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| <u>Decision Ref:</u> | 2020-0143 |
| <u>Sector:</u> | Banking |
| <u>Product / Service:</u> | Direct Debit |
| <u>Conduct(s) complained of:</u> | Failure to provide correct information Delayed or inadequate communication |
| <u>Outcome:</u> | Rejected |

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the switching of the Complainant Company's business current account from a third party provider to the Provider, against which this complaint is made.

The Complainant's Case

The Complainant was switching current accounts from a current account held with a third party provider ("P") to a new current account with the Provider. The Complainant says that this switch occurred during November/December 2018 and it was during this time that it became aware of the issue which forms the subject matter of this complaint.

The Complainant had direct debits and other "*switcher details*" on the account with P and it says these did not transfer or successfully switch to the new account with the Provider. The Complainant asserts that it understood it was the Provider's responsibility to transfer direct debits. It also submits that the Provider failed to communicate and inform it whose responsibility it was to transfer direct debits. The Complainant adds that "*none of the standing orders etc. [were] transferred*". The Complainant states:-

"Switcher details when moving from [P] to [the Provider] were not fulfilled. [The Provider] maintains it was my or [P's] responsibility to transfer direct debits. This was not communicated or explained at the time. It was my understanding that it was [the Provider's] responsibility."

When asked how it wishes the complaint to be resolved, the Complainant stated:-

“Please clarify [whose] responsibility it is to transfer direct debits [etc.]. If it is [the Provider’s] I wish a verbal and written apology”.

The Complainant’s complaint is that the Provider failed to fulfil its obligations in respect of the switching of its current account from a third party provider or that the Provider failed to inform it that it was the responsibility of the Complainant or the third party provider to effect the transfers of the direct debits from the old account to the new one.

The Provider's Case

In its final response letter dated 17 January 2019, the Provider states that *“the direct debit originators”* will be notified of the *“new [Provider] business account details by your old bank”* and the *“direct debit originators”* should then, upon amending their records, submit the new details to the Provider *“for processing”*.

The Provider refers the Complainant to specific pages and sections of its Business Current Account Switching Pack. The Provider says while it is required to *“adhere to the Central Bank Switching Code, the direct debit originators are not governed by the Code”*.

In its letter it says this is why *“it is imperative”* that customers also contact their direct debit originators. It states that some direct debit originators *“may change the details sooner than others and some may require new direct debit mandates to be completed by the customer”*.

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.

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A Preliminary Decision was issued to the parties on 13 March 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.

The Complainant held a current account with a third party provider (P).

The Switching Form

The Complainant completed a "Business Account Switching" form in order to move its current account from P to the Provider. Although the form is dated 3 October 2018, the Provider's "received" stamp appears to bear the date 21 November 2018.

The form contained the account number and sort code for the current account with the third party provider ("the Old Account") and for the current account with the Provider ("the New Account").

The intention was that the Complainant's banking business would be transacted through the New Account going forward. This would include all of the direct debits and standing orders that had previously been operated through the Old Account being operated through the New Account.

The switching form contains a "Preferred Switching Date" of 23 November 2018. Given that the form was received on 21 November 2018, this switching date was always going to be difficult to achieve.

The switching form contains the following instruction, addressed to the provider which operated the Complainant's Old Account (described in the form as "The Manager, the "Old" Bank"):

"I/We hereby request and authorise you to prepare and supply to [the Provider] and to me/us a schedule of active direct debit details direct debits and active standing order details ("the Schedule") held by you in relation to each of my/our business current account(s) at your branch as listed above.

Please send this schedule to [the address of the Provider's relevant department – "the Account Switching Unit"]."

There then follows instructions for the transfer of outstanding balance(s) and other housekeeping matters to effect a transfer of business from the Old Account to the New Account, none of which are relevant for the purposes of this complaint.

There is also an instruction to the Provider, which states:

“On receipt of the Schedule as described above, I/we authorise you to pay active direct debits and standing orders as so listed in the Schedule...”

The Switching Pack

The information leaflet prepared by the Provider for customers who wish to carry out such a switch (whereby the old account is closed) – the switching pack, which the Provider states was furnished to the Complainant – contains the following information:

“Step 2: Preparing to Switch

[...]

It is the responsibility of direct debit originators and you to ensure that all active direct debits are set up on the new account. All direct debit originators should amend their records and submit the new details to [the Provider] for processing.”

“Step 3: Making the Switch

[...]

Direct Debit Schemes operating under the SEPA scheme within Ireland will be notified by your old bank of your [New Account] details so that they can update their records and switch the direct debit to your [New Account]

[...]

Unfortunately correspondence cannot be sent to any direct debit originators outside of Ireland on your behalf. You will have to notify any originators outside of Ireland of you [New Account] details, including your BIC and IBAN.

Your old bank will do the following:

Send a list of all of your active direct debits and standing orders to [the Provider], and a copy to you for checking

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Inform your direct debit originators within Ireland of your [New Account] details

[...]

[The Provider] will set up your active standing orders on your [New Account] as soon as we receive them from your old bank.

For direct debits, originators operating within Ireland under the SEPA Scheme will receive correspondence from your old bank advising them of your [New Account]...”

The foregoing information was provided in accordance with the Code of Conduct on the Switching of Payment Accounts with Payment Service Providers (“the Switching Code”).

The switching form was sent to P by the Provider on 21 November 2018. The Provider states that P “started the switching process” on 23 November 2018 – the preferred switching date.

The Schedule

On 30 November 2018 the Provider received the schedule of direct debits and standing orders for the Old Account from P. The Provider states that none of the direct debit originators were outside the Republic of Ireland. The Provider states that one standing order instruction was transferred by it.

P was also obliged to send this schedule to the Complainant and inform the Complainant to check the details of the schedule. It is not clear whether the Complainant received this schedule or not – P is not a party to this complaint and therefore the conduct of the “Old” Bank is not being investigated.

Analysis

The Complainant states that “switcher details when moving [accounts] were not fulfilled. [The Provider] maintains it was my or [P’s] responsibility to transfer direct debits. This was not communicated to me at the time. It was my understanding that it was [the Provider’s] responsibility.”

The Complainant has stated in telephone calls that none of his direct debits were transferred. The Complainant’s calls with the branch are not available.

The switching process involves 4 parties – the old bank, the new bank, the customer and the direct debit originator(s).

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The switching form was received by the Provider on 21 November 2018. It was sent to the old bank on 21 November 2018 – the same day it was received. It contains an instruction to the old bank to furnish a schedule of direct debits to the new bank. This occurred on 29 November 2018.

The service pack advises that it is the responsibility of direct debit originators and the customer to ensure that all active direct debits are set up. The service pack also advises direct debit originators (within Ireland – which were the only originators in this complaint) will be informed of the new account details by the old bank, and that the direct debit originators would receive correspondence from the old bank.

The Provider set up the standing order applicable to the account on 30 November 2018 – the day the details were received from the old bank.

All of the foregoing is in accordance with the Central Bank of Ireland Switching Code.

The customer believes that the responsibility for transferring the direct debits rests with the Provider. I can find no evidence upon which the Complainant has based this contention, nor can I find any evidence that the Provider misinformed him in this regard.

It is not clear why the direct debits were not transferred successfully. It is possible that it was the fault of any combination of the old bank, the direct debit originator(s), or the customer. However, there is no evidence to support the contention that it was the fault of the Provider.

For the reasons outlined above, I do not uphold this complaint.

Conclusion

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

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



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

7 April 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.

