



<u>Decision Ref:</u>	2020-0402
<u>Sector:</u>	Investment
<u>Product / Service:</u>	Online Share Dealing
<u>Conduct(s) complained of:</u>	Encashment delays Delayed or inadequate communication
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant opened a trading account with the Provider on **22 May 2017**.

The Complainant's Case

The Complainant, having deposited GBP £5,000 into his trading account with the Provider on **28 May 2017** and two separate deposits of GBP £3,500 and GBP £1,950 on **7 June 2017**, advises, as follows:

*“After a few days I checked my account and to my surprise there was only £2.30 left **when I had done no activity on that at all**. I was surprised and contacted [the Provider] as soon as I could. They told me they linked my account with a Money Manager’s account...I told them clearly I did not know the account number at all, and that there was a clear breach of contract/misrepresentation occurred by them as they linked my account with a third person’s account without following the procedure they told me/agreed with me/prescribed by them to me over the phone and later in writing too, as I had never signed or sent any legal documentation to link my account”.*

The Complainant made a complaint to the Provider on **4 July 2017** that his trading account had been linked to an unknown account without his written consent, resulting in the loss of his funds.

In his email to this Office dated 17 June 2019, the Complainant advises, amongst other things, as follows:

"I logged a complaint against [the Provider on 4 July 2017] ... I had complained for the reimbursement of my funds and for the compensation of sufferings etc. due to [the Provider's] negligence.

My first part of complaint was satisfied by [the Provider] as they accepted their mistake and negligence and refunded my original money to me".

In this regard, the Provider replaced GBP £8,059 into the Complainant's account on **29 October 2018** (the Complainant having previously secured a refund of the balance of his losses from the credit card provider that he had used to lodge that portion of his deposit into the trading account).

As a result, in his email to this Office dated **17 June 2019**, the Complainant sets out his complaint, as follows:

"BUT NOW my complaint against [the Provider] is for compensation. There was a mistake on [its] side. I lost about 10k GBP due to [its] negligence. I filed a complaint. [The Provider] did not respond to my complaint and letters and emails and phone calls ...

... after constant follow up and phone calls [the Provider] looked into my complaint and decided in my favour ACCEPTING [ITS] MISTAKE THAT THEY HAD OVERLOOKED THIS COMPLAINT and then later...clearly stated it was their mistake and they have refunded me my money.

... My complaint is simple. It took [the Provider] over 18 months to refund my money to me. I have requested them to compensate me for my loss, my tension, my anxiety, my interest that I have been paying ... my credit history that has been destroyed looking for personal loans etc."

In his email to the Provider and this Office dated 26 November 2018, the Complainant submits, *inter alia*, as follows:

"I believe I am fully entitled to have 100% compensation for the following reasons:

- 1. Negligence on part of [the Provider] who linked my account with a third party without my written consent.*
- 2. [The Provider] did not address my complaint properly and avoided me for about a year and half".*

In addition, in his email to this Office dated **16 March 2020**, the Complainant submits, *inter alia*, as follows:

“My [complaint]...is simple, [the Provider] did not take my [complaint] seriously and there was a big ‘oversight’ regarding my claim that lasted for around a year and half ...

My [complaint] is for compensation after [the Provider] have decided the [complaint] in my favour and that [the Provider] could have sorted the matter in a few days but since they accepted it was an ‘oversight’ they took 18 months to decide my matter and the only excuse [the Provider] had for not addressing the matter (that I did not follow complaint procedure) has been clearly proven wrong and contrary to facts”.

The Provider’s Case

Provider records indicate that the Complainant first presented his complaint by email to its Regional Manager Mr P. and its Senior Market Analyst Mr J. on **4 July 2017**.

Whilst the Provider acknowledges that the Complainant first presented his complaint on 4 July 2017, it notes that because the Complainant unfortunately did not follow the proper procedure for making a complaint, his complaint was not handled in line with its Complaints Handling Process. In this regard, the Provider notes that had the Complainant followed the complaints process as set out in its Terms and Conditions and also on its website, then the complaint would have reached its Complaints Department and been handled more efficiently.

In its email to this Office dated **26 October 2018**, the Provider advised, as follows:

“We previously investigated this and determined that the [Complainant’s] complaint was valid. It was an oversight that it was not resolved until now.

Whilst we believe it was [the Complainant’s] intention to grant the power of attorney to the third party involved, we agree with [the Complainant] that he did not actually sign the document and thus we take responsibility for the linking of [his] account and the losses occurred as a result”.

The Provider notes that the total losses on the Complainant’s account were GBP £9,999.81. In this regard, having reviewed the complaint fully, the Provider decided to give the Complainant the benefit of the doubt in the matter and fully reimbursed him by replacing GBP £8,059 into his account on 29 October 2018, which he has since withdrawn (the Complainant having previously secured a refund of the balance of his losses from the credit card provider that he had used to lodge that portion of his deposit into the trading account in April 2017).

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As a result, the Provider advised this Office in its email dated **8 November 2018**, as follows:

“We have paid the Complainant the disputed amount of £8059. However, he is seeking compensation for the lost time. We believe we’re not entirely responsible for his lost funds. It was him who contacted the third party and provided his details. Unfortunately, at this stage we can’t do any further than this”.

Accordingly, the Provider is satisfied that by replacing GBP £8,059 into his account on 29 October 2018, that it has appropriately redressed the Complainant’s grievance.

The Complaint for Adjudication

The complaint is that the Provider furnished the Complainant with poor customer service throughout the handling of his complaint.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider’s response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **12 October 2020**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

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I note that the Complainant opened a trading account with the Provider on **22 May 2017**. He deposited GBP £5,000 into this account on 28 May 2017 and then made two separate deposits of GBP £3,500 and GBP £1,950 on 7 June 2017. He submits that,

“After a few days I checked my account and to my surprise there was only £2.30 left when I had done no activity on that at all.”

The Complainant advises that he raised a complaint with the Provider on **4 July 2017** but that “[the Provider] *did not respond to my complaint and letters and emails and phone calls*” and that it was not until October 2018, some 16 months later, that the Provider “*accepted [its] mistake and negligence and refunded my original money to me*”.

In this regard, I note that the Provider replaced GBP £8,059 into the Complainant’s account on 29 October 2018 (the Complainant having previously secured a refund of the balance of his losses from the credit card provider that he had used to lodge that portion of his deposit into the trading account).

This Office is mindful that the complaint being made is not in relation to the activities that took place on the Complainant’s trading account with the Provider in June 2017, as this matter was later resolved to his satisfaction when the Provider refunded the Complainant the sum of GBP £8,059 on 29 October 2018. Instead, this complaint relates to how the Provider dealt with the complaint that the Complainant first made to the Provider on 4 July 2017, insofar as the Complainant contends that the Provider failed to appropriately address his complaint for a period of 16 months, between July 2017 and October 2018.

I note that the Provider advises that the Complainant did not follow the proper procedure for making a complaint and that had he done so, then his complaint would have reached its Complaints Department and been handled more efficiently and in line with its Complaints Handling Process.

In this regard, Section 13, ‘**Complaints**’, of the Provider’s ‘General Terms & Conditions’ document, supplied in evidence by the Provider which I note was in effect from 26 November 2015, provided at pgs. 12-13, as follows:

“13.1 In the event that you are dissatisfied with the service provided by [the Provider], we will deal with your complaint internally and will endeavour to come to a satisfactory solution promptly.

13.2 The complaints procedure of [the Provider] follows the requirements outlined in the Irish Consumer Protection Code.

13.3 Our complaints procedures apply in respect of all services provided by [the Provider] in relation to all E. U. clients who trade with [the Provider].

13.4 All complaints should be directed to [complaints@\[Provider\].com](mailto:complaints@[Provider].com) or [the Provider] Financial Centre, [address].”

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Nevertheless, I note that the Provider now acknowledges that the Complainant first presented his complaint on **4 July 2017**, by way of his email to both its Regional Manager Mr P. and its Senior Market Analyst Mr J. re

“Refund on Account xxxxx due to forgery acted on my account.”

I note from the documentary evidence before me that the Complainant then emailed both Mr P. and Mr J. again on **5 July 2017**, as follows:

“Will there be a time frame I shall be hearing back from you?”

I also note that Mr J. replied to the Complainant by email later on 5 July 2017, as follows:

“We are reviewing the case and checking absolutely each and every aspect of it in order to assure the best care for your case, unfortunately I cannot give you a time frame but I can assure you that it is being reviewed for the last few days already”.

In addition, I note that Mr P. replied to the Complainant by email the following day, on **6 July 2017**, as follows:

*“This is not the typical case we come across and it is sitting with our Head of Compliance.
I will update you once I have more information”.*

I note that the Complainant subsequently emailed Mr. P. 13 days later on **19 July 2017**, as follows:

*“I just wanted to have some answers to my complaint. It’s been about three weeks that I have registered the complaint...I have been hearing that the complaint is with the head of compliance department since. I have not yet even been given a line of action that what are you going to do and how much time is required ...
... I believe you have not taken my complaint seriously”*

I note that Mr P replied to the Complainant by email on **21 July 2017**, as follows:

“As previously mentioned, I and [the Provider] are taking your complaint seriously, and this case has been escalated to the top.

The case is by no means closed, and it is being dealt with appropriately. As mentioned, the solution here is not instant”.

I note that the Complainant responded to Mr P. later on **21 July 2017** by email, as follows:

*“...thanks a lot for taking my complaint seriously. Could you please advise **how many days should I wait for a proper resolution to come through as I have spoken to your regulators** which is Central Bank of Ireland.*

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They advised me that there are a number of days for which the regulated company in question, which is [the Provider] needs to address the problem and reach a resolution”.

In addition, I note that the Complainant once again emailed both the Provider’s Regional Manager Mr P. and its Senior Market Analyst Mr J. some weeks later, on **15 August 2017**, as follows:

“Is there any update on my complaint?”

Furthermore, I note from the evidence before me that the Complainant subsequently emailed both the Provider’s customer support and its complaints email addresses on **29 September 2017**, as well as cc’ing the email to Mr P. and Mr J., as follows:

“With regard to my complaint sent to [Mr P.] (Regional Manager), and [Mr J.] (Senior Analyst) on July 4 2017 with regard to my account...Since it is now well over 40 days from the first day of complaint, could you please provide me with a letter of Final Response for this complaint”.

I note that **Chapter 10, ‘Errors and Complaints Resolution’**, of the Central Bank of Ireland’s **Consumer Protection Code 2012**, as amended, sets out the following requirements for handling complaints:

“COMPLAINTS RESOLUTION

- 10.7 *A regulated entity must seek to resolve any complaints with consumers.*
- 10.8 *When a regulated entity receives an oral complaint, it must offer the consumer the opportunity to have this handled in accordance with the regulated entity’s complaints process.*
- 10.9 *A regulated entity must have in place a written procedure for the proper handling of complaints. This procedure need not apply where the complaint has been resolved to the complainant’s satisfaction within five business days, provided however that a record of this fact is maintained. At a minimum this procedure must provide that:*
- a) the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received;*
 - b) the regulated entity must provide the complainant with the name of one or more individuals appointed by the regulated entity to be the complainant’s point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further;*
 - c) the regulated entity must provide the complainant with a regular update, on paper or on another durable medium, on the progress of the*

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investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made;

- d) the regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; where the 40 business days have elapsed and the complaint is not resolved, the regulated entity must inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the complaint and must inform the consumer that they can refer the matter to the relevant Ombudsman, and must provide the consumer with the contact details of such Ombudsman; and*
- e) within five business days of the completion of the investigation, the regulated entity must advise the consumer on paper or on another durable medium of:
 - i) the outcome of the investigation;*
 - ii) where applicable, the terms of any offer or settlement being made;*
 - iii) that the consumer can refer the matter to the relevant Ombudsman, and*
 - iv) the contact details of such Ombudsman”.**

10.10 *A regulated entity must obtain an up-to-date log of all complaints from consumers subject to the complaints procedure. This log must contain:*

- a) details of each complaint;*
- b) the date the complaint was received;*
- c) a summary of the regulated entity’s response(s) including dates;*
- d) details of any other relevant correspondence or records;*
- e) the action taken to resolve each complaint;*
- f) the date the complaint was resolved; and*
- g) where relevant, the current status of the complaint which has been referred to the relevant Ombudsman”.*

I note that notwithstanding the Complainant’s email to the Provider on **29 September 2017**, in which he requested it to issue him with a Final Response Letter, this Office had cause to write to the Provider on **17 August 2018**, (some 13 months after the Complainant had first made his complaint to the Provider on 4 July 2017,) requesting it to review the Complainant’s complaint and issue him with a Final Response Letter, within the following 15 working days.

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I also note that reminders were sent by the FSPO to the Provider on **11 September 2018** and **27 September 2018**.

A further email reminder on **22 October 2018** from this Office advised the Provider, as follows:

"...it is unfair to the Complainant for [the Provider] to continue to delay the progression of this complaint".

Following this, I note that the Provider emailed this Office on **26 October 2018**, as follows:

"We previously investigated this and determined that the [Complainant's] complaint was valid. It was an oversight that it was not resolved until now ...

We will contact [the Complainant] to arrange the settlement".

I note that the Provider then emailed the Complainant on **30 October 2018**, as follows:

"Please be advised that we investigated your complaint in depth and decided to refund you £8,509 in your [Provider] account...The funds are available in your trading platform, you can place a new withdrawal request and we will process it".

As part of this complaints process, the Provider was asked to give this Office a detailed timeline of events, commencing with the date when the Complainant deposited the funds into his trading account in June 2017 until the date when the Provider refunded him the sum of GBP £8,059 in October 2018, including a copy of all correspondence and a recording of all telephone calls between the Complainant and the Provider in relation to this matter.

I note from the evidence that the Provider has since furnished to this Office, that apart from the brief emails that I have cited above (dated 6 July, 19 July and 21 July 2017), the Provider has presented no evidence indicating that it sought to address and resolve the complaint the Complainant made to it on 4 July 2017, in the period between July 2017 and October 2018.

In this regard, I am satisfied that the Provider clearly breached its obligations under Chapter 10, 'Errors and Complainants Resolution', of the Central Bank of Ireland's Consumer Protection Code 2012, as amended, as cited above.

In addition, during the 16 month period from July 2017 to October 2018, I note that the Complainant was without access to his funds (GBP £8,059) and was uncertain throughout as to whether or not the Provider would refund this money to him. Whilst I note that in its email to this Office on 26 October 2018 the Provider submits that it *"was an oversight that [the complaint] was not resolved until now"*, I am of the opinion that the 16 month delay constituted a wholly unacceptable level of customer service to the Complainant.

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Given the extent of the breaches of its obligations under Chapter 10, 'Errors and Complainants Resolution', of the Central Bank of Ireland's Consumer Protection Code 2012, as amended, as well as the prolonged duration of the poor customer service that it provided throughout, I consider it appropriate to direct that the Provider make a compensatory payment to the Complainant in the amount of **GBP £2,500**, to an account of his choosing.

I also take the view that it is a matter of very real concern that the Provider essentially ignored the Complainant's complaint for such an extensive period. I do not accept, as suggested by the Provider that the complaint made to it "*was not handled in line with [the Provider's] Complaints Handling Process*" because "*the Complainant did not follow the procedure for making a complaint*".

I am satisfied in that regard from the content of the emails between the Complainant and Mr. P. and Mr. J. that the Provider was well aware of the Complainant's complaint in mid-2017 and indeed, Mr. P advised the Complainant that the Provider was "*taking his complaint seriously*". The Provider's failure to engage with the Complainant thereafter until after the involvement of this office, is entirely unacceptable and I believe that the Provider should pay more heed to its regulatory obligations to its customers.

In light of the Provider's failure to in any way adequately engage with the Complainant's complaint, I believe that this matter is an appropriate one for this Office to refer to the Central Bank of Ireland, for such action as it may consider appropriate.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2)(f) 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 **Stg£2,500**, 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.



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

4 November 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,
 - (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.