An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0080
Sector:	Banking
Product / Service:	Direct Debit
Conduct(s) complained of:	Complaint handling (Consumer Protection Code) Maladministration
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to the Provider's withdrawal of its sponsorship of the Complainant Company as an originator of direct debits under the ***Irish Retail Electronic Payments Clearing Co Ltd (IRECC), Direct Debit Scheme*** (the "***Scheme***").

The Complainant's Case

The Complainant Company submits that in **2008** it was granted direct debit sponsorship as an originator by the Provider. The Complainant Company submits that it told the Provider the type of facilities it required and why and the facility was set up. The Complainant Company submits that the facility ran without issue from 2008 to 2013 and it *"built up a very valuable business with the benefit of the Direct Debit Facility/Sponsorship."*

The Complainant Company submits that between 2008 and 2013, "*what we applied for was what we did….just very successfully*". The Complainant Company submits that it provided a direct debit collection service for its clients. To this end, the Complainant Company set up a client account to receive in the debits from the payers as these receipts were not for the Complainant Company's account, but for the Complainant Company's clients. The Complainant Company submits that no limits as to volume were put on the money that could be received into the client account by the Provider, at the time it was set up.

The Complainant Company submits that they had no engagements with the Provider with respect to their business from 2008 to September 2013, save for a letter that the Complainant Company issued to the Provider in **September 2012**, which was unanswered by the Provider.

The Complainant Company outlines that it was contacted by a representative of the Provider in **September 2013**, *"enquiring and pursuing a line of questioning as if [the Provider's representative] was unaware of the origin and reasoning behind [the Complainant Company's] client account housing the direct debits and suggesting an impropriety."* The Complainant Company submits that it was a "*disturbing call*" to receive and requested the Provider to put the queries in writing.

The Complainant Company submits, the Provider "*accused*" the Complainant Company of acting as a bureau under the Irish Retail Electronic Payments Clearing Co Ltd (the "***IRECC***"), Direct Debit Scheme Rules (the "***Scheme Rules***"). The Complainant Company submits that there was no rule in the Scheme Rules preventing the Complainant Company from providing a direct debit collection service and that the Complainant Company only collected *"on foot of our own direct debits by payers who instructed us accordingly"*.

The Complainant Company submits that in **October 2013** it relied on the Provider's position, as the *"expert*" in these matters. The Complainant Company submits that it accepted that the way they were operating their facility was in *"breach of the law"* at the time, as that was what the Provider had told them.

The Complainant Company submits the Provider issued a notification of withdrawal in **October 2013** to terminate the Complainant Company's sponsorship as Direct Debit Originator effective from **31 January 2014**.

The Complainant Company submits that as a result it terminated its direct debit accounts with its clients. With respect to one large client, in particular, the Complainant Company asserts that it was left with no alternative but for this client to move its direct debit management elsewhere. The Complainant Company submits that at the time this client was worth €100,000 per annum to the Complainant Company.

The Complainant Company submits that only later, when it set up a direct debit facility with another financial service provider, it discovered that the Provider was *"completely incorrect in [it's] interpretation"* that the Complainant Company was acting as a bureau under the Scheme.

The Complainant Company submits that the Provider was using a breach of the Scheme

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Rules as *"an excuse to terminate the facilities with the onset"* of the ***Single Euro Payments Area*** ("***SEPA***"). The Complainant Company submits that with the advent of SEPA and the initial risk of a "*no questions asked 8 week refund*" of any direct debits by payers, the Provider became concerned about the risk of all the direct debits being processed by the Complainant Company and the Provider's exposure because of the level of funds being transferred. The Complainant Company considers that this is what prompted the Provider to withdraw its sponsorship of the Complainant Company as a direct debit originator, as opposed to the reasons given by the Provider, when it withdrew its sponsorship.

The Complainant Company sets out that it tried to engage with the Provider, on receipt of the notification of withdrawal in **October 2013**, but the Provider proceeded to terminate *"even though [it] knew or ought to have known the consequences of such termination for [the Complainant Company's] business."*

The Complainant Company submits as follows;

> *" We have no problem with a bank sponsor from a commercial view denying or restricting or using limits, but when it is what you apply for, what is sanctioned and operate for 5.5 years without informed restrictions and without incident, then to be accused of rule breaches and terminated from the financial service when it is clearly an exposure issue is an action in bad faith, is deliberate and grossly negligent, is an abuse of power and privilege and to date there is an incompetence defence to our complaint with false and misleading rhetoric. We did not agree to have rules that protect in such incidence and where a party can use their discretion to terminate in business without due regard for this consequences."*

The Complainant Company submits the Provider has breach provision 2.1, 2.2, 2.4, 2.8 and 2.11 of the Consumer Protection Code 2012.

The Complainant Company is seeking a "*withdrawal of accusations";* an admission of error, an apology and compensation "*for direct and immediate loss, foreseeable and acknowledged*" by the Provider. The Complainant Company submits that the loss/damage has arisen as a result of "*breach of contract, negligence and negligent and false misstatement*".

The appropriate compensation suggested by the Complainant Company in December 2014 as a figure of €378,048. The Complainant Company's calculations are outlined as a *"multiple of four times net profit earnings*". The Complainant Company has sought costs of €5,000 for Costs involved in December 2013 and January 2014, and third party costs/loss of €10,000 for the "use and benefit" of a named employee who was put on *"short time"* owing to the loss of the third party company contract.

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The Provider's Case

The Provider submits that, in **2008**, the Provider sponsored the Complainant Company in the Scheme which was governed by the Rules, which permitted the Complainant Company to collect monies by presenting direct debits on the account of customers of Irish Banks.

The Provider submits that in **2013**, it was preparing for the introduction of the mandatory EU wide SEPA system on **01 February 2014**, which was replacing the existing Irish Retail Electronic Payments Clearing Co Ltd governed scheme.

The Provider submits that the new SEPA scheme was a payment integration initiative of the EU for the simplification and standardisation of bank transfers denominated in euro. The Provider submits that as part of the process, it reviewed its sponsorships of all existing customers under the Scheme, which included the Complainant Company.

The Provider submits that in the course of its review, it had concerns about the operation of the direct debit sponsorship by the Complainant Company.

The Provider had concerns that the Complainant Company "*may be operating outside"* the Scheme Rules and in a way that exposed the Provider to a far greater risk than if it had been operated within the Scheme Rules.

The Provider submits the Complainant Company was presenting a very large volume of direct debits through its account, with a turnover of €2million per annum, on behalf of a third party company. The Provider submits that this represented a *"significant risk*" for the Provider as the proceeds of the direct debits were being lodged into an account in the Complainant Company's name, with a similar amount being transferred out some days later for the credit of the third party company.

The Provider submits that it was its understanding that the third party company had *"no right of access to the DD Scheme other than by using the [Provider] sanctioned sponsorship of [the Complainant Company]. [The Complainant Company] was therefore providing a service to [the third party company]".*

The Provider submits that the new SEPA scheme provided greater rights to the customers of the third party company (i.e. the direct debit payers) who could request and insist on an immediate refund of any disputed direct debit charged to their account. The Provider submitted that this created a risk, as the customers of the third party company could insist on a refund of a direct debit which would have to be "*charged back*" to the Complainant Company's account with the Provider. The Provider submitted that it was also their

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understanding that the new SEPA rules might not permit the Complainant Company to collect direct debits for the customers of the third party company.

The Provider submits that as a member of the Scheme the Provider had *"obligations to ensure that its Originators were acting in compliance with the Scheme"* and that it believed that the Complainant Company were presenting direct debits to a member bank (the Provider) on behalf of a totally independent third party organisation. The Provider submits that the Complainant Company was not registered under the Scheme as a Bureau.

The Provider submits that before making any decision whether to extend the sponsorship of the Complainant Company into the new SEPA scheme, the Provider sought clarifications and explanations from the Complainant Company. The Provider submits that its *"concerns about the risks"* were not *"allayed".*

As such, it made the decision to cancel the sponsorship of the Complainant Company under the Scheme and communicated this to the Complainant Company by letter dated 31 October 2013. The Provider submits that there was an issue *"of timing with the old IRECC governed scheme due to close on 31 January 2014 and then new SEPA scheme to commence the day after, 1 February 2014".*

The Provider submits that it exercised its right under the Scheme Rules to *"make the commercial decision at its sole discretion as it was entitled to do, to cancel a customer's sponsorship."* The Provider submits that it gave the Complainant Company three months' notice of the cancellation to *"permit sufficient time for the [Complainant] Company to seek alternative facilities elsewhere."* The Provider submits that it did not wish to give the Complainant Company any *"false expectation*" that their sponsorship into the DD Scheme by the Provider would continue post the introduction of SEPA and the Provider acted *"correctly"* in this matter.

The Complaint for Adjudication

The complaint for adjudication is that the Provider "*wrongfully* and *negligently*" accused the Complainant Company of acting "*illegally"* as a Bureau and of abusing the standards and procedures under the Irish Retail Electronic Payments Clearing Co Ltd (IRECC), Direct Debit Scheme and by consequence wrongfully terminated the Provider's sponsorship of the Complainant Company under the Scheme, effective from **31 January 2014**.

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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 Company 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 **8 January 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.

Following the issue of my Preliminary Decision, the Complainant Company made a further submission under cover of its letter to this Office dated **27 January 2020**, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

Having considered the Complainant Company's additional submission and all of the submissions and evidence furnished to this Office, I set out below my final determination.

I will firstly set out a sequence of events relevant to this complaint. I will also set out the relevant provisions from the Irish Retail Electronic Payments Clearing Co Ltd, Direct Debit Scheme (including Direct Debit Plus), Scheme Rules (version 4.19)(November 2011) **("*the Scheme Rules*")**.

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Sequence of Events

I note that the Directors of the Complainant Company completed a Direct Debit Originator Compliance Form dated **05 September 2008**. This form outlined;

> *"I/We the undersigned have received a copy of the Direct Debit Scheme Rules. I/We understand the duties imposed on an originator by the Rules and will fully comply with them."*

A client account was set up with the Provider in September 2008. This was confirmed by email from the Provider to the Complainant Company on **16 September 2008** which outlined.

> *"The client account is [Account Number] and a cheque book has been ordered (this is the current account to service the direct debit payments etc.)"*

The Complainant Company issued a letter to the Provider on **24 September 2012,** which outlined as follows;

> *"As you know we have operated the above account and DD system with you since September '08 – very successfully and without incident.*
>
> *Our primary use of the DD system was to collect pre-agreed amounts on foot of signed contracts for a period e.g. 36 months @ €400 + vat.*
>
> *While we use the DD system for collection of our own lease agreements the bulk of DD's collected are on behalf of a multi-national 3rd party who has seen their Irish business grow from collecting €3,000 a month initially for 10 agreements to €185,000 a month currently for nearly 550 agreements.*
>
> *This company [named company] is part of a larger group now quoted on the New York Stock Exchange."*

The letter continued to outline that the Complainant Company's client were moving to a paperless operation and that they wanted to move to a system of using electronic signatures for their "*contracts and DD's*". The Complainant Company indicated that it was their understanding that this would mean that the Complainant Company would require a "*DD Plus*" account type under the Scheme, to process direct debits with an electronic signature.

The Complainant Company closed the letter by outlining;

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> *"We are very happy with our existing account and facilities with [the Provider] – our company is strong in asset and liquidity terms and if there is any information you require to assist us in securing DD Plus, then please advise ASAP."*

It appears that the Complainant Company and a representative of the Provider were in telephone and email contact in **August 2013**. This office has not been furnished with a copy of the telephone recording in evidence as the Provider has submitted in its response to the request for this evidence that *"no conversations in this case were recorded by the Bank"*. However the email of **23 August 2013**, which has been furnished in evidence, records that the Provider issued a Direct Debit Collections Agreement to the Complainant Company. It is understood and accepted between the parties to this complaint that these communications were for the purposes of preparing for the transition to the SEPA payments system. This office has not been furnished with a copy of the Direct Debit Collections Agreement, completed or otherwise in evidence. As such, it does not appear that the Agreement was completed by the Complainant Company and submitted to the Provider for consideration.

From the evidence available, it appears that the Provider then contacted one of the Directors of the Complainant by telephone sometime in **early September 2013**. Again this telephone recording has not been furnished in evidence, for the same reason outlined by the Provider above. However it appears and is accepted by the Provider that the purpose of the call was to seek *"clarification and information"* from the Complainant Company about the operation of the Direct Debit Scheme.

The Complainant Company wrote to the Provider on **12 September 2013** and outlined that it was "*surprised*" by the nature of the Provider's queries. The Complainant Company outlined that the account had worked "*smoothly*" for what was "*applied for and sanctioned"* since 2008. It was outlined that the Complainant Company understood that new documentation was required for SEPA and that the Complainant Company had been liaising with a representative of the Provider to ensure that everything was in place. The Complainant Company requested that "*future queries*" be put in writing.

The Provider wrote to the Complainant Company by letter dated **31 October 2013** and outlined, as follows;

> "I *have been unable to contact you by telephone in relation to your Direct Debit Originator Facility. I am writing to advise of the Bank's decision to withdraw your Direct Debit origination facility with effect from 31 January 2014.*
>
> *As you know, [the Provider] currently sponsors your business as a Direct Debit (DD) originator under the Irish Retail Electronic Clearing Company (IRECC) scheme. Under*

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European Union regulations, the 1st of February 2014 has been set as the date by which all Euro denominated electronic payments must use the new SEPA Schemes and existing national/local electronic payments schemes must close. The IRECC DD scheme will therefore cease to operate from 31st of January 2014.

The new SEPA DD scheme has a number of significant differences from the existing IRECC scheme, particularly around rights of refund of monies taken from end customers' accounts. [The Provider] has run a number of a 'awareness' briefing forums earlier in the year, and a list of websites which provide full details of the SEPA DD scheme is included at the end of this letter by way of further background.

The decision has been difficult for us to make but we believe that it is in our mutual interest. We value you as a customer and recognise that this will undoubtedly impact on how you operate your business. As such we felt it imperative to write to you at the earliest opportunity to give you as much notice as possible, and allow you to make alternative arrangements on how you collect money due to you. Potential alternative arrangements include Merchant Acquiring facilities, standing orders and online/telephone banking processes. If you do wish to discuss these in more detail I will be happy to go through these with you.

We will continue to sponsor you as a DD originator under the IRECC scheme up until 31st January 2014, subject to the terms and conditions of the existing IRECC agreement"

The Complainant Company responded by letter dated **11 November 2013** and outlined, in detail, the impact that the termination of the sponsorship would have on the Complainant Company's business, detailed that the "8 week no questions asked" exposure under SEPA would not apply to the Complainant Company's business and "*pleaded*" with the Provider to *"re-consider*" its decision. The Complainant Company also requested a *"recommendation letter"* from the Provider.

The Provider by letter dated **14 November 2013**, noted the points made by the Complainant Company and outlined "*given that you are operating in breach of scheme rules by collecting direct debits on behalf of [third party company] we are unable to provide you with this service*". That letter enclosed a recommendation letter in relation to the operation of the Complainant Company's account.

The Complainant Company wrote to the Provider by letter dated **28 November 2013,** again setting out its positon with respect to the Provider's decision and its distress at the Provider's reference to the "*rule breaches*". The Complainant Company requested that the

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Provider "*review"* its position with respect to the asserted breach and requested an opportunity to *"discuss options/ideas."*

The Complainant Company again wrote to the Provider by letter dated **20 January 2014**, with respect to problems incurred in collecting the direct debit payments in January caused by "*online banking*" issues.

Following this, it appears that there were email communications between a representative of the Provider and a Director of the Complainant Company on **27 January 2014**. In this regard, it is noted that the Director of the Complainant Company by email at **12:25** requested that an extension for one or two months so that it would be able to process the Direct Debits for February and March 2014.

In this regard, it was outlined as follows;

> *"IT WAS A MONUMENTAL TASK FOR OUR CLIENT TO GET SET UP BANK WISE AND SEPA DD WISE WITH [NAMED THIRD PARTY BANK] AND THE MONTH WOULD GIVE EXTRA BRETHING SPACE…WE AS IN [THE COMPLAINANT COMPANY] AND [THIRD PARTY COMPANY] HAVE OUR NEW SEPA NUMBERS AND [NAMED THIRD PARTY BANK] ARE OUR SPONSOR WHEREAS [NAMED THIRD PARTY BANK] ARE [THIRD PARTY COMPANY] SPONSOR…BUT WITH 600 CLIENTS TO GET RESIGNED IN [THIRD PARTY COMPANY] WITH NEW MANDATES IT IS A HUGE UPHILL STRUGGLE……..BUT IF WE HAD FEB/MARCH AS BEFORE I COULD COMFORTABLY GIVE OFFICIAL WRITTEN NOTICE AND EXIT [THE PROVIDER] BY END FEB BUT CERTAINLY END MARCH…….WE HAVE BEEN WITH [THE PROVIDER] FOR NEARLY 6 YRS WITHOUT A PROBLEM AND DD IN OLD SYSTEM IS NOT THE 8 WEEK CREDIT RISK THAT'S SO TALKED ABOUT……..BUT I DO UNDERSTAND HOW IT HAS BECOME A HUGE BANK CONCERN ALL OF A SUDDEN……DON'T MIND PUTTING A LIEN ON €25,000 OR SO WITH YOU/[NAMED LOCATION] BRANCH UNTIL WE EXIT DD AND FOR 2 MTHS AFTER THE LAST DD RUN IF REQUIRED."*

The Provider's representative outlined by email on **27 January 2014** at **12:46** to the Director of the Complainant Company as follows;

> *"A little disappointing we can't give you an email confirming what is the absolute position, verbally I have been told all DD will be paid up to March – verbally!*

It appears an internal email was sent by one of the Provider's representatives to another of the Provider's representatives; with respect to the Complainant Company's account on **27 January 2014** at **12:54** outlining that *"the customer will physically be able to continue to collect direct debits under the current payment system until 31/03/2014 however the*

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decision lies with the Relationship Management Team given the circumstances involved whether they should be permitted to do so."

This email was forwarded by one of the Provider's representatives to a Director of the Complainant Company on **27 January 2014** at **13:15**, with the text "*for your eyes only*".

The Provider issued a letter to the Complainant Company on **31 January 2014** outlining that the Complainant Company was not in a position to extend the direct debit originator facility and that the facility would be withdrawn, as previously advised, with effect from that date, 31 January 2014.

A complaint was raised on the Provider's system and a final response letter was issued by the Provider on **24 March 2014**. The Complainant Company subsequently in correspondence dated **25 March 2014** took issue with the classification of its communications as a complaint, and outlined that it had made a *"proposal and pointed out some facts"*. The Provider wrote to the Complainant Company on 27 March 2014 and advised that the complaint logged had been closed. A letter of complaint was issued on the Complainant Company's behalf to the Provider dated **18 December 2014,** outlining the Complainant Company's complaint.

The complaint was acknowledged by the Provider by letter dated **22 December 2014** and a final response letter issued by the Provider dated **11 February 2015.**

Extracts from Irish Retail Electronic Payments Clearing Co Ltd, Direct Debit Scheme (including Direct Debit Plus), Scheme Rules (version 4.19)(November 2011) (the "Scheme Rules")

The following are extracts from the "***Definitions of Terms Used***" section of the Scheme Rules, relevant to this complaint;

- **Bureau Services** *"A Bureau Service is an organisation that creates and presents electronic Direct Debits to member Banks (sponsoring banks)* ***on behalf of*** *a totally independent third party organisation" [****my emphasis****]*

- **Direct Debit** *"A service for debiting of an account held by a Payer with a Paying Bank, where the debiting of such an account is initiated by the Originator on the basis of the Payer's consent given to the Originator".*

- **Originator** *"An organisation which created and presents electronic Direct Debits to its Sponsoring Bank* ***on its own behalf****, for presentation and application against the Bank accounts of one or more Payers." [****my emphasis****]*

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- **Originator Identification Number (also, "OIN")** "*an identification number issued by IRECC for each Originator.*"

- **Payer** *"An account holder with the Bank who permits the debiting of his account by means of Direct Debit"*

- **Sponsoring Bank** "*A Bank which provides Direct Debit services to an Originator, including, inter alia, holding an account of an Originator, accepting electronic files of debits from an Originator, and presenting those debits to the appropriate Paying Bank".*

The following is an extract from the "***Originator Participation***" section of the Scheme Rules, relevant to this complaint;

"The Originator acknowledges that in the event it is determined by the Board of the IRECC that the Originator is in material breach (in the reasonable opinion of the Board of IRECC) of the rules, terms and standards of the Direct Debit Scheme in force from time to time, that unless such breach is capable of remedy and is so remedied to the satisfaction of the Board of IRECC, that such Originator may by direction of the Board of IRECC be prohibited from any further participation in the Direct Debit Scheme, and thus no longer entitled to originate Direct Debits against bank accounts held with members of the Direct Debit Scheme.

Any Sponsoring bank which acts for any such Originator shall be bound by the decision of the Board of IRECC in that regard, and accordingly shall cease to act as Sponsoring Bank for such Originator.

It is envisaged that the expulsion of an Originator from the Direct debit Scheme would only likely arise where the Originator has been in persistent breach of the Rules, and where the Originator had ignored reasonable warnings issued by either the Sponsoring Bank or IRECC in respect of such breach.

The foregoing provision is without prejudice to the ***right of the Sponsoring Bank of any Originator to cease at any time at its own discretion to act as Sponsoring Bank for such Originator, and thereby prevent the continued participation of such Originator in the Direct Debit Scheme.***

Without prejudice to or limitation of the foregoing provisions, an Originator may be prohibited from any further participation in the Direct Debit Scheme in any of the following circumstances:

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- *Direct Debit operations are being carried out by that Originator in a manner which constitutes an abuse of the Scheme, or without due regard to the interests of Payers.*
- *The Originator falls below the normal assessment criteria of the Sponsoring Bank for entry to the Direct Debits Scheme.*
- *Standards and procedures detailed in these Rules are deliberately or negligently ignored by the Originator.*
- *The contractual capacity of an Originator is terminated by legal process – for example, by bankruptcy, liquidation, the appointment of a receiver, or legal incapacity.*

- *There has been any change of circumstances which in the opinion of the Sponsoring Bank may be prejudicial to the interest of Payers.*

The Sponsoring Bank will make every effort to give sufficient notice to enable an orderly and timely withdrawal of the Originator from the Scheme.

Neither IRECC nor any Sponsoring Bank accept any liability, nor shall they be liable whatsoever, for any loss or expense, whether direct or indirect and whether monetary or otherwise which an Originator may suffer as a result of its removal from the Direct Debit Scheme.

*The provision of a Direct Debit collection service by any person not being a Member or an Originator is **prohibited** (as being a form of unauthorised participation in the Scheme) save and unless where:*

- *The Direct Debit collection service is provided by such person for and on behalf of an Originator using (only) for such purposes the OIN attributable to such Originator (and with the permission and authority of such Originator); and*
- *The amount of any Direct Debit the subject of such collection service is lodged or transferred into the bank account of such Originator (and accordingly not into any bank or other account held or maintained by the person providing such collection service or their agent).*
- *Thus, any person(s) providing such a collection service must send their files to the bank of the Originator for whom they are providing such services. Therefore, the bureau service must be in a position to present files to all member banks." **[my emphasis]***

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The following is an extract from the "***Obligations of a Sponsoring Bank in the event of termination of sponsorship***" section of the Scheme Rules, relevant to this complaint;

> *"An Originator can terminate its participation as an Originator in, and accordingly withdraw from, the Direct Debit Scheme at any time by informing its Sponsoring Bank(s) in writing.*
>
> *In the event of termination of sponsorship, the Sponsoring Bank(s) must advise the Originator of its continuing liability in respect of claims arising in relation to Direct Debit transactions initiated by or for that Originator prior to the date of such termination.*
>
> …

Process for enforced termination of sponsorship

	Step	*Date*	*Description*
1	*Initiation by IRECC (see section 1 above)*	*On or prior to termination date*	*IRECC issues to the Sponsoring Bank a direction prohibiting the Originator from further participation in the Scheme, whereupon the Sponsoring Bank advises the Originator of its termination of sponsorship. The Sponsoring Bank reminds the Originator of its responsibility and liability under these Rules in respect of past Direct Debit transactions.*
2	*Initiation by Sponsoring Bank (at its discretion)*	*On or prior to termination date*	*Sponsoring Bank advises Originator of its termination of sponsorship, and the date of termination. The Sponsoring Bank reminds the Originator of its responsibility and liability under these rules in respect of past Direct Debit transactions*

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3	*Inform IRECC*	*On the same day as step 2*	*Sponsoring Bank advises IRECC of the date of termination*
4	*Inform other Banks*	*On the same day as step 3*	*IRECC advises all Members of the date of termination*

The following are extracts from the "***Log of Revisions to the Direct Debit Scheme Rules***" section of the Scheme Rules, relevant to this decision;

Version number of Direct Debit Rules	*Brief description of revision*	*Date adopted by IRECC Board*
4.19	*Amendments made to the Rulebook as set out below;-* *Pg 6 Definition of a Bureau Service* *Pg 7 Amendment to the definition of Originator* *..* *Pg 8 & 15 Amendments to establish requirement / obligations for Bureau Service Providers* *…* *Pg 66 Bureau Service Registration Form."*	*1 Nov 2011*

The following is an extract of "***The Bureau Service Registration Form"*** contained in Appendix 18 (page 66) of the Scheme Rules, relevant to this decision;

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APPENDIX 18: DIRECT DEBIT BUREAU SERVICE REGISTRATION FORM

Irish Payment Services Organisation Ltd
Registration Form for Bureau Services Organisations
operating within the Irish Clearing System

Please complete details below:

Company Name	
Address	
Contact Name & Position	
Telephone Number	
Email Address	
Website	
Estimated Business Level	
Direct Debit Processing *(please tick)*	

Please initial box on right to confirm the below statements:

I / we confirm that the above mentioned organisation, in its capacity as a Bureau Service operator, will only collect Direct Debit payments for third parties using the Originator Identification Number (OIN) provided to that third party.	
I / we confirm that the above mentioned organisation, in its capacity as a Bureau Service operator, will only lodge money collected on behalf of any third parties into an account owned by that third party.	

Signed by

Name of Bureau Service Organisation:

Acting by: Date:

Signature of Director

Name of Director (in print)

Analysis

The Provider was entitled to use its discretion under the Scheme Rules to terminate its sponsorship of the Complainant Company at any time under the Scheme. That right is clearly set out in in the emphasised section of the ***Originator Participation*** section of the Scheme Rules, which is extracted above. The obligations on the Provider in the event of termination are outlined in the above ***Obligations of a Sponsoring Bank in the event of termination of sponsorship*** section, as outlined above. In exercising its discretion it appears to me that the Provider acted in accordance with the Scheme Rules. In this regard, I note that the Complainant Company accepts that Provider was entitled to exercise its discretion to terminate the sponsorship.

The Complainant Company's issue with the termination is rather that the Complainant Company believes that the Provider acted in "*bad faith*" in terminating the sponsorship. From the outset, I must note that no evidence has been put before me to suggest or substantiate that the Provider acted in bad faith or with any mal fides towards the Complainant Company.

The issue to be determined is whether in effecting the termination the Provider was correct in classifying the Complainant Company as providing "*Bureau Services*" under the Scheme Rules in 2013. I note that the Complainant Company maintains that it was

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operating in accordance with the Scheme Rules as an "*Originator*" at this time. The Complainant Company's primary arguments, in this respect, relate to the fact that the activity of collecting direct debits on behalf of a third party company was activity that the Complainant Company had been approved for an "*Originator*" in 2008 and that this was the same activity it continued to carry on in October 2013, albeit at that time, it had built that business up to a larger scale.

From the evidence submitted it is clear that the Complainant Company was carrying on the activity of collecting direct debits on behalf of a third party company, these funds were lodged into a client account in the name of the Complainant Company and thereafter transferred by the Complainant Company to its client's own bank account. In this regard, I have been provided in evidence with copies of the Direct Debit instructions which were required to be completed by the direct debit payers. I note that these direct debit instructions clearly identified the Complainant Company as the "*Originator*" and contained the Complainant Company's "*Originator Identification Number*".

I have had regard to the definitions of "*Originator*" and "*Bureau Services*", as contained in the Scheme Rules, as extracted above. It is clear to me that the activity that the Complainant Company was conducting was a "*Bureau Service*" within the meaning of the Scheme Rules, as the Complainant Company was creating and presenting electronic direct debits to the Provider *"**on behalf** of a totally independent third party organisation" [**my emphasis**]*. In this regard, it is clear to me that this is the activity that the Complainant Company was carrying on from the outset in 2008. However, it important to note that certain revisions were made to the Scheme Rules in November 2011.

It appears that the revisions made, which included, the introduction of a definition of a Bureau Service, an amendment to the definition of Originator, amendments to the Originator Participation section and the inclusion of a Bureau Service Registration Form had a direct impact on the Complainant Company's classification and operations under the Scheme. These amendments are all recorded in ***Log of Revisions to the Direct Debit Scheme Rules*** (extracted above), as effective from 01 November 2011.

Consequently, it appears that the Complainant Company was providing Bureau Services, within the meaning of the Scheme Rules from **01 November 2011**. This meant that the Complainant Company should have applied to be registered to provide Bureau Services, at that time. The appropriate course of action was for the Complainant Company's client to become an Originator, for the clients' OIN to be used by the Complainant Company (as a Bureau) and for the funds collected to be lodged by the payers directly into the third party client's bank account. Consequently from **01 November 2011**, the manner in which the Complainant Company was collecting the direct debits as an "*Originator*" was contrary to

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the prohibition on the provision of a direct debit collection service on behalf of a third party, as contained in the Scheme Rules.

The Complainant Company in its post Preliminary Decision submission dated **27 January 2020**, suggests that the Preliminary Decision is incorrect in fact and law. The Complainant Company has made detailed and lengthy submissions about the difference between a Bureau and an Originator. These include an argument that;

> *"to demonstrate, by reason of the fact that all direct debits were paid into our Account in our Sponsor Bank, in Bank Account held in our name and from which Bank Account all such monies collected were distributed by us and that by these facts alone we cannot be described as a Bureau but can only be described as an Originator and as required of as an Originator we provided a collection service."*

The Complainant Company further detailed as follows;

> *"I say that there was no re-classification of the Rules in November 2011 which changed our status as Originator, however, the continued Rules clearly state that a Bureau does not have its own OIN, does not have its own Sponsoring Bank, does not have its own Bank Account, does not process its own direct debits and accordingly I respectfully submit that even though the definition of a Bureau was changed by the Rules on the 1st of November 2011 this related to a Bureau and the continued Rules clearly show that because we had our own Sponsoring Bank, we had our own OIN, we processed our own direct debits into our own Account therefore under no circumstances could we be defined as a Bureau pursuant to Rules pre or post the 1st of November 2011 and accordingly no requirement for registration. Obviously in both scenarios a third-party benefits to the amount of the funds collected; that is the similarity but the route the funds take and the obligations attaching to the service providers are SIGNIFICANTLY different.*
> *As an Originator we collected direct debits from payers and the definitions here are relevant and may be helpful. See also definition of sponsoring bank who are the payment initiators of every collection file and DD Indemnity connected to an Originator.*

The Complainant Company also refers to the Scheme Rules on page 15, which the Complainant Company submits allows "*an Originator to provide a collection service, which collection service must by definition of a service be for a third party*".

I am of the view that the from **01 November 2011**, the manner in which the Complainant Company was collecting the direct debits as an "*Originator*" was contrary to the prohibition on the provision of a direct debit collection service on behalf of a third party,

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as contained on page 15 of the Scheme Rules. I accept that the monies that the Complainant Company was collecting from its client's customers were going into its own client account, however the Complainant Company is failing to recognise that it was not presenting these direct debits on its own behalf, rather it was presenting these direct debits on behalf of a third party. The Complainant Company was collecting the money into its client account for onwards transmission to its client. In these circumstances the prohibition as outlined at page 15 of the Scheme Rules applied to the manner in which the Complainant Company was operating its business from 01 November 2011.

It is disappointing that the Provider did not communicate the amendments to the Scheme Rules to the Complainant Company in **November 2011** or at any stage up until **October 2013**, when the Provider was preparing for the transition to SEPA and were carrying out reviews of accounts for the purposes of transition. This is so in particular where, these amendments had a direct impact on the manner in which the Complainant Company operated its business. Even if the Provider was not aware at the time of the impact of these revisions for the Complainant Company's business, it should have been aware by **September 2012**, when the Complainant Company wrote to the Provider. This letter was unanswered by the Provider.

In accordance with the Scheme Rules, there was an obligation on the Provider to "*ensure that Originators adhere to the Scheme Rules"* and also to *"monitor the ongoing suitability of an Originator for continuing participation in the Scheme"*. I have not been provided with any evidence to demonstrate that the Provider had monitored the Complainant Company's "*suitability as an Originator*" between 2011 and 2013. If the Provider had done so, it may have been the case that this issue would have been noted sooner and could perhaps have been resolved.

In this respect, I am of the view that there were shortcomings in the Provider's conduct from November 2011 in failing to communicate the revisions in the Scheme to the Complainant Company. Despite the Provider's shortcomings the Complainant Company continued to conduct its business, albeit as an "*Originator*" instead of a "*Bureau*" from **November 2011** up until **31 January 2014**

I must make it clear, that I am making no finding that the Provider "*wrongfully"* and *negligently*" accused the Complainant Company of acting "*illegally"* as a Bureau and of abusing the standards and procedures under the Scheme from **September 2013**, as has been alleged by the Complainant Company.

Furthermore, I have not been provided with any evidence to substantiate the Complainant Company's submissions of breach of contract or breach of the Consumer Protection Code.

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In relation to the Complainant Company's allegation of "*defamation*", I must point out this is not a matter which this Office would investigate, it being more appropriate to a court.

As detailed above, the Provider was entitled to terminate its sponsorship under the Scheme. The obligation on the Provider under the Scheme Rules was to "*make every effort"* to give *"sufficient notice"* to enable an *"orderly and timely withdrawal"* from the Scheme. It appears to me that the Provider gave the Complainant 3 months' notice, which was sufficient in the circumstances for the Complainant Company to withdraw from the Scheme and make any alternative arrangements necessary, in order to ensure the continuity of the Complainant Company's services to its own clients. I note that thereafter the Complainant Company, communicated with the Provider seeking that the Provider reverse its decision, the Provider issued a clear communication in **November 2013** that the termination would continue to take effect. It was not until late **January 2014,** that the Complainant Company sought an extension of time from the Provider. I note that a representative of the Provider indicated to the Complainant by email that "*verbally I have been told all DD will be paid up to March – verbally*" on **27 January 2014** and a letter subsequently issued on **31 January 2014** outlining that the Complainant Company was not in a position to extend the direct debit originator facility and that the facility would be withdrawn, as previously advised, with effect from that date, 31 January 2014. In this respect, I am of the view that no assurances were given to the Complainant Company that an extension was "*absolutely*" forthcoming and the email of 27 January 2014 was sufficiently caveated to that effect.

I appreciate that there was a volume of work for the Complainant Company to put in place an alternative mechanism ahead of the 31 January 2014 deadline, however the Complainant Company was given sufficient notice of three months' notice in order to do this.

Furthermore, I note that in any event the Scheme (as it had existed) was closing at the end of January 2014. In this respect, the Provider was under no obligation to grant the Complainant Company sponsorship under the new SEPA scheme. As outlined in the Sequence of Events, it appears that a Direct Debit Collections Agreement under SEPA, had issued to the Complainant Company in August 2013. There is no evidence that this agreement was submitted for consideration to the Provider and in any event, it was clear that the Provider was not willing to sponsor the Complainant Company after January 2014. It is noted that by **January 2014** the Complainant Company had secured sponsorship with a new Bank under the SEPA scheme.

In conclusion, I accept that on the basis of the evidence before me, the Provider cannot be held responsible for the losses claimed by the Complainant Company. However, on the basis of my finding that there were certain shortcomings, on behalf of the Provider in

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November 2011, I partially uphold the complaint and direct that the Provider pay the Complainant Company a sum of €2,000.

Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld, on the grounds prescribed in ***Section 60(2)(g).***

Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to make a compensatory payment to the Complainant Company in the sum of €2,000, to an account of the Complainant Company's choosing, within a period of 35 days of the nomination of account details by the Complainant Company to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in ***Section 22*** of the ***Courts Act 1981***, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with ***Section 60(8)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017.***

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

24 March 2020

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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.