



<u>Decision Ref:</u>	2020-0291
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Banking Online Facility
<u>Conduct(s) complained of:</u>	Handling of fraudulent transactions Dissatisfaction with customer service
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint is made by the Complainant Company (“the Complainant”) regarding the Provider’s handling of a disputed payment from its account with the Provider.

The Complainant’s Managing Director (the “Complainant’s Representative”) has pursued the complaint with this office on the Complainant’s behalf. He states that at 1.41pm on Thursday 21 July 2016, an employee of the company received what she believed to be an email from the Complainant’s Representative, requesting that a payment in the amount of €9,380 be made to a third party. He says that the employee received a further email, again appearing to come from him, at 2.22pm on that same day, providing the bank details for the third-party payee. The Complainant’s Representative says that the transfer of funds in the amount of €9,380 was processed by the employee concerned at 2.32pm that same day.

The Complainant’s Representative says that following a further email, from the perpetrator of the fraud, at 3.01pm on 21 July 2016, the employee concerned realised that the transaction was fraudulent in nature when, on attempting to reply to the email, the true identity of the sender was revealed. The Complainant’s Representative states that the employee concerned made a number of unsuccessful attempts, throughout that afternoon, to contact the Provider in order countermand the payment. The Complainant’s Representative expresses dissatisfaction with the responses received from the Provider, which are set out in detail in the Complainant’s submission to this Office dated 8th August 2016. In its submissions to this Office, the Complainant’s Representative argues that the effect of the fraud could have been prevented if it had been possible to make contact with the Provider, to notify it of the fraud and to request that the transfer be stopped or recalled, in a timely manner.

The submissions furnished to this Office, including copies of emails between the Complainant and the Provider, show that the Provider has declined to accept responsibility for processing the fraudulent payment at issue in this complaint. In its Final Response Letter dated 19 October 2016, the Provider explains that transactions such as the disputed transaction in the present complaint are “irrevocable”. It says that it, “acted in good faith” and does not accept responsibility for processing the fraudulent transaction.

The Complaint is that the Provider wrongfully failed to have adequate systems and resources in place to permit the Complainant to contact it to notify it of the fraud and to request that the fraudulent transfer being processed from the Complainant’s account with the Provider be stopped or recalled on a timely basis, resulting in a loss to the Complainant of €9,380. The Complainant’s Representative states that the Complainant, therefore, holds the Provider responsible for the loss sustained.

The Complainant’s Case

The Complainant’s case is reliant on two lines of argument. The principal line of argument is that the Provider’s systems and resources were not adequate or sufficiently robust to permit the successful recall of the payment. In this regard, the Complainant’s Representative asserts in its submission dated 11 January 2019 that:

“It took a full 4 hours to get through to someone who could stop the payment – despite the employee’s consistent efforts by phone and email – by that time it was too late”.

The Complainant’s Representative argues that, through the efforts of the employee concerned, everything within the Complainant’s power was done to contact the Provider during the afternoon of 21 July 2016.

The Complainant’s Representative has furnished this Office with a detailed timeline of events, as they happened, on the afternoon of 21 July 2016, which is reproduced in summary form below.

*“Received an email from Managing Director on the 21st July 13.41pm requesting a payment to be processed for the amount of €9,380.00
Replied to email at 13.49pm requesting full banking details
Full banking details were furnished to me through an email from Managing Director at 14.22pm
Transfer was processed on the 21st July @ 14.32 for the said amount
On emailing the confirmation of the transfer I discovered the name of [named individual] – thus realising it was a fraudulent email – the confirmation of transfer email was not sent
I received another email @ 15.01pm wanting to know had transfer being sent
On discovering the fraud I tried to ring the [Provider’s business banking section] and was left holding for 30mins – I then tried to ring the [Provider’s branch] but to no avail here also –*

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I tried and left messages with our account manager on three occasions and sent her an email to contact me urgently eventually made contact at 16.11pm – I sent her by email the fraudulent emails that we had received with the confirmation transfer attached. She rang me at 17.23 with the [Provider’s] fraud number. I rang the fraud number [xx-xxxxxx] and was told they only deal with debit/credit cards – explained the situation and after a long interval they transferred me to a [named employee] who put me on hold again to transfer me to a leader in the [Provider’s business banking section].”

The Complainant’s Representative argues that this response was not what would reasonably be expected from a financial service provider when it is informed that a fraud is being perpetrated and, that it represents a failure to facilitate taking timely action to prevent the fraudulent transaction being completed.

The second line of argument is that the Complainant’s employee who processed the payment at issue was “duped” into making it, and was the victim of a “sophisticated trick”.

The Complainant’s Representative contends that the ‘trick’ was such that a reasonable person would have executed the payment, believing that the instruction had come from the managing director of the company for which she worked and from whom the email appeared to have come.

The Provider’s Case

The Provider argues that the Provider’s employee effected the disputed payment using its on-line facility and that adequate warning was given, prior to confirming authorisation of the payment, that a check on the validity of the instruction to pay a third party should have been made by telephone.

The Provider has drawn attention to the terms of the Complainant’s account and to those terms applicable to the making of electronic funds transfers.

Specifically, it relies on the message that appears on the computer screen when an account holder makes an electronic transfer of funds, such as in the present case. The wording of that disclaimer is:

“We strongly recommend you verify payee details directly with your payee. Do not act solely on any emails, letters, pop-ups or phone calls you receive. Ask an existing contact in the company to confirm any payee changes with you directly”

The Provider relies also on the provisions of the Payment Services Regulations 2009. In that context it argues that the payment was, as matter of undisputed fact, authorised by the Complainant’s employee and, notwithstanding what the Provider says were its “best efforts” to recall the payment, it was not successful in doing so.

The Complaint for Adjudication

The complaint is that the Provider wrongfully failed to adequately respond to the Complainant's attempts to notify it of a fraudulent transaction and to recall that fraudulent transfer being processed from the Complainant's account with the Provider, resulting in a loss to the Complainant of €9,380.

The Complainant holds the Provider responsible for the loss sustained, and seeks to have the Provider refund the amount of the disputed transaction.

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 **31 July 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, within the period permitted, the final determination of this office is set out below. The issue to be determined is whether the level of service provided to the Complainant on the afternoon of 21 July 2016 was of an adequate and acceptable standard.

The Complainant's Representative has furnished a detailed timeline of the actions its employee took to make contact with the Provider in order to notify it of what had happened, and to seek its assistance in trying to stop the transfer or recall the transfer of funds. That timeline is supported by the telephone records. The Provider has not challenged those telephone records, nor has it been able to explain the difficulty the Complainant's employee had in contacting the Provider that same afternoon.

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In the interest of clarity, and given the importance of what took place during the short window of opportunity that was available to take corrective action, to prevent the completion of the fraud, I consider it important to set out the timeline of events distilled from the parties' submissions and evidence including the Complainant's telephone records.

Timeline of events during the afternoon of 21 July 2016

- 13.41 Initial email from perpetrator of the fraud to Complainant's employee
 - 13.49 Complainant's employee replies, requesting full bank details for payment
 - 14.22 Bank details received by Complainant's employee from fraudster
 - 14.32 Payment authorised**
 - 14.46 Complainant's employee makes first unsuccessful attempt to contact Provider on 1890 number
 - 14.48 Complainant's employee telephones Provider's branch
 - 14.53 Complainant's employee telephones Provider (Referred to by the Provider)
 - 15.00 Complainant's employee telephones Provider's branch
 - 15.01 Further email from fraudster enquiring if payment made
 - 15.03 Complainant's employee telephones Provider's branch
 - 15.05 Complainant's employee telephones Provider (Referred to by the Provider)
 - 15.26 Complainant's employee telephones Provider's business banking service – on hold for 22 minutes - did not speak with agent
- [It appears that the following calls to other Provider numbers were happening at the same time]
- 15.27 Complainant's employee telephones Provider's branch
 - 15.31 Complainant's employee telephones Provider's branch
 - 15.33 Complainant's employee miss-dials Provider phone number
 - 15.34 Complainant's employee attempts to contact Provider (Central)
 - 15.39 Complainant's employee emails Provider's branch regarding the fraudulent payment instruction
 - 15.51 Complainant's employee telephones Provider (Referred to by the Provider)
 - 15.56 Complainant's employee telephones Provider (Central)

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- 16.11 Provider's branch made unsuccessful attempt to contact Complainant's employee. Email sent to Complainant's employee to inform her of availability
- 16.11 The time that the Complainant's employee suggests that copies of emails relating to fraud were sent to Complainant's relationship manager in Provider's branch
- 16.17 Complainant's employee telephones Provider (Central)
- 16.18 Complainant's employee telephones Provider (Central)
- 16.20 Complainant's employee telephones Provider's branch
- 16.22 Complainant's employee telephones Provider (Referred to by the Provider)
- 16.37 Provider indicates that it received email from Complainant with copies of emails relating to fraudulent transaction
- 17.00 **Cut-off point to ensure transfer is effective within 24 hours**
- 17.23 Provider's relationship manager emails Complainant's employee and provides her with 'fraud number' after which Complainant's employee contacts the 'fraud number' to be advised that it could not deal with the matter
- 18.12 Initial telephone contact with business banking section
- 18.15 Provider's employee asks the Complainant's employee to *"bear with me just a few moments, I'll check with a colleague of mine"*
- 18.29 The time when the call appears to be picked up, after transfer from earlier conversation. (It was during this telephone conversation that the recall process was initiated.)

It should be noted that some of those calls appear to have been of a very short duration and where the Complainant's employee is not likely to have spoken to anyone who could have been of assistance. This inability of the Complainant's employee to locate someone within the Provider, who could have taken action shortly after the discovery of the fraud behind the transfer of funds, and the mis-direction by the Provider's branch official to its fraud team, were raised with the Provider during the first successful telephone call which took place between the Complainant's employee, on the evening of 21 July 2016.

Subsequently, these issues were raised again during the lengthier telephone call between Provider and the Complainant's Representative on 11 August 2016. In my opinion, on neither occasion was an adequate explanation given by the Provider for the inability of the Complainant to make contact successfully by phone, during the afternoon of 21 July 2016.

The evidence shows that the Complainant's employee attempted to contact the Provider's relationship manager in the branch where the Complainant hold its accounts, by

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telephone, without success. There appears also to have been email contact, with delays arising here too, in circumstances where the Complainant's employee has said she had forwarded copies of the fraudulent emails to the Complainant's relationship manager.

I consider it important to note at this juncture that there was a very short window of opportunity to effect a 'stop', 'recall' or other intervention, that might have prevented the completion of the fraud. The Complainant's employee's first attempt to make telephone contact with the Provider was at 14:46, so there was effectively it seems, 2 hours and 15 minutes available within which the Complainant Company could have successfully instructed a "stop", if not the full cancellation of the transaction.

During a telephone call between the Complainant's employee and the Provider, on 21 July 2016 at 6.12pm, a recording of which was furnished to this Office by the Provider, the Complainant's employee noted that, "I've been hanging on there for 20 minutes". That employee of the Provider did not address the delay and transferred the Complainant's employee to another employee which transfer, on the basis of the call recording information, appears to have taken approximately a further 15 minutes.

The final person with whom the Complainant's employee spoke, within the Provider's business banking unit, discussed the matter with her for just under 9 minutes, during which the matter of the difficulty getting in contact with the Provider was addressed as follows:

Complainant's employee: Yeah, because I've been trying to get [business banking] [name] all day today,

Provider's employee: OK, yeah,

Complainant's employee: I've just been on hold all day trying to get [business banking],

Provider's employee: Yeah, with [business banking]?

Complainant's employee: Yeah

Provider's employee: OK, we haven't been that busy today, em..

Complainant's employee: Well, I've rang and was 30 minutes on hold [name]

Provider's employee: Yeah, was that the service desk, the customer service desk?

Complainant's employee: Yeah

Provider's employee: Ok, the number for [business banking], I can give you that number now so you'll have it,

Complainant's employee: Hold on a sec ... it's the number I used for, you know, on the system, on the [business banking] system, the one I usually use, yeah, Ok

Provider's employee: It's [1890 number]? That number? That's our [business banking] desk number,

Complainant's employee: Yeah, say that again [name]

Provider's employee: [1890 number], so any [business banking] queries, it'll be that number

Complainant's employee: That's the number I rang [name]

Provider's employee: It is? Ok, what time did you ring it at?

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Complainant's employee: I rang it as soon as, I seen, was given back the email, so it went from 3 o'clock onwards

Provider's employee: Ok, ok, em ..what we'll do is put a recall on it, but it will be on a best effort basis but we will keep you updated."

[It is noted that the reference by the Complainant's employee to "all day" is inaccurate]

The Complainant's Representative does not complain that the Provider was in any way negligent after the Complainant's employee spoke with the Provider's [business banking] employee at 6.29pm on 21 July 2016.

The Provider has, in its response to the complaint, focussed on its reasons for refusing to refund the amount of the fraudulent transaction to the Complainant, rather than addressing the specified complaint, which concerns the Complainant's inability to make the necessary contact with the appropriate section within the Provider's business, during the afternoon of 21 July 2016.

While this may be understandable in view of the Complainant's Managing Director having made it clear in his submissions that he holds the Provider responsible for the loss incurred, this was not the primary focus of this complaint. The nature of the complaint was made clear during the telephone call between the Provider and the Complainant's Representative on 11 August 2016, being the length of time it took, during the afternoon of 21 July 2016, for the Complainant to be able to engage properly with a section within the Provider's business, which could properly deal with the matter. The Complainant says that by the time contact was made with the appropriate section within the Provider's business, it was effectively too late to stop the fraudulent transfer because:

1. The Complainant's employee got to speak with the appropriate person only at 6.12pm, after the relevant cut-off time, apparently 5.00pm, had passed
and
2. The section within the Provider's business dealing with SEPA recalls had closed for the evening and it was not possible to attempt the recall until the following morning.

In its response also, the Provider does not dispute the efforts made by the Complainant's employee to contact the Complainant's branch, the fraud team or the [business banking] section. However, it has not offered any explanation for the inability of the Complainant's employee to be able to make contact with any of the sections in question.

The Provider's employee with whom the Complainant's Representative spoke on 11 August 2016, sought to rule out the possibility of there having been the delays in getting through to that section, during the afternoon of 21 July 2016.

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In that regard, the following excerpt from the telephone call can be noted:

“Provider’s employee At the time [the named employee] called us it was, em, the payment was already processed and sent.

Complainant’s Representative Ah, what time was that? Did that happen at?

Provider’s employee Give me a second, it was around 6 o’clock on the 21st

Complainant’s Representative 6pm, Ok, she had been trying to get through to [the Provider] since 2.15pm,

Provider’s employee Ok,

Complainant’s Representative Right so, I’m just trying to establish, you know, how come we failed to stop it going out and, certainly I know [the employee] had considerable difficulty getting to speak to somebody, getting any kind of verification, so really what’s happened here is we didn’t get it stopped in time. Is that correct?

Provider’s employee To be honest, I don’t know how long [the employee] was holding for.

Complainant’s Representative She has a complete record, with the timelines and the whole lot

Provider’s employee That’s ok, so yeah, basically, because it was after 6pm when I spoke to the employee...

Provider’s employee You know, we have had busy periods here in the help desk, but going back to 21 July I would have thought all our issues would have been rectified...

Complainant’s Representative But you know, I tried myself, I was on the following week, I tried myself on Monday, sorry on Tuesday to phone the number, your number that I was given, the [OXX], and I tried it three or four times, it was constantly engaged, I got on to my manager, my line manager in the branch, she gave a number for credit card and debit card fraud, I rang it, eventually they said, oh, we only, you’re on to the wrong department.”

[It is noted that the Complainant’s Representative’s reference to “2.15 p.m.” is in fact also incorrect]

It is not disputed by the Provider that the Provider’s relationship manager in the branch where it holds its accounts, indicated to the Complainant’s employee that she should contact the fraud team and furnished her with that particular contact number, though this division was in fact unable to assist the Complainant’s employee, as it does not deal with SEPA transfers. It is clear from the telephone call on 11 August 2016 that when the Complainant’s Representative had difficulty getting through to the [business banking] section, the Provider’s business relationship manager in its branch again directed him to the fraud team, where again he was informed that the fraud team deals only with debit and credit card fraud.

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The Provider, in setting out its timeline of events that afternoon has not included any indication that the Complainant was put in contact with the fraud team and was actually transferred from there to the [business banking] team. Rather, the Provider's timeline moves directly from the email from its branch at 5.23pm, in reply to the Complainant's email at 4.37pm, to the time when the Complainant's employee first spoke with the business banking section, which then transferred her to the Provider's employee who eventually set the recall process in train.

It is also clear from the audio evidence furnished by the Provider that the call at 6.12pm on 21 July 2016, is the one during which the Complainant's employee had been transferred to that section and had (according to herself) been waiting for that transfer for some 20 minutes.

I am satisfied that the level of service made available to the Complainant during the afternoon of 21 July 2016, fell well below what the Complainant was entitled to expect; the Complainant required urgent access to help from the Provider, as a fraud had been identified by the Complainant's employee within some 15 minutes of the electronic funds transfer having been authorised, and there was an urgent need for swift action to prevent the funds being transferred out of the account.

There were 135 minutes remaining within which that transaction could have been cancelled and I note that the Complainant's employee pursued the matter assiduously through all available channels, throughout that afternoon. I can fully understand how frustrating it must have been for the Complainant's employee in those circumstances to be unable to contact the Provider in order to instruct a "stop", in order to successfully halt the fraud, in its tracks. Bearing in mind the very poor level of service made available by the Provider to the Complainant throughout that afternoon, I am satisfied that it is appropriate to uphold the complaint.

I have noted the assertion by the Provider that once made, the transfer was irrevocable. It is clear from the telephone call on 11 August 2016 that the Provider accepts that there are, in fact, three grounds on which a SEPA payment (as the disputed payment was) can be recalled. One of those three reasons is the existence of a fraud, something that is not in dispute in the present circumstances.

The Complainant's Representative does not dispute the fact that the transfer was validly authorised, even if its authorisation was as a result of a "*sophisticated trick*". He does, however, "*hold the Bank responsible*" for the failure to prevent the transfer for the reasons dealt with above. In making this assertion, the Complainant submits that;

"... the systems are not in place to allow the reporting of a fraud in a timely fashion so as to prevent the loss of funds from your client's account".

In its submission, the Provider has submitted that the cut-off point, to ensure payment is received within 24 hours of being authorised, is 5.00pm. The Provider does not accept that a payment made on a given day can be stopped. It argues that, once authorised, the

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transfer must proceed. While the Provider submits that once authorised, payment instructions are irrevocable, it accepts nevertheless, as noted above, that in the event of fraud, such a transaction can be recalled within 10 days, as per the SEPA rules.

I have considered the evidence, in particular the content of the telephone call between the Complainant's Representative and the Provider on 11 August 2016 when the Provider's employee, in responding to the Complainant's Representative, described the outcome of a recall in the following terms:

"So what happens then is, once the foreign bank receive it, they will freeze the account and they will freeze any funds that are left in that account ... now how these fraudsters work, these are professionals so usually when the funds hit the account they will withdraw all the money, they may leave €5 or so, so to not raise any suspicion."

It seems therefore that, where a fraud is detected, notified to the Provider, and a 'stop' or 'recall' is requested before the 5 p.m. cut-off point, on the same day as the payment is authorised, this results in the payee bank being notified and in all likelihood taking the action described by the Provider's employee, *i.e.* freezing the payee account to prevent the dissipation of the funds in question, so that they can be returned to the payer's bank, once satisfied of the facts.

It follows therefore, that the earlier a 'stop' or 'recall' is placed on the transaction, and the earlier the payee bank is notified, the greater is the chance of preventing the completion of the fraud. It does not guarantee a successful outcome for the victim of the attempted fraud, but I am satisfied that it certainly very considerably enhances the chances of success.

It would seem unlikely that a provider would permit such a transfer of funds, without making an effort to 'stop' or 'recall' it, at the earliest opportunity, only to then put a recall in place, *"on a best efforts basis"* the following day or within ten days, without having informed the payee bank of the fraud and requested that it take some action to prevent the dissipation of the funds, such as freezing the payee account.

Therefore, I am satisfied that whatever avenues existed on 21 July 2016, to prevent the completion of the fraudulent transaction, if the Complainant's employee had been in a position to successfully contact the Provider in the time between the discovery of the fraud at 14.45, and the cut-off point at 17.00 (which coincided with the end of normal business hours) her inability to do so greatly impacted the possibility of preventing the completion of the transaction, and the ensuing fraud.

For the reasons outlined above, I am satisfied that the Provider, in this instance, failed in its customer service obligations to the Complainant at a time when the Complainant needed urgent access to its services, and for that reason, I consider it appropriate to uphold this complaint. In circumstances however where the fraudulent payment was validly authorised, it would be unreasonable, in my opinion, to hold the Provider

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responsible for the entirety of the loss, and to therefore require it to refund the full amount of the loss in question.

For that reason, I consider it appropriate to direct the Provider to make a compensatory payment to the Complainant Company in the amount of €6,000, in recognition of the customer service failures on its part in its dealings with the Complainant in the immediate aftermath of the discovery by the Complainant, that there was a fraud at the heart of the transaction it had authorised, some minutes earlier.

I also consider it appropriate to recommend that the Provider fundamentally review the manner in which it makes its services available to its customers, to take account of the incident which gives rise to this complaint. Online fraud is a significant issue and the incident giving rise to this complaint is unlikely to be an isolated one. In my opinion, the Provider should have systems in place which facilitate contact in such urgent circumstances, as the difficulties encountered by the Complainant Company in this instance, in making contact with the correct division of the Provider, are simply not acceptable.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is 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 **€6,000**, 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.



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

3 September 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.

