot be located.

Certain withdrawals docketed from the period bear the Complainant's signature and appear to have also been signed by DE, as follows:

- €700 on 9 September 2013
- €600 on 23 September 2013
- €600 on 4 November 2013
- €300 on 17 January 2014
- €600 on 10 February 2014
- €600 on 3 March 2014
- €600 on 14 March 2014
- €600 on 24 April 2014
- €600 on 2 May 2014
- €600 on 23 June 2014
- €600 on 7 July 2014
- €600 on 21 July 2014
- €600 on 18 August 2014
- €600 on 15 September 2014
- €600 on 10 November 2014
- €600 on 24 November 2014

A withdrawal slip for €600 from 26 May 2014 was signed by the Complainant and DE and bears the annotation "*authority on file*". There is a letter from 26 May signed by the Complainant which states "*Would you please give [DE] 600 Euros. Thank you.*" There is a letter dated 12 August signed by the Complainant which states "*would you please give [DE] €600 as I cannot go myself. Thank you*". The letter has been annotated to confirm "signature checked".

It appears from these withdrawal dockets and letters of authority that DE assisted the Complainant with the banking affairs from 2013. It is again disappointing that the letter of authority referred to on the withdrawal docket from 12 August 2013 is missing. On the other hand, it is clear that all the transactions in which DE was involved were authenticated by the Complainant's signature.

Further, two other letters signed by the Complainant requesting that the Provider give €600 to DE have been submitted in evidence which substantiates the Provider's claim that such a letter was also given in August 2013 along with the withdrawal dockets referencing a letter of authority.

Two withdrawals during the relevant period appear to have been conducted by the Complainant's sister, JK. A withdrawal slip for €8,600 dated 6 February 2014 appears to be signed by the Complainant and bears the annotation "*600 Euro cash to [JK] see letter in kept items*" and €8,000 to new account. There is a lodgement slip in the sum of €8,000 to an account in the Complainant's own name from the same date.

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There is also a letter signed by the Complainant dated 6 February 2014 and bearing the Complainant's address which states as follows *"I wish to authorise my sisters [SR] [JK] to make withdrawals from my current account on my behalf."*

A withdrawal from 29 September 2014 in the sum of €2,000 does not appear to be signed by the Complainant but rather signed by JK and the money stated to be received by her with the annotation *"authority attached"*. There is a letter from 29 September bearing the Complainant's signature which states *"please give [JK] 2,000 Euro. Thank you."*

While AB has taken issue with sums of money apparently being received by a party or parties rather than the Complainant personally, the Provider has demonstrated that each transaction was authorised by the Complainant's signature. I do not accept the argument of AB that the letters of authority submitted were deficient simply because they were not formally addressed to the Provider. Further, the Complainant herself appears to have indicated that a meeting with KC in June 2016 that DE assisted with her banking affairs. There is no evidence from the Complainant that she did not authorise DE to receive or withdraw funds on her behalf or that she did not receive the benefit of these funds. Instead, by her signature on the withdrawal slips and letters, she has given her consent to those withdrawals.

A recording of a telephone call from February 2015 has been furnished in evidence. I have considered the content of this call in which Complainant ordered an ATM card. It is clear that a third party (HS) was assisting the Complainant on this call as she was not able to follow the instructions of the Provider's representative. She did, however, verify all required information directly to the Provider. Further, there is no suggestion that the ATM card was sent to any address other than the Complainant's address.

From February 2015 after an ATM card was ordered by the Complainant, cash withdrawals were made by ATM. I note that the ATM withdrawals were more frequent during this period than had been the case with cash withdrawals in branch but that the amounts involved were significantly less than the amounts previously withdrawn in branch. I note that on certain dates, multiple withdrawals appear the same date in different denominations, mostly of €40 or €80.

I also note, however, that a number of the withdrawal dockets from the previous three years note various denominations in which the withdrawals were made which suggests that the Complainant specifically requested smaller notes, that is, €10 and €20 notes. The overall monthly withdrawals continued to correlate monthly withdrawals from 2009.

The Complainant's withdrawal history does not change until June 2016 when there was a very sharp increase in the amount of ATM withdrawals and point of sales transactions including UK withdrawals and point of sales transactions. There was also a cheque made payable to AB for €12,000 in June 2016 which debited most of the funds in the Complainant's account.

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The signatures on the withdrawal slips from June 2016 to November 2016 appear to be the same as those on the withdrawal slips between 2012 and 2015. The ATM card was cancelled by the Provider from 3 September 2016 to safeguard the Complainant's assets on the understanding that she no longer used the ATM card herself.

A statement from KC has been submitted by the Provider. KC states that the Complainant is a long-standing customer of the branch who has been coming into the branch every week or every two weeks for a number of years to withdraw her pension and is known and recognised by the staff in the branch. KC states that the Provider is aware that the Complainant is partially sighted and has difficulties with hearing and in all instances the Provider would assist the Complainant with banking affairs. KC states that he had a meeting with the Complainant and AB in June 2016. KC states that AB requested to be added as a signatory to the account but was advised that this could not be done as she would need a power of attorney to operate the bank account or would need to open a joint account. KC states that AB indicated that a neighbour of the Complainant, DE, had inappropriately taken funds from the Complainant's account. KC responded that this was a serious allegation of fraud and the matter should be reported to the Gardaí and would be referred to the Provider's internal team for review. KC states that he did not indicate that any transactions looked irregular or abnormal for a pensioner.

KC states that he spoke to the Complainant at the meeting in June 2016 and states that she:

"seemed quite confused. She advised that a neighbour helped her out at times. During the meeting, she confirmed that she had given her ATM Card and PIN to a neighbour who would assist her at times with her shopping and would take funds out of the ATM on her behalf."

KC states that AB stated that the ATM card had been retrieved from the neighbour. He states that he attempted to call the Complainant and AB to discuss further got no answer.

KC states that DE, the Complainant's neighbour, is a customer and is well known to the Provider. He states that the Complainant confirmed at the meeting that DE would assist her in the banking affairs and bring her to the branch. At times when the Complainant was unable to attend the cash desk herself, she would sit in the lobby and DE would present the signed withdrawal docket to the cashier on her behalf.

KC states that on the occasion that the Complainant was not present, the Complainant would have given DE signed withdrawal slips and letters of authority to the Provider to withdraw money on her behalf. He states that it is the Provider's procedures to verify the transaction by phoning the customer and confirming them. He states that the Provider's staff would also verify the Complainant's signature against previous withdrawal slips or cheque signed by the customer and would also verify the transaction was in line with the customer's transaction history.

There are a number of terms and conditions attached to the Complainant's current account that are of relevance in this complaint. Under Clause 6.1, *"you are responsible for ensuring that instructions to pay money into and out of your Account are correct and accurate."* Clause 6.10 provides that a statement will be made available to a customer once a year setting out the amount and dates of all transactions. Clause 11.2 states that *"you must tell us about any transaction that you did not authorise, or a transaction was not done correctly, as soon as possible but no later than 13 months after the date of the transaction."* Clause 11 further provides that the customer will be liable for the full amount of any unauthorised payments if they were made because of any fraud or gross negligence by the customer.

In other circumstances, unauthorised payments would be refunded subject to a payment of €75 in the case of a lost stolen or misused card. The provisions of clause 11 mirror the obligations on the Provider under the European Communities (Payment Services) Regulations 2009 (**PSR 2009**), which were in place at the relevant time.

The Provider has argued that the Complainant has admitted giving her ATM card and security PIN to her neighbour and that this constitutes gross negligence within the meaning of PSR 2009 and terms and conditions. I note in this regard that the term 'gross negligence' is not defined, although a customer is under an obligation to keep security features safe. I do not consider there to be a need to determine the question of whether the Complainant's conduct would constitute gross negligence in this context because, as set out above, I am not of the view that any evidence has been submitted in the present complaint that any individual transactions were in fact unauthorised. I do not therefore propose to express a view on the matter.

The Provider has argued that because clause 11.2 obliges a customer to inform it of any unauthorised transaction no later than 13 months after the date of the transaction, the scope of the present complaint should be confined to a 13 month period prior to June 2016. I accept that the Complainant was under a contractual obligation to inform the Provider of any unauthorised transactions, but I do not accept that this would be the end of the matter if the Provider had itself acted in breach of contract or otherwise wrongfully. While I do not propose to limit my investigation to that period, I am satisfied that no breach of contract or unreasonable wrongful behaviour by the Provider has been established.

I accept that the Provider has demonstrated that it acted at all times on the instructions of Complainant herself as evidenced by her signature authorising all relevant withdrawals. I also accept that the Complainant herself stated that DE assisted her in her financial affairs and that he was given use of her ATM and PIN for that purpose.

I am further satisfied that the Provider has met its regulatory obligations and in particular has acted all times in accordance with provision 3.1 of the Consumer Protection Code 2012 which obliges a regulated entity to ensure that a vulnerable customer is provided with reasonable arrangements and assistance to facilitate them in their dealings with it.

In all the circumstances outlined above, and having particular regard to the facts that the Complainant has not alleged that any withdrawal was unauthorised and that each withdrawal has been properly authenticated by the Complainant's signature, 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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

11 March 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.**