



<u>Decision Ref:</u>	2020-0323
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Savings Account
<u>Conduct(s) complained of:</u>	Failure to process instructions Application of interest rate
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint relates to the Complainants' instructions regarding standing orders between their current and savings accounts held with the Provider.

The Complainants' Case

The Complainants opened a current account and a joint savings account with the Provider in **2016**. They argue that one of the terms of the savings account is that they must fund the savings account by standing order and/or credit transfer on a monthly basis from a current account. The Complainants instructed that the savings account be credited by €500 by way of standing order from the current account on a monthly basis. The current account, in turn, was credited €500 by way standing order from a third-party bank account on a monthly basis.

The Complainants claim that in April 2016, the Provider did not give effect to the monthly standing order instruction to transfer €500 from the current account held with the Provider to the savings account (i.e. the standing order funding the savings account). The standing order instruction funding the savings account was not effected until February 2017. At that point, the Provider transferred a lump sum of €5,000 to the Complainants' savings account in February 2017 instead of the 10 missed payments of €500 a month, which had been due to be paid between May 2016 and February 2017.

In addition to the Provider's failure to give effect to the standing order in the period between May 2016 and February 2017, the Complainants argue that on 3 April 2017, the Provider also failed to give effect to the €500 standing order instruction and it has failed to rectify this omission since that date, resulting in a €500 deficit in the Complainants' savings account.

The Provider has indicated that while there was an attempt to execute the standing order, there were insufficient funds in the current account at that time to meet the payment and as a result the savings account was not credited €500 in April 2017. The Complainants maintain that this amount of €500 is still outstanding from their savings account. They say that the Provider failed to debit the funds from their current account and credit those monies to their savings account. The Complainants also say that they have not been refunded to the loss of interest that would have been earned if €500 had been deposited to the savings account on 3 April 2017 as per their instructions.

It appears that in around **June 2019**, the Provider suggested that if the Complainants were willing to sign an order to transfer the €500 from their current account to their savings account, this would resolve the issue. However, the first Complainant was unwilling to sign such an order due to an implication that it placed responsibility on the Complainants.

The Complainants have argued that the standing order set up with the third party provider was set up on 20 April 2016 to be effected on the 1st of each month. The Complainants argue that it was a condition of the Provider that they had to set up a current account in order to set up a savings account. The Complainants argue that the administrative errors that occurred show a gross lack of care by the Provider in managing the financial affairs of the Complainants. The Complainants also argue that it is incorrect for the Provider to state that no financial loss has been incurred, given that the monies to be transferred in accordance with the standing order were not transferred in April 2017. The Complainants argue that since the standing order from the third party provider was executed on the 1st day of each month, the €500 not transferred in April 2017, is the fault of the Provider. The Complainants have further argued that the matter has resulted in numerous trips to the Provider and lengthy correspondence which has caused them great stress.

The Complainants want the Provider to rectify the deficit of €500 in their savings account and any interest due, in addition to any penalty that this Office might decide to impose on the Provider.

The Provider's Case

The Provider's position is that the savings account was rectified and funded correctly as per the Complainants' instruction of 19 April 2016 and that the €16,212.40 balance as of 24 January 2019 is correct.

The Provider argues that it is not a requirement for a savings account to be funded from a current account held with the Provider. It states that the Complainant opted to set up a current account with it, to avail of a bonus rate on their savings account. The Provider states that the Complainants fund their current account from a third party bank account and a standing order is in place to fund the savings account from the current account with the Provider.

The Provider accepts that the standing order was not funded in the period from April 2016 to February 2017. It says that due to an administrative oversight, the standing order was not set up. In order to rectify this, the Provider states that it transferred a lump sum of €5,000 (10 multiplied by €500) from the Complainants' current account to their savings account. The Provider states that it also credited the amount of €26.82 which represented any loss of interest for the year 2016 and interest then was correctly applied for the year 2017 on 1 January 2018.

The Provider accepts that the Complainant instruction was not actioned in accordance with provision 3.3 of the Consumer Protection Code 2012 (CPC). However, in compliance with chapter 8 of the CPC, Provider argues that once this was brought to its attention, the matter was investigated and rectified to ensure that the Complainants incurred no financial loss, and an apology was issued as requested to the Complainants. The Provider argues that the Complainants suffered no loss as the standing order was put back into the same position as if it had been executed from April 2016.

The Provider states that it cannot comment on whether or not the third party bank executed its own standing order on 3 April 2017. It confirms, however, that the payment file was received by the Provider at 03.38 AM on 4 April 2017 and was then credited to the Complainants' current account. The Provider argues that previous standing orders were received from the third party bank on dates ranging from the 2nd to the 4th of the month. It further argues that some subsequent standing orders from the current account to the savings account have only been successful because the April 2017 credit remains as a "buffer", for example in April 2018, September 2018 and June 2019.

The Provider argues that if the Complainants agreed to provide a written instruction to transfer the April 2017 amount, then if the standing order from the third party bank is executed late in the future, there will again be insufficient funds in the current account on the standing order due.

The Provider argues that the standing order was due to be executed from the current account to the savings account on 3 April 2017. It argues however that there were insufficient funds in the current account on 3 April 2017, so the savings account was not credited. The Provider argues that in accordance with the terms and conditions attaching to the current account, it is the responsibility of the Complainants to ensure that there are sufficient funds available to meet all payments to be made from the current account.

The Provider argues that a second attempt was not made to execute the standing order again on 4 April 2017 as the Complainants' instruction was explicit insofar as the standing order was to be executed on the 3rd of each month. The Provider argues that this is in accordance with the terms and conditions attaching to the current account which indicates that standing orders will be in executed on the day specified.

The Provider argues that in order to offer a solution to the Complainants, it requested that they submit a written instruction to transfer €500 from the current account to the savings account. Despite the Provider providing a pre-prepared letter requiring just the Complainants' signatures to this effect, the Complainants were unwilling to provide such an instruction. Without the signed instruction, and on the basis that the Provider is satisfied that the standing order could not be executed in April 2017 due to insufficient funds, the Provider argues that it is not in a position to transfer the funds without the Complainants' written authority. This can be contrasted with the transfer of the lump sum of €5,000 as the Provider accepts that an error was made on its behalf which needed to be rectified in that instance.

The Provider states the Complainants had not received any interest on the €500 from April 2017 as the funds have remained in the current account. The Provider states that despite attempts to facilitate the Complainants in transferring these funds so that they could earn interest at the savings account rate, the Complainants have yet to authorise such a transfer. The Provider therefore argues that while the Complainants are not earning interest on the amount, this is not the responsibility of the Provider.

The Provider argues that it offered options to the Complainants in an attempt to resolve the matter but without their signed instruction to transfer the funds, it cannot progress the matter to a satisfactory conclusion. The Provider states that in recognition of the Complainants' overall dissatisfaction, is willing to offer a goodwill gesture of €200 in full and final settlement of the matter on the condition that a written instruction is received to transfer the funds from the current account to the savings account, should the Complainants still wish to do so.

The Complaints for Adjudication

The first complaint is that the Provider failed to properly execute a standing order on the Complainants' current account between May 2016 and February 2017.

The second complaint is that in April 2017 the Provider failed to transfer €500 from the Complainants' current account to their savings account pursuant to the standing order, as a result of which, they have suffered a loss of interest.

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 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 **28 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.

I have been supplied with a copy of the terms and conditions of the relevant accounts. In accordance with condition 37.2:

"You must ensure that you have sufficient funds in the Current Account to meet all payments to be made from the Current Account."

In accordance with condition 40.5:

"Standing Orders will be executed on the day specified in the Standing Order Mandate Form (or the next business day if the date specified is not a business day). You may specify in the Standing Order Mandate for a specific date or dates when the transfer should be executed."

In relation to the requirement for a current account to fund the savings account, condition 84.8.4 provides as follows:

"You must fund your Regular Saver account by Standing Order and/or Credit Transfer on a monthly basis from a current account (the "Funding Account"). Multiple lodgements are permitted by either means but the combined value of all lodgements must not be less than €100 or more than €1,000 per calendar month."

Direct Debit – 2016

I have been supplied with a copy of a standing order dated **1 March 2016** signed by the first Complainant. The standing order indicates an amount of €500 and a start date of 3 May 2016, with a monthly frequency.

The Provider's failure to execute the standing order seems to have been first realised by the Complainants in late January 2017 on receipt of a bank statement dated 31 December 2017 and a complaint was raised on **30 January 2017**.

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By letter dated **24 February 2017**, the Provider accepted that on 19 April 2016, the Complainants had requested that a standing order be set up from their current account to their savings account to avail of a bonus 1% interest. The Provider accepted that this had not been actioned and apologised for its error. The Provider indicated that the account had now been amended, with interest backdated to 19 April 2016, to ensure that the Complainants were not at a loss, as a result of the error.

In a further letter dated **15 March 2017**, the Provider confirmed that it had added interest of €26.82, which is what would have accumulated on the account from April 2016 to December 2016, if the original request had been actioned by the Provider when it was received. The letter stated that interest for January 2017 to December 2017 would be credited on the account on 1 January 2018. The letter of 15 March 2017 also indicated the interest rates on the savings account during the relevant period and stated that the Complainants were earning an additional 1% bonus on these rates as they were funding the savings account from a current account with the Provider.

According to an enclosed statement dated 6 March 2017, the sum of €5,000 was credited to the savings account on 24 February 2017, from the current account and the sum of €26.82 was credited by way of interest adjustment on the same date.

April 2017

The Complainants have submitted a copy of a statement from the third party bank account showing that the sum of €500 was deducted on 3 April 2017 and transferred to the Provider. I note that the ensuing credit of €500 was made to the Complainants' current account on 4 April 2017 (according to an account statement of the Provider dated 30 June 2017). There was however no onward transfer of that €500 payment to the savings account of the Complainants in April 2017.

January 2019 - Complaint

By letter dated 24 January 2019, the Provider wrote to the first Complainant in respect of a complaint received on **18 January 2019** referring to the monthly standing order of €500 payable from the Complainants' current account to their savings account. The Provider notes that the standing order had not been put in place at that time as requested (as referred to above) and so a lump sum of €5,000 was transferred to the savings account on 24 February 2017 to cover the 10 payments of €500 per month which had been due to be paid to the savings account in the period from May 2016 to February 2017 inclusive. The Provider confirmed that the account had been funded correctly as per the signed instruction of 19 April 2016 and that the balance of 24 January 2019 of €16,212.40 was correct.

The first Complainant followed up by letter dated **7 February 2019** noting that the account was not credited with the payment of €500 on 3 April 2017, despite the fact that the relevant payment had been made into the current account.

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A follow-up letter was sent in similar terms on **8 May 2019** arguing that the balance in the savings account was €500 less than it should have been, due to the missed April 2017 payment.

By letter dated 6 June 2019, the Provider wrote to the first Complainant stating that the standing order is set up to transfer €500 on the 3rd of each month. The Provider explained that in April 2017, there had been insufficient funds in the current account on the 3rd, and therefore the standing order was not executed. The Provider explained that the statements confirm that the payment to the current account from the external account was received on 4 April 2017, which was too late to honour the standing order payment the day before. The letter indicated that the balance of their current account was €500 and per the terms and conditions of the savings account, the first Complainant could manually transfer a further €500 to the savings account. The letter concluded that the Provider was satisfied that the payment was not transferred in April 2017 because of insufficient funds on the 3rd of the month and that there was no error therefore on the Provider's part.

The Provider has submitted interest calculations to show that the amount of interest that would have been earned by the Complainants on the additional €500 in their savings account for the period from 3 April 2017 to December 2019 was €12.24 (less DIRT).

First Complaint

There is no question but that the Provider fell into error in 2016, by not complying with the Complainants' instructions dated 3 March 2016 to transfer the sum of €500 monthly from their current account to their savings account by way of standing order between May 2016 and February 2017. The Provider has accepted that it was at fault in this regard and to fix this, it executed a lump sum transfer of €5,000 from their current account to their savings account on 24 February 2017, when the error came to light.

The Provider further credited the savings account with the interest that would have accrued if the monthly standing order had been executed as instructed. I am satisfied that the error in question was dealt with promptly by the Provider and was remedied within 3 weeks of receipt of the complaint with no loss or damage resulting to the Complainants.

Although the Provider was in error, it did not offer any compensation to the Complainants but the failing was rectified in full with no loss or damage to the Complainants.

Under the Consumer Protection Code 2012 (CPC), the Provider is obliged to "*resolve all errors speedily and no later than six months after the date the error was first discovered*" (Provision 10.2) and must "*seek to resolve any complaints with consumers*" (Provision 10.7). I am satisfied that the Provider in this instance met its obligations under the CPC with respect to its failure to effect the March 2016 standing order until February 2017.

In all of the circumstances, I do not consider it appropriate to uphold this aspect of the complaint as I am of the view that the error was promptly resolved by the Provider when it first came to light.

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Second Complaint

I am satisfied that there were insufficient funds in the Complainants' current account on 3 April 2017 to meet the standing order for €500. By 4 April 2017, the relevant transfer had been received from the third-party bank to the Complainants' current account, but this was a day later than the date when the standing order was due to be executed. The standing order was due to be executed on the 3rd of every month.

In accordance with the terms and conditions of the relevant account as set out above, it was the obligation of the Complainants to ensure that sufficient funds were present in the current account to meet the standing order in question. I am not in any way assigning blame to the Complainants for the fact that there was a delay in the transfer of €500 from the third party account to the current account in this case, as it appears that they have set up a standing order with that third party bank for the funds to be transferred on the 1st of every month. But neither can blame be attributed to the Provider. It is a simple question of whether or not requisite funds to meet the Provider's standing order were available in their current account on 3 April 2017, when the Provider tried to execute the standing order. On the basis of the evidence before me, the funds were not available on that date so the Provider was not in a position to make the relevant transfer from their savings account to the current account on 3 April 2017.

I appreciate that the Complainants are frustrated that the Provider did not subsequently seek to transfer the funds but any such an additional transfer was outside of the terms of the standing order instruction given by the Complainants, and the terms and conditions of the account as set out above. The Complainants are – and since 4 April 2017 have been – in a position to make a manual transfer of €500 from their current account to their savings account if they wished to do so. This option was in fact offered to them by the Provider with a view to resolving the present complaint but, for reasons that I do not fully understand, the Complainants have opted not to do so.

It appears that the first Complainant is of the view that issuing a fresh instruction to transfer the €500 would somehow signify that he was at fault for the delay that occurred. As set out above, this is quite simply not the case and there is no blame attaching to either the Complainants or to the Provider regarding that delay. The Provider is of the view that it requires a fresh instruction from the Complainants to execute the relevant transfer since there were insufficient funds in the account to execute the transfer on 3 April 2017, in accordance with the terms of the standing order. It appears to me that this is correct.

In my view, the ongoing refusal of the Complainants to make the relevant transfer is causing loss only to themselves, as regards the ongoing interest being lost on their savings account. It is also worth highlighting the submissions of the Provider to the effect that there have been other transfers from the third party bank to the current account in question, that have not been received into the Complainants' current account until the 4th of the month; the Provider says that the reason why these have been processed, is due to the additional balance still available from the missed April 2017 payment. I accept that this submission is substantiated by the account statements.

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It would seem to me prudent for the Complainants to consider contacting the third party bank, to avoid any future delays. They may wish to consider amending the standing order with the third party bank to transfer the funds earlier (eg on the last day or second last day of each month) in light of the fact that it takes some time to process a bank-to-bank transfer and that non-business days can lead to delays. Indeed I note in that regard that 1st April 2017, fell on a Saturday. Amending that arrangement could prevent the same problem arising for the Complainants in the future. In any event, I am not satisfied that the Provider is responsible for the fact that payments have not been made into the Complainants' current account until the 4th day of certain months, regardless of the terms of a third-party standing order. Having received the preliminary decision of this office, the Complainants remain unhappy and point out that the Provider was "quite happy" with the standing order arrangement, and never informed them that an earlier standing order would be more suitable. I am satisfied however that it was a matter for the Complainants to decide when it best suited them to transfer funds to their current account with the Provider. I note that now that they are fully aware of the situation which can arise, when the first of the month falls on a non-banking day, it will be open to them to consider their options.

On a final note, I accept the Provider's submission that its terms and conditions require that a standing order be set up from a current account to one of its savings account and it is not required that such a current account be held with the Provider. I note that the fact that the Complainants are utilising a current account with the Provider to fund their savings account means that they are entitled to an additional 1% interest rate on their current account. In all of the circumstances, I am unable to uphold this aspect of the complaint. Accordingly, having considered the evidence available in this matter, for the reasons outlined above, although I appreciate that the Complainants are disappointed with this outcome, I do not consider it appropriate to uphold these complaints.

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**

25 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—

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- (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.**

