



<u>Decision Ref:</u>	2020-0304
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Money Transfer (between accounts/between banks/3rd
<u>Conduct(s) complained of:</u>	Maladministration Dissatisfaction with customer service
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

In or around **2011**, the Complainants entered into an arrangement with the Provider and MABS whereby monthly lodgments of €280 would be made to the First Complainant's specified account with Provider. The Provider would then transfer this money to MABS which would use it to pay the Complainants' various creditors. The Complainants maintain that the Provider lodged their money into the wrong account on two separate occasions resulting in no funds being available to MABS to pay their creditors.

The Complainants' Case

The Complainants explain that they agreed to make repayments in respect of their creditors with the assistance MABS from **May 2011** through their account held with the Provider.

In **December 2015**, the Complainants lodged money to their specified account, as they believed, but the Provider lodged it to the incorrect account. When MABS sought to disburse funds from the Complainants' account, there were no funds available to do so.

As one of the Complainants' creditors was not paid, it forwarded the Complainants' loan account to a debt collector. The Complainants explain that they have been "*Blacklisted*" and their finish date under the BPFPI Protocol in respect of this loan has been moved from **2018** to **2022**.

The Complainants state that even though no payments were missed by them, the Provider provided paperwork admitting its mistake.

In resolution of this complaint, the Complainants wish to be placed in the position they would have been in had the mistakes not occurred:

*“- [The debt collector] paid off total €16334.14 as of June ‘18
- Our names to be removed from Blacklisting and if not compensation to suit.”*

The Provider’s Case

MABS arrangement

On **24 May 2011**, the Provider received a letter from MABS advising it that the First Complainant had approached their services with regard to his financial difficulties.

The Provider explains that there is a long standing relationship with MABS whereby the Provider facilitates the collection of monies for MABS from their clients by allowing customers to lodge money to their accounts which the Provider then transfers to MABS on their behalf. On receipt of those monies, MABS transfers a portion back to the Provider in respect of the Complainants’ loan with the Provider.

On a monthly basis, MABS submits a list of their clients, making a request for various amounts of money relevant to each customer to be sent to them. The Provider withdraws the money from the particular account and lodges it into a MABS account via a machine in the Provider’s branch.

Quick pay system

The Complainants made payments directly through the Provider, sometimes over the counter and other times via the Provider’s Quick Pay machine. The quick pay system afforded customers an opportunity to lodge money if its branch was too busy, by completing a docket and including it with their deposit in an envelope. The contents of the envelopes are collected by two members of staff and lodged to the respective accounts.

Delayed repayments

The Provider has explained that it was aware of a double repayment in **January 2016** but it was not previously aware of a double repayment in **March 2017**.

In relation to the **December 2015** missed payment which was subsequently doubled up on in **January 2016**, the Provider *“... can and have already confirmed this was created by a human error in [the Provider].”* The Provider advises that the error occurred when a lodgment made by the Complainants, via the quick pay system was inadvertently lodged directly to their loan account instead of to the specified account used to pay MABS.

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Subsequently, when MABS made their monthly request for funds, there was an insufficient balance in the Complainants' account to do so. The Provider explains that the error was brought to its attention by the Complainants and was corrected with a double payment to MABS in **January 2016**.

A letter of apology was issued to the Complainants and accompanied by a letter of explanation for the Complainants to provide to their creditors if necessary. The letter also offered the recipient the option of contacting the Provider for any further clarification or explanation.

The Provider remarks that while the Complainants expressed their concerns about the missed payment, the matter was not raised again for some two years, until **July 2018**.

In terms of the double repayment in **March 2017**, the Provider states that having investigated the matter, it has evidence to show that payments to MABS were made on the Complainants' behalf in **February 2017** and **March 2017** in full and on time.

The Provider refers to account statements from the creditor and collection company, and it observes that these show the double payment for **January 2016** and that all other transactions since then have been made on time. A second double payment is seen in **March 2017** and is marked as 'no issue' on the MABS statement which was furnished by the Complainants.

Reporting of Arrears (referred to by the parties as "Blacklisting")

When the transaction error was brought to the Provider's attention, one of the Complainants' creditors was contacted. This creditor informed the Provider that the loan in question was now with a collection company. The creditor explained that if the Complainants contacted the collection company, that company would make the same arrangements that the Complainants had with the creditor.

The Provider advises that it could not progress matters further as the creditor or collection company would not discuss the Complainants' account with it. During the Provider's investigation of the matter, when the Complainants eventually gave their consent for the Provider to discuss the account with the creditor and the collection company, the Provider posed two questions to the collection company. Firstly, it sought to establish whether the delayed payment of **December 2015** had been the direct cause of the Complainants' loan being transferred from the creditor to the collection company. Secondly, it sought confirmation as to whether the missed payment had caused the Complainants to be "blacklisted".

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The Provider refers to a written response from the collection company in **November 2019**, which advised that the Provider was not the cause of the Complainants' account being reported to the Irish Credit Bureau, as being in arrears.

Refusal to provide written consent

The Provider submits that from the outset of this complaint, it has been inhibited in its investigation by the fact that it was prohibited from communicating directly with the third parties involved. The Provider states that it failed to understand the Complainants' reluctance to allow it to communicate with the third parties as its only intention was to assist the Complainants in resolving their issue. It says that to progress the complaint, without receiving particular pieces of information or confirmation from the parties involved, impaired the Provider's ability to inform and make adequate responses.

Eventually, the Provider received the Complainants' permission through this Office to communicate with the creditor and the collection company. The Provider submits that it is at a loss to understand why permission to communicate with MABS was denied.

The Provider outlines that a number of points including more detail on the suggested second missed payment and the details of the agreement between MABS and the creditor in relation to the BPF/MABS Protocol, would have been beneficial to its investigation.

BPF/MABS Protocol

In relation to the claim that the Provider was the sole cause of the Complainants losing out on the BPF/MABS Protocol, the Provider submits that "*... we cannot be conclusive about this.*" The Provider was denied access to discuss the Complainants' account with MABS, making it very difficult for the Provider to establish facts in full. The Provider refers to correspondence between MABS and the collection company, wherein MABS requested that the collection company work with the Complainants under the Protocol. In response, the Complainants' request was denied due to missed payments. However, it does not refer to the single missed payment in **December 2015**.

The Complaint for Adjudication

The complaint is that the Provider lodged the Complainants' funds into the wrong account on two separate occasions, thereby causing significant inconvenience and loss.

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 Complainants were given the opportunity to see the Provider's

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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 **27 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.

Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

The December 2015 Lodgment Error

The account statements for the First Complainant's loan account with the Provider show that on **4 December 2015** a lodgment of €280 was made. The next transaction on the account was a withdrawal of the same amount on **12 January 2016**. The account statements for the specified account with the Provider, while showing a series of €280 lodgments and withdrawals, show no such transactions for **December 2015**. However, €280 was lodged twice to this account in **January 2016**. I note that the collection company's account statement dated **26 September 2019** shows that a payment was missed in **December 2015** and that a double payment was made in **January 2016**.

Following this, the Provider wrote to the First Complainant on **25 February 2016** explaining:

"Further to our recent conversation about a lodgement made through our Quick Lodgement facility on 4th December 2015. We apologise for not lodging this to your [specified] account for distribution to MABS.

We have made enquires with [the creditor] with regard to your loan being transferred to [the collection company] however they could not discuss your account with us. They did however speak in general terms to us about loans being transferred to [the collection company] and said that if you could get your MABS advisor to get in touch with [the collection company] they will make the same arrangement with you as you

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had with [the creditor]. We enclose a letter confirming the receipt of the funds on 4th December 2015.”

The enclosed letter states:

“We confirm that on the 4th December 2015 we received a lodgement from [the First Complainant], however it was lodged in error to his loan account. This resulted in a delay in distributing this money to MABS.

Should you require any further clarification concerning this please do not hesitate to contact me.”

BPFI/MABS Protocol

It appears that MABS wrote to the collection company on **15 June 2018** requesting that it engage with the Complainants under the Protocol:

“We refer to the operational protocol which was completed between the BPFI and MABS in early 2015 of which [the creditor] is a signatory. In that regard we would specifically refer to Part 2.1(f) thereof, which acknowledges debt settlement as a central concept. We would greatly welcome a chance to work with you using the principles of the protocol. In light of the circumstances there is very little reality to this debt being cleared in full within an acceptable timeframe from both your and our client’s point of view.”

The collection company replied on **20 June 2018** advising:

“Please note, we are unable to consider this account under the BPFI/MABS Protocol due to missed payments on this account.”

By way of response dated **28 June 2018**, MABS wrote:

“Our records show no missed payments on this account since July 2011. ...”

The Provider wrote to the First Complainant on **10 July 2018** referring to a meeting between the parties on **5 July 2018** as follows:

“I refer to the copy of the letter you gave me from [the collection company].

Could you please provide full details of the offer MABS made to [the collection company] on your behalf, and full details of the refusal under the BPFI/MABS protocol...”

The Complainants responded to this letter on **13 July 2018**, outlining their position as follows:

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"... Unfortunately [the Provider] on two separate occasions lodged our MABS payment into the wrong account so when MABS requested the payments to send to our debtors on the face of it we never made the lodgement.

As part of the deal MABS got us with [the creditor] we could not miss any payments once they didn't receive the payment they passed [our] loan to a company called [the collection company] who are basically a debt collection company who proved extremely difficult to deal with.

MABS have recently approached [the collection company] to avail of a BPF1/MABS protocol which when clients of MABS have paid over 7 years they are entitled to get an end date to their loans. Ours should have been in 3-5 years but because we show up on their system as having missed 2 payments we have been refused. ..."

Following a further exchange of correspondence and meetings, the Provider wrote to the Complainants on **1 October 2018**:

"You indicated your willingness for [the Provider] to communicate with MABS, [the creditor] and [the collection company] in respect of your loan account which is now with [the collection company].

If you are still happy for us to try to communicate with these institutions could you sign the attached letters of authorisation."

In an undated response, the Complainants advised the Provider that:

"Following our last meeting and your request for access to our accounts with MABS, [the collection company] and [the creditor] we have consulted with MABS and the Financial Ombudsman and have decided not to give you access as we have provided all relevant paperwork for our complaint ..."

Correspondence from the Creditor

The creditor wrote to the Complainants in respect of their loan on **17 September 2018** stating:

"From February 2015 you had agreed a 12 month repayment plan with our collections & recoveries team in which there would be monthly direct debits of €25. We had received the agreed repayments of €25 until December 2015, when a payment of €25 was missed. I can confirm in January 2016 we received a double payment of €50 to cover December and January, but as the 12 repayment plan had been broken the loan was subsequently transferred to [the collection company] ..."

Correspondence with the Collection Company

The collection company wrote to the Provider on **26 September 2019** enclosing a statement of account in respect of the First Complainant. The letter advised the Provider as follows:

“As per our letter issued to your client’s authorised third party dated 10/10/2018, based on the current consistent payments from June 2015 at €158 Monthly, our client will be willing to review the account under the MABS BPII protocol in June 2022. ...”

The collection company wrote to the Provider on **4 November 2019**, in response to certain clarifications sought by the Provider:

“The customer missed all loan repayments of €599 per month with the customer only paying €150 per month. The customer has been in arrears since 2009. The missed December 2015 payment was not the cause of the customer’s account being reported in arrears to the Irish Credit Bureau as the account had fallen into arrears before this date.”

Analysis

It appears that the First Complainant had an arrangement in place with the Provider whereby he would make monthly lodgments of €280 to a specified account, to facilitate the transfer of funds to MABS for the purpose of making various payments to the Complainants’ creditors. The First Complainant also held a loan account with the Provider which was serviced by the disbursements being made by MABS, through this arrangement.

The first missed payment

As acknowledged by the Provider, I am satisfied that an error was made by the Provider by lodging the Complainants’ deposit of €280 to the First Complainant’s loan account instead of to the specified account in **December 2015**.

This resulted in no funds being available to MABS in **December 2015** to make the pre-arranged payments to the Complainants’ creditors. I note that this error was rectified in **January 2016** through the reversal of the **December 2015** lodgment.

The second missed payment

The Complainants maintain that the Provider is also responsible for an incorrect lodgment of €280 to the loan account in **February 2017**, which resulted in missed payments to their creditors. I note that the collection company account statements show that no payment was received for **February 2017** and two payments were made in **March 2017**.

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The First Complainant's loan account statements show that a lodgment of €280 was made on **6 February 2017** to the loan account, followed by a withdrawal of €280 a week later on **13 February 2017**. The account statements for the First Complainant's specified account show that lodgments of €280 were made on **3 January 2017**, **13 February 2017**, **3 March 2017** and **4 April 2017** with corresponding withdrawals of €280 made in each of those months. I note that there are no *double lodgements* similar to that which occurred in **January 2016**.

The Provider has also furnished a *Withdrawal Sheet* dated **14 February 2017** showing payments made to MABS which includes a payment made in respect of the First Complainant in the sum of €280.

The Complainants have submitted two quick lodgment slips for their specified account held with the Provider. One is dated **6 February 2017** and the second is dated **3 February 2018**. These "Quick Lodgement" slips noted as "*Lodgements – Subject to Verification*", have not been stamped or completed by a Provider's teller. The Complainants say that this is because when using this system "*you put the money and a copy of the lodgement slip into an envelope and keep the other copy of the lodgement*".

Having considered the evidence in this complaint, I am not satisfied that the Provider is responsible for and/or caused the Complainants to miss their **February 2017** loan repayment to the collection company. The evidence demonstrates that the normal monthly lodgment was made to the First Complainant's specified account and the corresponding withdrawal/payment to MABS was also made. Whilst the circumstances surrounding the lodgment and withdrawal on the loan account in **February 2017**, remain unclear, I am not satisfied this caused and/or contributed to the Complainants' missed loan repayment.

Consequences of the missed repayment

The correspondence from the creditor dated **17 September 2018**, shows that the missed payment in **December 2015** broke the chain of repayments on the Complainants' repayment plan and this was the reason for the transfer of the Complainants' loan to the collection company. I accept this to be the case.

In terms of the Complainants' application pursuant to the BPF/MABS Protocol, MABS wrote to the collection company on **15 June 2018** requesting that it work with the Complainants under the Protocol. The collection company refused to do so, due to missed payments on the Complainants' loan account.

The Complainants' loan account has been in arrears since **2009** with only partial payments being made. Further to this, I am satisfied that the Complainants have missed a number of payments in respect of the loan and only one of these missed payments was caused by the Provider in **December 2015**. Subsequent to this, a further missed payment occurred in **February 2017**. As a result, I am satisfied that the missed payment for which the Provider was responsible contributed to the collection company's refusal to work with the Complainants under the BPF/MABS Protocol in **June 2018**. In my opinion however, this contribution was not as significant as the Complainants believe.

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I am not satisfied, based on the evidence, that the Provider's error necessarily delayed or frustrated the review date for the BPF/MABS Protocol allocated by the collection company in **September 2019**. The collection company stated in its letter dated **26 September 2019** that

"... based on the current consistent payments from June 2015 at €158 Monthly, our client will be willing to review the account under the MABS BPF protocol in June 2022."

Therefore, the decision to review the Complainants' loan was *"... based on the current consistent payments from June 2015 ..."* suggesting that the **December 2015** missed payment did not in fact prejudice the Complainants' review date in 2022. However I note the Complainants' explanation that it was the missed payment in December 2015, which triggered the transfer of the loan to the collection company in the first place. The Complainants say that, as a result, the loan did not therefore become eligible for the protocol, for a 7 year period, thereby drawing the matter out until 2022, rather than the opportunity they may have had in 2018, if the loan had never been transferred at all.

Finally, it is clear that the Complainants missed more payments than the one for which the Provider was responsible. Their loan account has been in arrears since **2009**. Further to this, the collection company has clarified in its letter **4 November 2019**, having consulted with the creditor, that

"The missed December 2015 payment was not the cause of the customer's account being reported in arrears to the Irish Credit Bureau as the account had fallen into arrears before this date."

Accordingly, I am not satisfied that the Provider's conduct was the cause of the *"Blacklisting"* suggested by the Complainants. Although a payment was missed in **December 2015**, the Complainants have not demonstrated nor is there any evidence to suggest, that the missed payment was incorrectly reported to the Irish Credit Bureau or the Central Credit Register.

In all of the circumstances, on the basis of the evidence before me, I consider it appropriate to partially uphold this complaint.

Administration errors of the type giving rise to this complaint, can have significant consequences for an account holder, particularly when the customer's finances are very finely balanced. I am satisfied that the error in question added to the pressure on the Complainants at an already stressful time. I note that the Provider rectified the issue the following month, after Christmas, but at that point the *"deal"* which the Complainants had come to with the original loan owner was broken, as a result of which the loan was then transferred to the collections company.

It is worth bearing in mind however, that even if the loan had been eligible for the MABS protocol in 2018, there was no guarantee of a particular outcome for the Complainants at that time. I recognise however that the missed payment in December 2015, whilst seemingly a small matter, has this significant consequence for the Complainants insofar as their

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established relationship of honouring their “deal” with the previous owner, was rendered of little value, as it had no particular relevance to their new relationship with the collection company to which the loan was sold.

One can fully understand the Complainants’ frustration in that respect, given the financial pressure they were under at that time. In all of the circumstances therefore I consider that it is appropriate to mark my Decision to partially uphold this complaint, by directing the Provider to make a compensatory payment to the Complainants, jointly, in the sum of €1,500.

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)(b) and (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 Complainants in the sum of €1,500, to an account of the Complainants’ choosing, within a period of 35 days of the nomination of account details by the Complainants 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**

11 September 2020

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,

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- (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.**

