



<u>Decision Ref:</u>	2020-0243
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Money Transfer (between accounts/between banks/3 rd parties)
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant holds two current accounts in a branch of the Provider.

The Complainant's Case

The Complainant submits that one of his two current accounts (account ending in 92) is entirely confidential (the 'secret' account). He states that this secret account has never been declared by him in any financial dealings he has had with other institutions and he wished it to remain so. The Complainant sets out that his reason for not disclosing the secret current account in the first instance is that he would like to have a small nest egg for a little comfort in his last years.

The Complainant submits that he attended a branch of the Provider on 12 November 2018, and asked the attending staff member if it was possible to transfer €1,000 from one of his current accounts (the secret account) to the other account (ending in 57, the 'disclosed' account) without the transfer appearing in his subsequent bank statements. The Complainant submits that the staff member stated that she was unsure if the transfer could be done without it appearing in bank statements.

The Complainant contends that he suggested that he could draw down cash from the secret account and lodge into the disclosed account so that the transfer would not appear in his bank statements. The Complainant submits that while having this discussion, the staff member went ahead and transferred €1,000 between the two accounts without his permission. The Complainant contends that he then requested to have this transaction removed from his account statements but was informed that it was not possible to remove a narrative from an account.

The Complainant submits that in his interactions with the Provider, there has been a complete lack of appreciation of the potential financial repercussions for him of a disclosure of the second bank account to the other financial institutions with which he deals. While he accepts that the Provider has not informed any other institution directly of the fact that he has two current accounts, he argues that it will become obvious to other institutions when he is asked to submit copies of bank statements which is obliged to do regularly. He argues that this revelation to other financial institutions is not only embarrassing for him but also has huge financial repercussions.

The Complainant accepts that information regarding the secret account can be accessed through the Central Credit Register but he argues there is no reason for any lending agency to go enquiring there and he believes that the statement that he only has one current account (the disclosed account) would be taken at face value. He argues, however, that the Provider has now declared the existence of the second, secret account by putting it on his bank statement.

The Complainant argues that one example of the severe financial repercussions of the disclosure which will arise, is regarding a split mortgage that he has with another bank which was negotiated on the basis of his declared assets. He argues that the next time he has to submit copies of his bank statements, the outcome of his agreement with that bank will become uncertain. He argues that his mortgage agreement will have to be reviewed and he expects to be penalised by reverting to full mortgage repayments. The Complainant states that a three-year review of his ability to repay his mortgage was due at the beginning of 2020. He argues that the mortgage Provider has been unaware of the second secret account which now, due to the Provider's error, appears on his bank statements. He argues that as the mortgage Provider was unaware of the existence of the second account, it would have had no reason to go searching the Central Credit Register but that the existence of the second account is now printed on the bank statements that he is obliged to provide to the mortgage Provider with to show his current financial standing. He states that to revert to a full mortgage repayment will have a severe impact on his life at 80 years of age, with limited assets.

The Complainant states that he has been very stressed by the revelation and it is quite damaging to his health at this stage of his life. He argues that the Provider is guilty of a serious breach of confidentiality and possibly a breach of section 144 of the data protection legislation as well.

In response to submissions by the Provider, the Complainant submits that the bank teller could not possibly have misunderstood his intention on the day as he was very categorical that he did not want the transaction to appear on his bank statements. He notes that he informed her of how displeased he was the time and informed her that he would be making a formal complaint about the matter. The Complainant argues that the Provider has declared the existence of the second account through the bank statements submitted to the Complainant's mortgage Provider. He argues that he does not need a lesson on morality and his obligations to make full declarations to his mortgage Provider. The Complainant argues that as the Provider has admitted to making a mistake, he does not consider that its offer of €1,000 properly reflects the stress endured by him.

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The Complainant submits that it is only fair that more reasonable compensation is warranted to offset the current stress of the potential longer term financial difficulties that this scenario has presented to him. He argues that he has been with the Provider since 1965 and he believes that it can do better after 54 years of his custom. He sets out that he wishes for the present complaint to be resolved by way of financial compensation.

The Provider's Case

In its final response letter dated 10 December 2018, the Provider stated that it was unable to remove any narrative on the account statements because once a transaction is processed, it cannot be removed or altered. The Provider apologised that the Complainant's request was not carried out and apologised for the fall down in service that occurred at the branch. The Provider offered a goodwill gesture of €75 to the Complainant. The redress offered was increased to €150 by letter dated 18 January 2019. In its letter, the Provider disagreed that there had been any data breach or that it was responsible for any potential changes to the Complainant's current mortgage repayment arrangement. The Provider argued that any details of the account that he had not disclosed to the mortgage Provider could be found on the Central Credit Register when conducting a credit reference search due to an overdraft of €3,500 on the secret account.

The Provider made an improved compensation offer of €600 by email dated 23 December 2019 in the stated context of a transaction of €1,000 made by human error which was immediately corrected. The Provider argues that the account statements are a true reflection of the statement of account that an error (a debit) was made and subsequently reversed (a credit). It argues that is not the Provider's responsibility if the customer does or did not disclose the existence of the account to a third party. Furthermore, as the Complainant has an overdraft facility of €3,500 on both accounts, the existence of both accounts are automatically recorded on the Central Credit Register, regardless of whether the initial transfer of €1,000 on 12 November 2018 occurred or not.

In response to questions raised by this Office, the Provider explains that where a customer does not have an ATM card for the accounts held, the Provider's teller would manually input their account details into the "Funds Transfer System" once the customer has been identified. In such a case, a receipt is printed for the customer to sign which is retained with the teller's work for that day and a receipt is also printed for the customer as a record of the transaction.

The Provider argues that it was the teller's recollection that she completed the relevant funds request as it was her understanding that this is what the Complainant wanted. The Provider argues that the transaction was processed in good faith and it was only upon presentation of the docket requiring the Complainant's signature that it became apparent that the Complainant disputed the actions of the teller. The Provider sets out that the first transaction time of 1:28 PM on 12 November 2018 was a transfer of €1,000 from the secret account to the disclosed account. The second transaction time of 1:32 PM was a transfer of €1,000 from the disclosed account to the secret account, done with the intention of reversing the first transfer.

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The Provider states that the narratives of the transfer as it appears on the account statement of the disclosed account reads “FUNDS TRANSFER . . XXXXXXXXXXXXX15” in respect of the credit and then “FUNDS TRANSFER TO A/C xxxxxx92 XXXXXXXXXXXXX69” in respect of the debit.

In relation to the authorisation of payment transactions under Regulation 88 of the European Union (Payment Services) Regulations 2018, the Provider concedes that the Funds Transfer Request from of 1:28 PM on 12 November 2018 is not signed by the Complainant at the applicable section authorising the instruction. The Provider therefore concedes that the transaction processed, although done in good faith, could be considered to constitute an unauthorised transaction under Regulation 88. The Provider reiterates that it was never the teller’s intention to perform an unauthorised transaction on the Complainant’s bank account and the initial transfer between accounts was processed in good faith on the understanding that this is what the Complainant wished to be done. The Provider reiterated that it has offered its apologies to the Complainant for any misunderstanding in this regard.

The Provider argues that the funds transfer cannot be reversed but only counteracted by a reverse transaction. It argues that this is what occurred on 12 November 2018 when it came to the teller’s attention that the transfer processed did not meet with the Complainant’s satisfaction. The Provider argues that the original transfer narrative cannot be removed from the transaction history. The Provider argues therefore that while the effect on the accounts can be reversed (i.e. a debit to replace the credit and vice versa), the narrative of the initial funds transfers remains on the account. It states that due to the functionality of the teller system, it is simply not possible to remove, edit or anonymise a transfer from appearing on a customer’s account statement after the transaction has occurred.

The Provider disputes the contention of the Complainant that it has given reason to the Complainant’s mortgage provider to ask the Complainant about the secret account. It argues that it is a matter between the Complainant and the mortgage provider as to what information is sought and provided between the parties in relation to any financial arrangement between the parties. The Provider argues that the mortgage provider may see the existence of the secret account in a search conducted through the Central Credit Register as both current accounts have an overdraft facility of €3,500.

The Provider argues that it is obliged under the Credit Reporting Act 2013 to provide information to the Central Credit Register on all customers, including the Complainant, who fall within the relevant criteria. The Provider further argues that it is likely that a financial institution may run a search for a customer via the Central Credit Register and in such circumstances, the existence of the Complainant’s secret account would be evident in the search results.

The Provider argues that it did not declare the existence of another account to the mortgage provider. It argues that it is a matter between the Complainant and his mortgage provider as to what information is supplied in his dealings with that institution. The Provider also highlights that under the Code of Conduct on Mortgage Arrears 2013, a borrower can be classified as “*non-cooperating*” if

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“the borrower failed to make full and honest disclosure of information to the lender, that would have a significant impact on his/her financial situation.”

The Provider accordingly argues that it is the responsibility of the borrower to provide his or her lender with honest and accurate information regarding his personal financial circumstances.

The Provider argues that it has no record of the Complainant’s initial in-branch complaint or request to be contacted by the Provider. The Provider states that its records show that the complaint was raised by the Complainant via the Customer Care team following a telephone call received from the Complainant on 20 November 2018. During this telephone call, the Provider states that the Complainant stated that he understood the branch would escalate a complaint as a result of the issue that arose in branch on 12 November 2018. From a review of its records, the Provider states that it appears that this did not occur and that a complaint was not raised for him until the Complainant contacted the Provider’s customer care team on 20 November 2018. As a result of the phone call on 20 November 2018, an acknowledgement letter, a resolution letter and a final response letter were sent to the Complainant on 26 November 2018, 10 December 2018, and 18 January 2019 respectively.

The Provider apologises for the lapse in service in that no complaint was logged in relation to the complaint on 12 November 2018. It accepts that it was reasonable to assume from the Complainant’s dissatisfaction and refusal to sign the transfer document on 12 November 2018 that he had stated his dissatisfaction and accordingly a complaint should be logged for him at that point. If it had been, the Provider’s customer care team should have been in contact with him within five working days from 12 November 2018 which did not happen. The Provider argues that attempts were made to explain the Provider’s position and make a fair offer of redress to the Complainant during telephone calls with the Complainant on 29 November 2018, 11 January 2019 and 14 January 2019.

The Provider has since made an increased offer of financial redress to the Complainant in the sum of €1,000 which it considers to be very reasonable offer based on its investigations into the issues raised.

The Complaint for Adjudication

The complaint is that the Provider wrongfully performed a transfer between the Complainant’s accounts without his permission, thereby declaring the existence of his second “secret” account by putting details of it on the Complainant’s bank statements, and it then failed to remove records of the erroneous transfer from the Complainant’s account when requested to do so. The Complainant believes that the Provider demonstrated a lack of appreciation of the repercussions for him as a result of the erroneous transfer.

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Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **25 June 2020**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties regarding the merits of the complaint, within the period permitted, the final determination of this office is set out below.

I note at the outset that the Complainant has argued that the alleged breach of confidentiality in this matter is possibly a breach of the Data Protection Act 2018, section 144. The Complainant has been informed accordingly that the appropriate forum for a complaint of that nature is the Data Protection Commission and that complaints regarding data protection breaches are not a matter for the FSPO.

The present complaint concerns an admitted error by the Provider in making a funds transfer from one current account of the Complainant to another. The Complainant argues that he made it clear to the Provider's teller in branch on 12 November 2018 that he only wished for the transaction to be completed, if it would not show up on his bank statements, otherwise he would complete the transaction by withdrawing cash from one account and lodging it in the other. The teller in question completed the relevant transaction and when it became apparent that this was against the wishes of the Complainant, she arranged for a re-transfer of the relevant funds back to the originating account.

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The Provider argues that the error was made by the teller in good faith, and that she had no reason to complete the transaction otherwise than in belief that this was in accordance with the instructions of the Complainant. The Complainant argues that it was clear from the context of the conversation that he did not want the transaction to be completed if it would appear on his bank statements. The reason for his concern appears to be that the originating bank account is a "secret" one which he has not disclosed to other financial institutions. Although the funds transfer has been reversed by the Provider, the Complainant is distressed by the fact that the transaction appears on his bank statements. He is of the view that by its error, the Provider has disclosed the existence of the secret account to other financial providers, as the existence of the second account will now be obvious from the narrative of the erroneous funds transfer on his account statement of the disclosed account.

Two Funds Transfer Request forms have been supplied to me from 12 November 2018. The first, bearing a time stamp of 1:28 PM, requests the transfer of funds from the secret account to the disclosed account in the sum of €1,000. This fund transfer request was not signed by the Complainant. The second Funds Transfer Request form is time stamped 1:32 PM on the same date and requests the transfer of €1,000 from the disclosed account to the secret account. The second fund transfer request has been signed by the Complainant.

As the original request form is not signed, I accept that this transaction was not authorised by the Complainant. Although the Provider has explained that the unauthorised transaction occurred as a result of human error and confusion, which I accept, the Provider itself concedes that the transaction was unauthorised. This initial transfer from the secret account to the disclosed account therefore should not have taken place.

The second request form demonstrates that the effect of the initial unauthorised transaction was reversed almost immediately. The only lasting consequence of the unauthorised transaction is the fact that the transfer and re-transfer appears on the Complainant's bank records in respect of both the disclosed account and the secret account. The narratives of the transfer as it appears on the account statement of the disclosed account reads "FUNDS TRANSFER . . XXXXXXXXXXXXX15" in respect of the credit and then "FUNDS TRANSFER TO A/C xxxxxx92 XXXXXXXXXXXXX69" in respect of the debit.

Similar entries appear on the statement of the secret account, identifying the account number of the disclosed account. The Provider has stated that it is not possible to remove a transaction from a bank statement once the transaction has occurred. I accept that this is the case. I appreciate that statements of account must disclose an accurate summary of all transactions in and out of an account, lest the system be abused.

The question then becomes: what is the consequence of the fact that a funds transfer appears on the Complainant's disclosed account followed directly by a re-transfer in the same amount back to the account with the account number identified? There would usually be no consequence of such a record appearing on a customer's account. The complication in the present case is that the Complainant has deliberately withheld the existence of the secret account, and the assets therein, from other financial institutions.

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The Complainant claims that he is obliged to provide copies of his bank statements in respect of his disclosed account at regular intervals, to these other financial institutions. He is of the view that the narrative of the erroneous funds transfer discloses to those institutions that he has a second account that he previously failed to disclose to them. The Complainant is effectively looking to be compensated for the fact that the unauthorised transaction as it appears on his bank statement will likely lead his other financial institutions to discover the existence of the secret account and hence to discover that he previously failed to disclose his assets in full.

While I accept that the Provider wrongfully processed an unauthorised transaction between the Complainant's two accounts, I do not accept that there has been a breach of confidentiality in the present case. There has been no disclosure by the Provider of the existence of the second, secret account to any third party.

Firstly, the Complainant's account statements are personal and confidential to him and it is a matter for the Complainant to decide whether and to whom to disclose those statements. Secondly, the statement in question does not identify the 'secret' account as belonging to the Complainant; it merely shows a reversed funds transfer back to the 'secret' account number. The account statement narrative in and of itself does not associate the Complainant with the 'secret' account. Thirdly, I accept that it is already open to other financial institutions to conduct a search of the Central Credit Register and from there to discover the existence of the Complainant's secret account, which it seems has had an overdraft facility in place.

The Provider has at all times acknowledged its error in processing the unauthorised transaction. It is also acknowledged that the teller who processed the unauthorised transaction should have logged the incident as a complaint from the Complainant on 12 November 2018. It has apologised for both of these shortcomings. In terms of redress, the Provider initially offered the Complainant the sum of €75 in its final response letter dated 10 December 2018. In response to further telephone complaints by the Complainant, an improved offer of €150 was made by letter dated 18 January 2019 in respect of the Provider's service failure. The offered compensation was then raised to the sum of €600 and ultimately to €1,000 in response to the formal investigation of the complaint by this Office.

While I appreciate the Complainant's frustration with the situation that has arisen in respect of his account statements, I note that the Provider immediately rectified the effect of the transaction in question. In relation to the record of the transaction on the statements, the Provider has apologised for the fact that the transaction record cannot be removed from the statements and has now offered the sum of €1,000 in compensation to reflect this error and the fact that the initial complaint was not logged by the branch. In my view, this response is more than adequate considering that the effect of the transaction error was remedied so quickly and the complaint dealt with so speedily once logged after the Complainant's initial telephone call to the customer care team.

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As for the potential effect on the Complainant's other financial affairs, these are matters that it is simply not appropriate for this office to compensate the Complainant for. The Complainant has admitted to deliberately withholding relevant financial information in respect of his available assets, from another regulated financial service provider in an application for an alternative repayment arrangement (ARA) on his mortgage account.

While it is not the role of this Office to police the behaviour of customers, and indeed the Complainant has made it clear that he does not seek a lesson in morality, the Complainant is nevertheless asking this Office to compensate him for the likely discovery of a lack of good faith on his part, or indeed the discovery of what might be considered deception.

It is incumbent on me to note that customers are obliged to disclose their full financial affairs to regulated financial service providers when seeking forbearance under the Code of Conduct on Mortgage Arrears 2013. Providers are likewise expected to act in good faith. In this light, the potential loss of the ARA currently in place with the mortgage provider as a result of the transaction record on the Complainant's account, is not a matter that this Office can take into account in determining the appropriateness of the Provider's response to the complaint, the adequacy of offered compensation, or indeed the level of compensation that this Office might have directed if the Provider's response had been shown to have been inadequate.

I am satisfied that the Provider immediately reversed the effect of the unauthorised transaction in question. It has apologised for its error, and has further apologised for not initially logging the incident as a complaint, and has offered compensation to the Complainant which in my opinion, is commensurate to the errors that it made. I am therefore of the view that the Provider adequately responded to the Complainant's complaint and that it is not appropriate to uphold the present complaint. It will be a matter for the Complainant to contact the provider directly, if he wishes to accept the compensatory measure which it has offered to him.

Conclusion

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

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



**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

17 July 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.

