



<b><u>Decision Ref:</u></b>	2020-0370
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Current Account
<b><u>Conduct(s) complained of:</u></b>	Handling of fraudulent transactions Delayed or inadequate communication Dissatisfaction with customer service Handling of fraudulent transactions
<b><u>Outcome:</u></b>	Partially upheld

**LEGALLY BINDING DECISION  
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

The Complainant wished to purchase a car from an individual based in Europe having seen the car advertised online. The Complainant paid for the car by way of a SEPA transfer on **6 July 2018**. The Complainant became suspicious of the advertisement and contacted the Provider on **7 July 2018**. During the call, the Complainant was advised that the transfer had been processed by the Provider. The Complainant was also advised that the Provider could seek to have the transfer recalled. The Provider executed a recall request on **10 July 2018** but was advised on **24 August 2018** that the Complainant's funds had been *utilised*.

**The Complainant's Case**

The Complainant explains that he made a direct payment of €7,500 through the Provider's online system on **6 July 2018** to a named individual's Berlin account for the purchase of a car which the Complainant intended to import to Ireland and refurbish.

The morning after the transfer took place, the Complainant's son discovered the car had been re-advertised by the seller at a reduced price. The Complainant's son emailed the seller who reassured the Complainant's son that this was a mistake and the advertisement would be removed. The Complainant's son remained suspicious, and as the Complainant was not contactable at the time, he contacted the Provider's helpdesk through their social media page. The Complainant's son was advised that the Complainant should contact the Provider as soon as possible and the Provider would check if the payment could be reversed at that stage.

The Complainant states that he contacted the Provider at 3:26pm on **7 July 2018**. When the Complainant spoke to the Provider's agent "... whom initially was quite negative and unhelpful ...", referred the matter someone more senior and advised the Complainant that "... they would initiate a recall to the foreign bank."

On **9 July 2018**, the Complainant spoke to an individual in his local branch who advised the Complainant to report the matter to An Garda Síochána, obtain a PULSE number, and give the number to the Provider's helpdesk. The Complainant was also advised to request a payment recall and confirm that the transaction had been reported as a crime. The Complainant immediately contacted his local Garda station and completed the necessary paperwork.

Following this, the Complainant contacted the Provider's helpdesk. The Provider's agent did not take note of the crime reference number but informed the Complainant that someone would be in touch with him to take the number. This never happened. However, the Provider's agent "... did confirm that a 'stop' had been placed on the payment and that the money would probably be in my account by the end of the week."

The Complainant explains that he checked his account regularly and on **17 July 2018**, he emailed the Provider's helpdesk for an update. The Complainant sought further updates on **29 and 31 July 2018**, and **2 and 3 August 2018**. The Complainant received a text message from the Provider's Customer Care Team on **7 August 2018** advising him that the Provider was investigating his complaint. The final contact with the helpdesk was on **14 August 2018** advising that the matter was no longer being dealt with by this section and had been referred to the Complaints Team. On **21 August 2018**, the Complainant received a text message from the Customer Care Team explaining that the investigation had been completed and a response letter issued.

The Complainant received a letter dated **17 August 2018** on **22 August 2018**. This letter referred to a number of clauses in the account terms and conditions, and stated that the Provider was unable to uphold the complaint, or refund or compensate the Complainant for any loss of funds. The Complainant states that he was surprised and disappointed at this and immediately responded to the Provider. However, no response was received to this letter.

Between **22 August 2018** and **8 October 2018**, the Complainant met with an individual in his local branch and mentioned that he had not received a response to his letter, not even an acknowledgement. On **8 October 2018**, the Complainant contacted the Complaints Team and was advised that a response was issued to the Complainant's letter on **29 August 2018**. The Complainant states that he never received this letter. The Provider's agent offered to re-send the letter by registered post but as the Complainant was away, it was agreed that the letter would be sent to his local branch for collection. When the Complainant went to his branch on **18 October 2018** to collect the letter, it was not there. The Complainant's wife contacted the Complaints Department but was unable to speak to the original complaint investigator as she was unavailable. The Provider's agent advised the Complainant's wife that the letter did not appear to have been sent to the branch.

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The Complainant explains the reason for his complaint is that:

- “(a) It takes a minimum of two days for funds to be transferred from one financial institution to another, even in the same town.*
- “(b) I was informed on the 9<sup>th</sup> July by [Provider’s agent] on the [helpdesk], that my money would probably be back in my account by the end of that week - presumably she was suitably informed to tell me that & for that reason, I took no other course of action to recover the funds.*
- “(c) The letter from the [Provider] Customer Complaints Department dated 17<sup>th</sup> August, refers to a transfer in favour of [named individual]; the name is incorrect - it was [different named individual]: could this be the reason why the Foreign Banks did not respond to the recall?*
- “(d) [The Provider] appears to have only contacted the Foreign Bank once - why was this not followed up again? Perhaps if had (sic), they would have been alerted to their incorrect spelling of the surname.*
- “(e) No-one has confirmed to me where the funds actually are!”*

In resolution of this complaint, the Complainant is “... seeking the full amount of €7,500 as the bank had more than sufficient time/opportunity to recall this payment.”

### **The Provider’s Case**

The Provider explains that when a customer processes a transaction using the online banking system which has been approved by them, the transaction is irrevocable as it has been fully authorised by the customer. This is outlined in the relevant terms and conditions effective from **13 January 2018**. The Provider refers to clause 6.4 in this regard.

It is stated that all transactions processed using the online system have a cut off time of 3:30pm. This cut off timeframe falls under SEPA Regulations which confirm that if the payment is made before 3:30pm, the Provider guarantees that it will reach the beneficiary bank within 24 working hours. This is outlined at clause 4.8 of the terms and conditions.

The Complainant consented to the transaction through the Provider’s online system using its security instruments to authenticate his instructions. The Provider refers to clauses 5.1 to 5.3.

At 12:28pm on **6 July 2018**, the Complainant successfully logged on to the online banking system, added the relevant individual as a SEPA Payee, and entered the payee’s BIC and IBAN. The Complainant then entered the relevant seven digit security code sent to his mobile phone. At 12:29pm, which was before the Provider’s cut off time, the Complainant transferred €7,500 to the named individual.

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The Provider advises that once a payment has been authorised by a customer, the Provider must assume that the account details to which the payment is being made are correct and have been fully checked by the customer.

The Provider submits that the transaction was correctly authorised and the Provider was not on notice of any wrongdoing. As a result, the Provider was obliged to honour the transaction. Furthermore, as the payment was authorised by the Complainant, the Provider has no liability for the correct execution of the payment. The Provider states that *“It would appear that the Complainant is the unfortunate victim of a scam and while the Bank empathises with his situation only the Gardai/German police have authority to investigate the beneficiary of the funds.”*

The Provider states that the Complainant’s son contacted it through one of its social media accounts on **7 July 2018** regarding the SEPA transfer. The Provider asserts that it did not advise that the SEPA transfer could be cancelled.

The Provider states that its Customer Service Agent sent a referral to the Customer Care Department on **7 July 2018** following a telephone conversation with the Complainant and his wife. The Provider states that during the conversation, the Provider’s agent made clear that the SEPA transfer could not be cancelled but a recall request could be sent. However, it was not guaranteed that the Complainant would get his money back and there was no guaranteed timeframe.

On **9 July 2018**, the Customer Care Department sent a recall request to the Group Payments Department. This department then sent a recall request through the SEPA Scheme to the payee’s bank stating the reason for the recall as fraud. No response was received. The Provider submits that the recall request was sent on a *best efforts* basis and no assurances were given to the Complainant at any stage that the recall would be successful.

As an exception, the Provider states that the Group Payments Department sent a SWIFT secure message for the SEPA transfer to the beneficiary bank on **9 August 2018** which had to go through an intermediary bank. The Provider clarifies that the date of the transaction is recorded as 09072018 as this is the date the SEPA transfer would have credited to the payee account. The intermediary bank responded on **10 August 2018**. The intermediary bank furnished the Provider with the beneficiary bank’s response on **24 August 2018**.

The Provider rejects the assertion that it had more than sufficient opportunity to recall the payment. The Provider states that as the payment was a SEPA transfer, the Provider was obliged to pay the beneficiary bank within one banking day. The Complainant authorised the payment at 12:29pm on **6 July 2018**, therefore, the payment instruction would have been actioned on that banking day as it was prior to the cut off time of 3:30pm. The Provider advises that the funds were debited from the Complainant’s account on **6 July 2018**. The instruction was completed by the intermediary bank on **9 July 2018**.

The Provider explains that a SEPA transfer cannot be stopped as it is done through the SEPA payment’s system/scheme and a recall is the only option available to the Provider.

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At 3:36pm on Saturday, **7 July 2018**, the Complainant contacted the Provider as he was concerned that he was a victim of fraud and requested that the transaction be cancelled. The Provider advises that the recall request could not be sent to the beneficiary bank as it was not a banking day. The recall request was processed on **10 July 2018** which the Provider considers was within a reasonable time period. The Provider refers to clause 4 of the terms and conditions dealing with SEPA transfers.

The Provider does not accept the Complainant's assertion that a staff member told him on **9 July 2018** that the money would be back in his account by the end of the week. The Provider states that the call recording between the Complainant and the Provider's staff member demonstrates that no such statement was made.

The Provider rejects the Complainant's allegation that it stated the incorrect name of the payee/seller on the recall instruction. It argues this is demonstrated in the SEPA Recall Request dated **10 July 2018** and the SWIFT secure message of **9 August 2018**.

The Provider has set out its compliance with the various provisions of the ***European Communities (Payment Services) Regulations 2018*** in its Formal Response.

The Provider explains that the Complainant did not provide a Garda Report. However, on **18 July 2018**, its Group Fraud Department reported the matter to the An Garda Síochána. On **31 October 2018**, a letter was received from a Detective advising that matter was being investigated.

### **The Complaints for Adjudication**

The complaints are that the Provider:

1. Failed to act in an expeditious and efficient manner to secure the return of the funds;
2. Misrepresented its ability to secure the return of the funds; and
3. Provided poor customer service.

### **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.

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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 1 October 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.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

Using the Provider's online banking platform, the Complainant created a *SEPA Payee* on **6 July 2018**. This was the individual from whom the Complainant believed he was purchasing a car. Within one minute of doing this, the Complainant authorised a *SEPA Transfer* in favour of this individual in the amount of €7,500 at 12:29pm.

On **7 July 2018**, the Complainant's son contacted the Provider through social media, suggesting that the Complainant may have been the victim of a fraud. The Provider responded the same day as follows:

*"Hi ..., thanks for your message. We'd advise that your father calls us on [number] as soon as possible and a colleague will check if the payment can be reversed at this stage."*

The Complainant and his wife spoke with one of the Provider's agents on **7 July 2018**. The Complainant stated that he wanted to cancel a payment he made the previous day. The Provider's agent informed the Complainant that the payment was fully processed, the funds had gone out of the account and were on their way to the payee account.

The Complainant's wife then spoke to the Provider's agent and advised that her son had been in contact with the Provider that morning and was informed that the Complainant could cancel the transfer as it had not gone through yet. The Provider's agent corrected the Complainant's wife and stated that transactions made online could not be cancelled or stopped.

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The Provider's agent said she would contact the Fraud Department to see if anything could be done for the Complainant and placed the call on hold. The Complainant was advised that the Fraud Department would not take the transaction as a fraud claim. The Provider's agent advised the Complainant that she could send a request to have the funds recalled. The Complainant was advised that there was no guarantee on a timeframe for this or that he would get his money back.

The Provider's agent appears to have sent a referral to the Customer Care Department on **7 July 2018** indicating that the Complainant wished to have the transfer recalled.

A recall request was sent by the Customer Care Department to the Group Payments Department on **9 July 2018**. Later that afternoon, the Complainant and his wife contacted the Provider by telephone.

The Complainant was seeking an update regarding the transfer. The Provider's agent advised that the matter had been transferred to the Support Team and a recall request had been submitted. The Provider's agent advised the Complainant that she could not give a timeframe for the recall as the Provider relied on the beneficiary bank to respond to the recall and action it. It was explained that a recall was done on a *best efforts* basis and the Provider could not guarantee the return of the funds as this was dependent on the beneficiary bank. The Complainant was advised that all he could do at that time was wait for either the payment to come in or one of the Provider's agents to contact him.

A recall request was sent by the Group Payments Department to the beneficiary bank through SEPA on **10 July 2018**. The *Transaction Recall Confirmation* records the *Requested Execution Date* as **6 July 2018** and the reason for the recall as fraud. I note that the payee's name is spelled correctly.

The Complainant wrote to the Provider through its online platform on **17 July 2018**:

*"Hi, I reported a fraud of €7,500 on Sat 7th July to your [Helpdesk] via [agent]. I phoned back on Monday 9th, spoke to another member of staff & was told that everything was in hand and the funds would be returned to my account by the end of the week. Could I have some update on this please."*

The Provider responded through the platform on **18 July 2018**:

*"... In response to your query, we have sent a request to recall the payment on 09/07. We are yet to hear back from the international bank. Once there is an update, we will contact you. ..."*

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The Complainant wrote to the Provider again on **29 July 2018**:

*"... On the 9th July when I contacted your office and tried to give the PULSE number, I was informed that the funds were requested from the receivers bank & would be in my account by the end of the week – i.e. 13th July. Can this be followed up please. Apart from information at branch level, I am receiving conflicting information."*

The Complainant sent a follow up message on **31 July 2018** as no response had been received to his previous message.

A response was sent to the Complainant on **1 August 2018**:

*"... Please be advised I have referred your query to the relevant department. A recall request was sent on 9/7/2018. Unfortunately there has been no update on the recall of funds as of yet. Please note SEPA recalls are sent to foreign bank on a best efforts basis and [the Provider] are reliant on the foreign bank to accept a recall request and action. ..."*

Replying to this message on **2 August 2018**, the Complainant states:

*"... Yes. I understand that & the process involved. However, I think that as this fraud was reported in a timely manner, 24 hours after the remittance and, that your colleague informed me that the funds would be in my account by the end of that week. I trust she was suitably well informed of the procedure to tell me that? In the interim, no-one has contacted me on any aspect of this and naturally, I required an update; unfortunately I don't feel that most recent reply had clarified anything. Basically, I remitted the funds in good faith: reported a fraud in approx. 24 hours; surely something could have been done in that time frame. Please confirm when the funds will be re-credited to my account as a matter of urgency."*

By way of a reply dated **2 August 2018**, the Provider advised the Complainant as follows:

*"... I apologies (sic) for the late response this is due to a large number of secure messages being sent in. I see that there has been a reply sent in relation to your query sent on the 29/07/2018."*

A further message was sent by the Complainant on **3 August 2018**:

*"Please see my query of 2nd inst., to which I've had no reply. [Agent/Agent] have replied to previous comments but not to my message of the 2nd. I have been reliably informed that this money should be back in my account by now. Between several [Provider] accounts, I have balances of approx €140K. If this matter is not concluded to my satisfaction in the very near future, I will be withdrawing those funds."*

On **6 August 2018**, the Provider advised the Complainant that: *"We have referred this to the relevant department and are hoping to hear back asap."*

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A further message was sent to the Complainant on **7 August 2018**, advising the Complainant as follows:

*"... We still have no response from the foreign bank and I can see no information from them advising the funds will be returned.*

*I have raised a formal complaint and our Customer Care team will be in contact with you within 15 working days to clarify the issue in more detail. ..."*

The Provider sent a SWIFT message to the beneficiary bank via the intermediary bank on **9 August 2018**. This message states:

*"...*

*ATTN Investigations Urgent Urgent SEPA Payment Recall Request ...*

*Recall Reason Fraud*

*Please urgently confirm you have received out PYMT and kindly confirm your actions in regards to the under signed. ..."*

The intermediary bank responded on **10 August 2018**:

*"...*

*We confirm receipt of your message. But please be advised that our involvement in this transaction is strictly as an intermediary institution.*

*In order to assist you we have forwarded your request to beneficiary bank ... by email ... they are not reachable via SWIFT in general.*

*Additionally, we confirm execution of you're a/m SEPA-p/o on our part as per received instructions value 09JUL18.*

*The amount of EUR 7.500,00 was credited to the TARGET 2 clearing sub-account of ... in a bulked amount with Instruction ID ...*

*We suggest you contact ... directly if any further clarification is necessary. ..."*

The Complainant contacted the Provider via its online platform on **10 August 2018** requesting an update. The Provider responded on **14 August 2018** advising the Complainant that the matter had been referred to the Complainants Team who would be in contact with the Complainant directly. The Complainant was also advised that the matter was no longer being dealt with by the Service Desk.

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The Provider issued a Final Response letter dated **17 August 2018**. Referring to a number of clauses in the terms and conditions, the Provider declined to uphold the complaint, or refund or compensate the Complainant. I note the SEPA payee's name is spelled incorrectly in this letter.

The intermediary bank provided the response of the beneficiary bank to the SWIFT message on **24 August 2018**. The beneficiary bank's response states:

*"Unfortunately a return of funds is not possible as they have been utilised. ..."*

### **Terms and Conditions**

The Provider has furnished a copy of its terms and conditions for phone and digital banking. Clause 1 contains a number of definitions:

#### **"1.0 Definitions of Terms used in this Document**

...

1.6 *"Banking Day" means any day on which we are open for business in the Republic of Ireland other than a Saturday, Sunday or bank holiday; and "non-Banking Day" means any other day.*

...

1.12 *"Cut-Off Time" means the latest time in any Banking Day we can process an Instruction (see Clause 1.20) on that Banking Day."*

Clause 4 deals with SEPA transfers:

#### **"4.0 SEPA Transfers**

...

4.8 *We accept payment instructions for SEPA transfers at any time. If you give us a payment instruction to pay money from your Account, we treat the Instruction as given on the Banking Day ("D") on which we actually get it, so long as it is received by us before 3:30pm (the Cut-Off Time for SEPA transfers). If we receive it after 3:30pm it will be treated as being received by us on the next Banking Day. We will ensure the payee's bank is paid within one Banking Day of D.*

4.9 *The financial institution where the Designated Account is held controls payment into that account. We are not responsible for that."*

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Clause 6 sets out how the Provider acts on a customer's instructions:

***"6.0 When we Act on your Instructions***

- 6.1 *You permit us to act on any instruction you give us ... Other than provided at 6.4, you cannot withdraw this permission.*
- 6.2 *Once an instruction is received with the correct security credentials, you agree that we can act on it. ...*
- 6.3 *...*
- 6.4 *You agree that all instructions, other than instructions for Future Dated Payments, are subject to the relevant Cut-Off Times, considered to be instructions for immediate processing, and are considered irrevocable. ... You can ask us to cancel or amend any instruction, but we may not be able to do so. We will have no liability to you in respect of any such request to cancel or amend a previously issued instruction where we are unable to do so."*

Broadly similar provisions to those contained in clause 6 are also set out in the Provider's account terms and conditions.

**The First Complaint**

The Complainant authorised a SEPA (Single Euro Payments Area) transfer at 12:29pm on **6 July 2018**. Section 1.28 of the terms and conditions define SEPA as *"... a European banking initiative which aims to create one single integrated and standardised payments market in Europe."* The Complainant believes the Provider failed to act in an expeditious and efficient manner to secure the return of his money. In response to this, the Provider maintains that the transfer was irrevocable as it was completed online and it had already been processed. The Provider also states that in such circumstances it uses *best efforts* to recall the transfer.

Clause 4.8 of the terms and conditions state that if a SEPA transfer is authorised before 3:30pm on a Banking Day, the transfer will be paid within one Banking Day. Clause 4.9 states that the receiving bank is responsible for payments into the payee account, and not the Provider. Once the Provider is given an instruction, under clause 6, it will act on that instruction and the instruction cannot be withdrawn. Further to this, it is considered that all instructions are for immediate processing and are irrevocable. Clause 6 also excludes the Provider's liability in respect of any request to cancel a previously issued instruction where it is unable to do so.

The Complainant's son sought clarity from the Provider regarding the reversal of the transfer on the morning of **7 July 2018**. However, he does not appear to be an account holder in respect of the account the subject of this complaint.

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The Complainant first notified the Provider of the possibility that the transfer may have been fraudulent later that day by telephone and sought to have it cancelled. The Complainant was advised that it was not possible to cancel the transfer but the Provider could request a recall. The Complainant agreed to have the transfer recalled.

Following this, the Provider's agent then sent a referred to the Customer Care Department indicating that the Complainant wished to have the transfer recalled. A recall request was sent by the Customer Care Department to the Group Payments Department on **9 July 2018**. This was followed by a recall request from the Group Payments Department to the beneficiary bank through SEPA on **10 July 2018**. The Provider then sent a SWIFT message to the beneficiary bank through the intermediary bank on **9 August 2018** and received a response from the beneficiary bank through the intermediary bank on **24 August 2018** advising the funds had been utilised.

It appears that the transfer was effected by the intermediary bank on **9 July 2018**, however, it is not clear when it was processed by the beneficiary bank.

Following the Provider's recall request on **10 July 2018**, it advised the Complainant on a number of occasions that it had not received a response from the beneficiary bank. However, it was not until **9 August 2018**, as an exception to its policy, that it sought an update in respect of the recall request.

While the Provider, through its terms and conditions, effectively excludes liability for the type of circumstances giving rise to, and the consequences arising from, this complaint, it nonetheless acknowledges that it will use *best efforts* to recall the transfer. *Best efforts* is not necessarily capable of precise definition and is dependent on, and relative to, the circumstances in which such efforts are sought to be exercised. In this instance, I am satisfied it would require that all such efforts be taken as would be taken by a reasonable financial services provider similar to the Provider and in the same circumstances as have arisen in this complaint.

The Complainant contacted the Provider on the afternoon of Saturday **7 July 2018**. An internal referral was made following this telephone call and a recall request was made by the Provider on **9 July 2018**. The transaction appears to have been processed by the intermediary bank on **9 July 2018**. A formal recall request was then made using the SEPA system on **10 July 2018**. The Provider did not seek an update regarding the recall until **9 August 2018**.

When the Complainant requested that a recall request be issued, it was immediately actioned by the Provider. It must be accepted, however, that for the recall request to be sent, certain internal processes must first be followed which involved the request being sent to the relevant department. This is what appears to have occurred: the request was first sent to the Customer Care Department and then the Group Payments Department before being sent through the SEPA system. I am not satisfied this was an unreasonable process to follow.

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It seems there was one day, Sunday **8 July 2018**, where no action was taken by the Provider. This was a non-Business Day and essentially a non-work day, and despite the urgency of the matter from the Complainant's perspective, it was not unreasonable for the Provider not to continue with the recall request on that day. It is clear, however, that the processing of the request resumed on Monday, **9 July 2018** and was sent through the SEPA system on **10 July 2018**.

Having considered the Provider's conduct against the backdrop of the terms and conditions, and the requirements of *best efforts*, I am not satisfied that the Provider failed to exercise *best efforts* in seeking to recall the transfer up to **10 July 2018**.

This does not conclude this aspect of the complaint, however. As previously noted, once the recall request issued and not having received any communication from either the intermediary bank or the beneficiary bank, the Provider did not pursue the recall request for almost one month until **9 August 2018**. In this respect, I do not believe that the Provider exercised *best efforts* to pursue or follow up on the recall of the transfer. It is reasonable to have expected a similar financial services provider and the Provider, to have queried or investigated why a response to the recall request had not been received; and follow up through the SEPA or SWIFT systems.

In addition to this, the Provider advised the Complainant in its Final Response letter dated **17 August 2018** that "*A request to recall the funds was then processed on 9 July 2018 on your behalf. Please note the foreign bank have not responded to our request.*" Even though this part of the Final Response letter was in the context of the telephone conversation which took place on **7 July 2018**, I am not satisfied the information conveyed was entirely accurate or correct insofar as it concerned the processing of the request. As no reference was made to fact that the request ultimately issued through the SEPA system on **10 July 2018**, the Final Response letter creates the impression that the recall request was sent on **9 July 2018**. Separately, the Provider was advised that the Complainant's money had been *utilised* on **24 August 2018**, but it is not clear when the Provider conveyed this information to the Complainant, if at all.

Accordingly, I am satisfied the Provider did not meet the *best efforts* standard after **10 July 2018**.

Notwithstanding this, it must be emphasised that the Provider was not obliged, whether pursuant to the online banking/account terms and conditions or the *best efforts* standard, to secure the return or successfully recover the Complainant's money. However, it was required to make better efforts in respect of the recall request once it was sent on **10 July 2018** and until it received clarification that it was not possible to recall the transfer.

### **The Second Complaint**

The Complainant maintains the Provider misrepresented its ability to secure the return of his money.

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He has based this on an assertion that on **7 July 2018**, the Provider advised the Complainant's son that the transfer had not been processed and could be cancelled, and on **9 July 2018**, the Complainant asserts that he was advised by the Provider's agent that the money would be back in the Complainant's account by the end of the week.

In terms of the Complainant's son, the evidence shows that the Complainant's son was only in contact with the Provider once on **7 July 2018** and this was through one of the Provider's social media accounts. It would appear that it was the Complainant's son who understood the money may not have reached the payee's account. In his message, the Complainant's son writes: "... As it's an international payment would it be possible to reverse this transaction as I imagine it hasn't reached his account yet." The Provider's message in response to the Complainant's son states: "We'd advise that your father calls us on [number] as soon as possible and a colleague will check if the payment can be reversed at this stage." This does not advise that the transaction has not been processed nor does it advise that the transaction could be cancelled.

Recordings of the calls between the parties have been provided in evidence. I have considered the contents of these calls including the call which took place on **9 July 2018**. At no point does the Provider's agent tell the Complainant or his wife that the money would be returned to the Complainant's account by the end of the week or at all.

Further to this, in a submission dated **1 March 2020**, it is stated on behalf of the Complainant that:

*"We have reviewed the audio of the relevant calls and would appear that [the Provider's agent] did not state that the funds would probably be back in the account at the end of the week or any week.*

*[The Complainant] must have interpreted the response incorrectly. However, he is adamant that he was told this by someone, although those are the only conversations I am aware of."*

Notwithstanding this acknowledgment, the Complainant is still maintaining the position that he was told by someone that the money would be back in his account. While the Complainant holds this view, there is no evidence to support it. For example, the Complainant has not identified who made the statement, when it was made or by what means. It also cannot be ignored that the Complainant has incorrectly identified the source of the alleged assurance and repeatedly sought to rely on this assurance in subsequent correspondence.

Contrary to the Complainant's assertions, during both telephone conversations in **July 2018**, the Complainant was clearly informed that the transfer could not be cancelled, the transaction had been processed, and the funds had left his account. The Complainant was also advised that the transfer could be recalled but this was not a guarantee that the money would be returned and largely dependent on the beneficiary bank.

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There is also nothing in the correspondence sent by the Provider to the Complainant that resembles an assurance to the effect that the Provider would recover or secure the return of the Complainant's money.

As such, I am not satisfied that the Provider in any way misrepresented its ability to recover the Complainant's money, and the Complainant has not been able to direct me to any evidence to support his assertions in this regard.

### **The Third Complaint**

The Complainant is dissatisfied with the level of customer service received from the Provider. This aspect of the complaint seems to comprise the following:

- i. The Provider's agent "*... initially was quite negative and unhelpful ...*" during the telephone call on **7 July 2018**;
- ii. The Provider did not request the Garda PULSE number/crime number from the Complainant;
- iii. The Provider's letter of **29 August 2018** was not received by the Complainant or subsequently delivered to the Complainant's branch for collection as promised;
- iv. The Final Response letter spelled the payee's name incorrectly which may have caused a delay in the intermediary and beneficiary bank processing the recall request;
- v. The Provider failed to follow up with the recall request; and
- vi. The Complainant does not know where his money is.

I will deal with each of these points in turn. Having considered the conversation which took place on **7 July 2018**, I am not satisfied that the Provider's agent was negative and/or unhelpful during this call. The Provider's agent explained the situation regarding the transfer in a clear and professional manner. This agent also made an enquiry with the Fraud Department and advised the Complainant about the recalling of the transfer.

Having considered the telephone call recordings submitted by the Provider (in particular the call of **9 July 2018**) and having reviewed the messages between the Provider and the Complainant, it does not appear that any discussions regarding the Complainant's reporting of the matter to An Garda Síochána arose beyond a brief reference to providing a *crime number* during the call on **9 July 2018**. Furthermore, the Provider is not necessarily obliged to enquire if the matter had been reported to An Garda Síochána or request a PULSE/crime number. I would note that it was at all times open to the Complainant to give this information to the Provider.

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The Complainant states that he did not receive the Provider's letter of **29 August 2018** nor was it sent to his local branch as promised. This was in response to an earlier letter from the Complainant on **22 August 2018** where the Complainant expressed his dissatisfaction with the Provider's Final Response letter, and which the Complainant states was not responded to.

During a telephone call with the Complainant's wife on **18 October 2018**, the Provider's agent indicated that the letter had issued and could not offer any reason as to why it was not received. The Provider's agent also stated that she assumed the letter was sent to the Complainant's branch. The Provider's agent later advised the Complainant's wife that she would follow up on this with the relevant agent.

On the basis of the evidence, in particular in light of the request to have the letter sent to the branch, I am satisfied it is likely that the Provider's letter of **29 August 2018** was not received by the Complainants. Further to this, it is not clear what came to light when the Provider's agent followed up with the relevant agent following her conversation with the Complainant's wife on **18 October 2018**. I would also note that the Provider does not appear to have addressed this point in its Formal Response. Therefore, I accept that it is unlikely that the letter was received by the Complainant's branch either.

While the Final Response Letter misspells the payee's surname, having reviewed the documentation submitted by the Provider regarding the recall of the transfer, it appears that the payee's name was only misspelled in the Final Response Letter and nowhere else. Therefore, I am not satisfied this impacted the recall request.

In terms of the Provider's conduct regarding the recall request, this has been dealt with in the previous section.

In relation to the whereabouts of the Complainant's money, the evidence indicates that the transfer was processed by the beneficiary bank and received into the payee's account. The Complainant was advised on **7 July 2018** and in the Final Response Letter that the transfer had been processed. In the circumstances, it was reasonably clear from the communications between the Complainant and the Provider, or ought to have been reasonably clear, that the transfer had been processed and the Complainant's money had reached the payee. The Provider is not obliged to trace the precise location of the Complainant's money and I accept that it was sufficient to make the Complainant aware that the transfer had been processed and the money had reached the designated account.

Finally, outside of the matters discussed in this section and the previous sections, I accept that the Provider provided a reasonable level of customer service to the Complainant.

When a customer becomes aware that money has, or is being, or is about to be defrauded from their account, it generally is a very stressful situation and causes great inconvenience.

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In such circumstances, I would expect a financial service provider to offer the best possible support and communication. I do not believe the Provider did so in its dealings with the Complainant.

While I cannot hold the Provider liable for processing a payment that was made freely by the Complainant, albeit that he was being defrauded, I believe greater communication and support was required when the Complainant made the Provider aware that he had been defrauded of his money.

Therefore, for the reasons outlined in this Decision, I partially uphold this complaint and direct the Provider to pay a sum of €1,000 to the Complainant.

### **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 Complainant in the sum of €1,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant 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.**



**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

22 October 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.