



<u>Decision Ref:</u>	2020-0271
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Cheques
<u>Conduct(s) complained of:</u>	Failure to provide notification /reason for closure Dissatisfaction with customer service Failure to process instructions
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant issued a cheque to a third party in **March 2019**. The Complainant was advised by the third party in **April 2019** that the cheque had been returned as *Payment Stopped*. The Complainant states that he did not give any instruction to the Provider to withhold payment on any of his cheques. Furthermore, the Complainant believes that the Provider should have notified him that his cheques were stopped.

The Complainant's Case

The Complainant refers to a letter of complaint to the Provider dated **30 April 2019** as containing the basis of his complaint to this Office. In this letter, the Complainant states that on **22 March 2019**, he issued a cheque to the third party. On **11 April 2020**, the Complainant received a telephone call from the third party and was advised that the cheque had been returned and marked *Payment Stopped*. The Complainant explains that he was *dumbfounded* and *embarrassed* by what had happened.

Following this, the Complainant contacted the Provider by telephone and was informed that *"... the cheque, with others, was cancelled by me."* The Complainant explains that *"[t]his was indeed news to me because I had certainly not give (sic) any instructions to cancel these cheques. Neither did I receive a letter from [the Provider] advising me of the cancellations."*

While in one of the Provider's branches the previous year on other business, the Complainant states that *"I enquired about my cheque book not having arrived as usual in the normal manner."* The Complainant outlines that he was anxious because he was going away and might not have enough cheques in his old cheque book. The Complainant submits that he was told not to worry as a new cheque book would be sent out in a few days.

Before stopping a cheque, the Complainant states that he would have thought that the Provider would have contacted him. The Complainant submits that *"... a cursory look at my account would have shown that person that there were more than adequate funds in my account to cover the cheque in question."* The Complainant states that he never gave any instruction to the Provider to cancel the remaining cheques in his cheque book and requested that the stop be removed.

On **14 May 2019**, the Complainant visited the Provider's branch and it was confirmed that the stop had been removed. The Provider's agent suggested to the Complainant that he must have put a stop in his cheque book. This was rejected by the Complainant and the Provider's agent *"... seemed to accept that and could not offer any proof that I did."*

The Provider's Case

The Provider explains that on **3 May 2018**, the Complainant attended one of its branches. During this visit, the Complainant stated that he had misplaced his cheque book. As the Complainant was unaware where his cheque book was, for security reasons the Provider's staff member suggested that a stop request be placed on the misplaced cheque book. The Provider's staff member also informed him that a new cheque book would issue to the Complainant.

In order for a *Stop* to be placed on the cheque book, the Provider requested the Complainant to complete a Customer Instruction Form. The form was completed and signed by the Complainant on the same day. The Provider placed a stop on the misplaced cheque book which consisted of cheque numbers 000241 to 000250. The Provider submits that at this point, the Complainant was on notice that the Provider would be cancelling the cheque book. The Provider also informed the Complainant that a new cheque book would be ordered and sent to the address held on file. The Provider advises that a cheque book was ordered, printed and posted on **4 May 2018**.

In respect of the cancelled cheques, the Provider states that on **23 March 2019**, the Complainant wrote a cheque payable to a third party in the amount of €150.00. The cheque number was 000241. On **11 April 2019**, the Complainant received a call from the third party advising that the cheque had been stopped.

On **30 April 2019**, the Complainant sent a letter to the Provider stating that he did not request that his cheque book be cancelled. On **9 May 2019**, one of the Provider's branch managers tried to contact the Complainant by telephone but was unsuccessful and a message was left for the Complainant to return the call.

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On **10 May 2019**, the Provider's branch manager made contact with the Complainant by phone and arranged for a meeting to take place to discuss the issues he had raised. On **14 May 2019**, the branch manager met with the Complainant who remained unhappy with the explanation that the cheque book had been stopped on his instruction.

In respect of the cheque book in question, the Provider states that this particular cheque book was issued to the Complainant on **24 April 2013** and contained 25 cheques. The cheques ranged in sequence from 000225 to 000250. The Provider states that the last cheque issued by the Complainant was cheque number 000240 in the amount of €60.00 on **3 May 2018**. This was prior to the stop being placed on the cheque book following the Complainant's confirmation that he had misplaced it.

The Provider states that it does not have any record of the Complainant confirming at any stage that he found the misplaced cheque book. Further to this, it is submitted that *"[i]t is noteworthy that the cheque at the centre of this complaint was written by the Complainant some 10 months after he instructed the Provider to [cancel it]."*

The Provider submits that it acted in the best interests of the Complainant and carried out an action based on his instruction as detailed in the completed Customer Instruction Form. The Provider states that it acted in good faith in placing the stop request on the remaining cheques in the misplaced cheque book which ensured that fraud could not be carried out in the event the cheque book was found by a third party.

The Complaints for Adjudication

The complaints are that the Provider:

1. Wrongfully and/or without authority stopped the Complainant cheques; and
2. Failed to notify the Complainant that his cheques had been stopped and/or cancelled.

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.

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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 6 July 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 made a submission under cover of his e-mail to this Office dated 9 July 2020, a copy of which was transmitted to the Provider for its consideration.

The Provider advised this Office under cover of its e-mail of 15 July 2020 that it had no further submission to make.

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

Attendance at the Provider's Branch

The Provider has furnished a statement of the staff member who dealt with the Complainant when he attended the Provider's branch on **3 May 2018**.

"[The Complainant] came into [the] branch, from memory I recall he may have been doing other business and whilst in branch he mentioned that he had mis-placed his cheque book. I provided the Customer Instruction form to [the Complainant] which he completed and signed. A stop was placed on the cheque book and I re-ordered a new one. The Bank can only put a stop on a cheque book on instruction from a customer. In this case I acted on the customer's instruction as he confirmed the cheque book was mis-paced [sic]."

Customer Instruction Form

A *Customer Instruction Form* dated **3 May 2018** and signed by the Complainant had been furnished in evidence by the Provider. This form contains the following instruction:

*"Cancel cheque from 0000241
Cheque book lost & re-order chq book"*

Statement of Branch Manager

The statement of the branch manager who dealt with the Complainant in respect of the cancelled cheque is as follows:

"I received a letter from [the Complainant], the letter was dated 30/04/2019, I tried to call [the Complainant] on the 9th and 10th May 2019 but there was no answer so I left [the Complainant] a message. [The Complainant] came in to meet me in [local] branch on the 14th May 2019.

I went through the explanation with [the Complainant] and showed him the customer instruction form that he signed to place a stop on his missing cheque book. [The Complainant] was unhappy with this explanation as he felt he did not ask for this book to be stopped and expressed his dissatisfaction. I then logged a complaint on our internal complaint system for this to be investigated."

Analysis

The Complainant issued a cheque dated **22 March 2019** in the amount of €150.00 to a third party. The number on this cheque was 0000241. He was informed by the third party on **11 April 2019** that the cheque had been returned and stamped *Payment Stopped*. The Complainant wrote to the Provider by letter dated **30 April 2019**.

Prior to receiving a response to his complaint, the Provider spoke with one of the Provider's agents in branch on **14 May 2019**. The Complainant submits that the Provider's agent was unable to explain why the cheque was stopped.

The Provider issued a Final Response letter dated **24 May 2019** wherein the Provider drew the Complainant's attention to the signed *Customer Instruction Form* dated **3 May 2018**. On his Complaint Form, the Complainant states:

"I have no recollection of signing the cancellation form but must accept I did."

The *Customer Instruction Form* contains a clear and unambiguous instruction to cancel the Complainant's cheques from and including cheque number 0000241 and to re-order a cheque book. While the Complainant does not recall signing the form, it nonetheless bears his signature and the authenticity of the signature is not disputed. The instruction to cancel cheques was given in **May 2018** and some ten months later, the Provider cancelled the recently drawn cheque (number 0000241) dated **22 March 2019**. I accept that this was clearly in line with the instruction contained on the form. Furthermore, there is no evidence to indicate that any contrary instruction was given to the Provider until **30 April 2020**.

In addition to the foregoing, I consider that it was not unreasonable to expect the Complainant to have been aware of the instruction signed by him to cancel his cheques and to issue a new cheque book.

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Accordingly, I am not satisfied that the Provider was required, in the circumstances of this complaint, to notify the Complainant that it had stopped payment in respect of cheque 0000241 nor do I consider it unreasonable for the Provider not to have done so.

The Complainant, in a post Preliminary Decision submission dated **9 July 2020**, has put forward that:

“There are just two points that I wish to make under the heading Point of Fact. I consider that a critical relevant fact does not seem to have been addressed.

The Bank failed to provide to you and me details of its policies concerning refusing payment on a cheque pleading commercial sensitivity. My contention is that such policy is flawed and detrimental to the customer. Also was any weight given to the offer of a €50 voucher which in my view constitutes an admission of blame”.

In circumstances where the Complainant directed the Provider to cancel the cheque, I do not believe the Provider’s policy would assist my adjudication of the complaint. Furthermore, I do not consider the offer of a voucher or any goodwill gesture offered in an attempt to resolve a dispute to be an admission of blame.

Therefore, 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 August 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.

