



<b><u>Decision Ref:</u></b>	2020-0441
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Money Transfer (between accounts/between banks/3rd
<b><u>Conduct(s) complained of:</u></b>	Handling of fraudulent transactions Delayed or inadequate communication
<b><u>Outcome:</u></b>	Rejected

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

The Complainant holds a current account with the Provider. At a certain point in time, the Complainant met a man on an online dating website. She then made several fund transfers at the request of this individual totalling almost €160,000, believing this to be an *overseas investment*. It subsequently transpired that the Complainant was the victim of a fraud. The Complainant wants the Provider to refund the sums invested.

#### **The Complainant's Case**

The Complainant explains that she came into contact with a man on an online dating website. After a number of months, this man asked if the Complainant would like to invest in an overseas investment “... *which would prove profitable to me.*” The Complainant advises that this occurred at a time in her life when she was in a very vulnerable position as she was undergoing cancer treatment and had suffered a recent bereavement. The Complainant states the money was transferred “... *under the belief of making a good investment.*” The Complainant had recently sold her house and was in the process of purchasing a new home when she began to transfer large amounts of money through online banking and fund transfers.

The Complainant states that she is at a loss of over €160,000 from this *scam* and she believes that the Provider “... *at any stage should have noticed these large amounts leaving my account.*” It is stated that she “... *was never contacted at any stage what was it for or why ....*”

The Complainant questions whether the Provider is accountable for this and points to her vulnerability at the time. She describes her complaint as follow:

*“My complaint is that I never got any warnings from my bank of these amounts being sent overseas and no questions asked why.”*

### **The Provider’s Case**

The Provider explains the transactions giving rise to this complaint took place between **April 2017** and **February 2018** and were made either through the Provider’s online banking platform or by completing an interpay form in branch. The Provider has also prepared a table showing the date, amount and method of payment for each transaction.

The Provider advises that the Complainant also registered a number of beneficiaries on her online banking profile and these beneficiaries were the recipients of the funds transferred, on foot of the online transactions outlined in the previously mentioned table. The Provider has also supplied a list of these beneficiaries, the country where each account is domiciled, and the IBAN for each of these accounts.

The Provider explains that it is not in a position to unilaterally stop payments from a customer’s online account when the customer has verified the transaction. In the case of the Complainant, she verified the transactions by entering her online PIN credentials. The Provider’s function upon receiving the verified PIN instruction is to merely facilitate the transfer. This is an automated process between the Provider and the third party financial services provider holding the beneficiary account. In this respect, the responsibility for the transfer instruction can lie only with the Complainant. The Provider also advised that its daily limit for transferring to a foreign beneficiary is €10,000.

In respect of the in-branch transactions, the Provider submits that its internal procedure for processing such transactions was correct. The Complainant attended the Provider’s branches requesting to transfer funds to an account in Malaysia. This required the completion of an interpay form. These forms were completed on **15** and **20 September 2017**.

The Provider advises that the Complainant first contacted it by telephone on **13 November 2017** to query why one of the online transfers had not reached the intended destination. It submits that at no point during this conversation did the Complainant inform the Provider as to the identity of the intended recipient or the reason for sending the funds. The Provider states that if the Complainant had advised she was transferring funds to someone she had met online, the Provider may have been in a position to question the Complainant about the nature or volume of the transactions. During the call, the Complainant explained that the intended beneficiary told her the funds were not received. The Provider’s agent confirmed the funds had left the bank and proof of payment could be requested to show that the funds had reached the intended account. Proof of payment was subsequently provided to the Complainant.

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On **20 November 2017**, the Complainant contacted the Provider to again query a transfer made on **3 November 2017**. During this telephone call, the Complainant confirmed that this was the first time transferring to this third party and that she assumed the details she had given were correct. The Provider's agent offered to put a *best efforts* recall on the payment. This involves the Provider requesting a return of funds from the beneficiary financial service provider, on the basis that there is no guarantee of a return of funds and the Provider relies solely on the beneficiary financial service provider to return the funds. This *best efforts* recall was effected but the Provider was subsequently advised by the beneficiary financial service provider that the funds had been withdrawn from the beneficiary account.

The Provider says that the Complainant first advised it of her belief that she had been the victim of a fraud on **7 April 2018**. The Complainant advised the Provider that she *met a chap online*, that she *had done a lot of transfers online to this person* and now felt *it was a scam*. The Provider says that this was the first time it became aware that the Complainant believed herself to have been the victim of a scam. The Provider also notes that the Complainant advised that she *only came forward and told people now*.

The Provider says its agent advised the Complainant that it would contact its Customer Care Department and issue a best efforts recall for the online funds. The Complainant was advised, particularly in respect of the in-branch transactions, to make a report to An Garda Síochána. Recall notices were then placed on three of the payments requested by the Complainant, namely those dated **13 December** and **22 December 2017**, and **5 February 2018**. The beneficiary financial service provider reverted in **June 2018** refusing to reverse the transfers.

The Provider says the Complainant contacted it on **19 March 2019** seeking an update in respect of the transfers, advising that she was at a loss of approximately €160,000. The Provider advised the Complainant to meet with one of its branch representatives to discuss the matter further. A meeting was held on **22 March 2019**.

The Provider explains that it has processes and systems in place to monitor out of course activity on a customer's account. Automated monitoring is completed with a focus on anti-money laundering as well as fraud activities. When a customer exceeds the daily limit, a customer is required to complete a funds transfer application in their local branch. A standard process is followed before accepting the application. This includes checking the available balance and previous transaction history, source of funds, asking the customer to validate where the funds are going and for what purpose.

The Provider says while it *"... has full sympathy with the position the Complainant was in during the course of making these transactions ..."*, it has no record of the Complainant advising it of these circumstances. The Provider was not aware of the Complainant's bereavement, her medical condition or her engaging with a third party online. The Provider advises that if these details had been communicated to the Provider, it may have caused further investigation into the purpose of the transactions.

## The Complaint for Adjudication

The complaint is that the Provider wrongfully failed to notify and warn the Complainant that her payments were being transferred overseas and failed to question these transactions.

## 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 November 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.

## Analysis

The background to this complaint is that the Complainant met a person through an online dating website. After some time, this person asked if the Complainant would like to invest in an *overseas investment*. The Complainant agreed to this and made 15 fund transfers to 8 different beneficiaries in varying amounts from €1,000 to €83,000 over a 10 month period between **April 2017** and **February 2018**. Only two of these transactions exceeded the Provider's limit of €10,000 and these were executed following the completion of InterPay forms in the Provider's branches on **15 and 19 September 2017**.

This complaint has two elements. The first is that the Provider should have informed the Complainant that the fund transfers were going overseas to foreign accounts, and the second is that the Provider should have queried the 15 transfers with the Complainant.

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Dealing with the first element of the complaint, I note that the Complainant states in her Complaint Form and a letter to this Office dated **19 April 2019**, that she was asked if she would be interested in investing in an overseas investment. This request was made by an individual the Complainant met online and who was based in Dubai with no apparent connection to Ireland. Further to this, six of the beneficiaries, based on their names, do not appear to be of Irish decent; the IBANS for each of the beneficiaries are non-Irish IBANS; the InterPay forms completed by the Complainant record the beneficiary bank addresses as being in Malaysia and in Spain; and the Complainant spoke to the Provider on three separate occasions in **November 2017** to query why a recent transfer to Turkey did not seem to have been received by the intended beneficiary.

It is not clear from the evidence, whether the addresses of the ultimate beneficiary of each transfer, or their bank, were required when completing an online payment.

Having considered the evidence, I am satisfied the Complainant was aware or ought reasonably to have been aware, that the money she was transferring was going to overseas or to foreign bank accounts. Further to this, I am not satisfied the Provider was obliged to notify the Complainant of the destination of the fund transfers she herself authorised. In particular, clause 6.1 of the Provider's terms and conditions states that:

*"You are responsible for ensuring that instructions to pay money into and out of your account are correct and accurate. We do not check whether any of the information is correct, for example, we do not check the name of the account given to us with a payment instruction."*

In terms of the second aspect of this complaint, it is submitted that the Provider should have questioned the Complainant regarding the transfers. The Complainant states, in a submission dated **5 July 2020**, that the transfers were not in line with the normal transaction history on her account nor were they consistent with her salary. The Complainant also points to the fact that she was vulnerable at the time the transfers were made.

The evidence is that the Complainant authorised each of the transfers and the money used to fund these transfers appears to have been the proceeds from the sale of her home. It is also the case that the Provider required transfers in excess of €10,000 to be completed in branch. The transactions took place over a 10 month period; ten of them were €5,000 or less, and all 15 were authorised by the Complainant.

The Complainant has not identified any specific duty on the part of the Provider whether common law, statutory or contractual that required the Provider to query the transfers she authorised from her account. Additionally, there is no evidence or indication that the Provider breached any regulatory code of conduct. Further to this, while the Complainant contends that the Provider should have questioned the transfers on the basis that she was vulnerable, there is no evidence to show that the circumstances giving rise to her vulnerable state were brought to the Provider's attention. In any event, even if the Provider was aware of these circumstances, I do not accept, based on the vulnerabilities described, that this would have affected the Provider's obligations or imposed any obligations on the Provider regarding the execution of the transfers.

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Accordingly, I am not satisfied that the Provider was obliged to question or query the transfers which the Complainant elected to make from her own account. Unfortunately, the Complainant reposed a significant amount of trust in a person she met online but never met in person. There is no evidence as to the description of the investment opportunity presented to her or whether the nature, type or risks of the investment opportunity were explained to her. There is also no evidence of any investment documentation being given to or requested by the Complainant before or after she transferred the funds, or that she signed any documentation relating to the investment whether in writing or electronically.

It remains unclear whether, and if so to what extent, the Complainant made any enquires regarding the investment before she invested or after she made the transfers. The Provider is not responsible however, for her decision to invest in such circumstances.

I note that the transfers were made to several different accounts and individuals. It is unclear whether the Complainant queried why the apparent investment would require her to transfer money in such a manner. Furthermore, each of the transfers were to natural persons and not to a particular investment company or corporate entity and it is unclear whether the Complainant ever queried this.

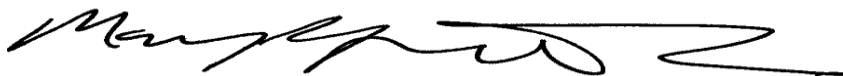
In any event, I note that the Complainant never drew the attention of the Provider to the reasons for her transfers of funds. I take the view therefore, on the evidence before me, that in the circumstances which the Complainant has described, the Provider did not conduct itself in any way inappropriately, in acting on foot of the Complainant's instructions over a period of 10 months, to transfer various amounts to the overseas accounts which she had specified.

Whilst one must have every sympathy for the Complainant who it seems has been a victim of fraud, nevertheless, on the basis of the evidence made available by the parties, I do not consider that there is any reasonable basis upon which it would be appropriate to uphold this complaint against the Provider.

**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**

4 December 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.

