



<u>Decision Ref:</u>	2020-0477
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Money Transfer (between accounts/between banks/3rd)
<u>Conduct(s) complained of:</u>	Non-receipt of money
<u>Outcome:</u>	Substantially upheld

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

The complaint relates to the blocking of two transfers which a third party had attempted to make into the Complainant's account with the Provider.

The Complainants' Case

A payment from an account in another EU State intended for the Complainant's account in Ireland was returned to the payer on the **21st of January 2019**. The payment was labelled '*Travel Expenses [Country X]*'. The monies were paid as reimbursement for expenses incurred by the Complainant when undertaking an EU Funded research project and were paid by an international NGO. The Complainant states this is not the first time monies have been sent to him from this NGO. The Complainant works in Ireland but due to his work lives in another EU State. The Complainant asserts that he had previously made the Provider aware of his living and working arrangements and, at that time, the Provider was contacted by the Complainant's Supervisor directly in this regard. The Provider states the payment was "*blocked for including a reference to a [Country X] in the narrative*". Country X is on a Sanctions List but this country was not the country from where the payment originated. The Complainant spent time in the Country X as part of his research project working through his Irish employer.

The Complainant contacted the Provider by email on the **25th January 2019** after he was informed by the remitter of the payment that it had been returned. The Complainant states he received no response to this contact from the Provider. On the **29th January 2019** the Complainant called the Provider.

The Complainant said he was placed on hold for **14 minutes** during this call and, eventually, was told that *“nothing was blocked into [his] account”*. He sets out that he was advised *“to ensure [he was] using the right account number and repeat it again”*. The Complainant contacted the NGO and requested that it make the payment again, which it did. On the **31st January 2019** the Complainant received an email from the Provider in which it stated that the payment to his account on the 21st January 2019 *“was previously returned to the remitter”*.

The Provider requested information from the Complainant on the payment. In the email seeking this information, the Provider stated that it had attached a *‘waiver form’* to be completed by the Complainant if the payment had *“any connection to [Country X]”* and this form had to be reviewed by the Provider’s *“Head of the Sanctions Unit”*. The Complainant states he did not receive this waiver form in the email. The Complainant replied to this email on the **1st February 2019**. He outlined the purpose of the payment, which was from an international NGO and which was connected to his job. The Complainant also set out that he will *“expect a very clear answer why this happened from [the Provider’s] side”*. Later that day, the Provider responded to the Complainant and sought information asking for a:

1. *Detailed description of the connection [the Complainant has] with [the Country X]*
2. *Has the payment got any connection to [any of three countries which appear on a Sanction List]*
3. *What is the connection this payment has to [the Country X] either directly or indirectly*

The Complainant replied to the Provider that he was *“happy to answer [Provider’s] questions”* after he received the explanation he had requested. In its response, the Provider queried what explanation had been sought by the Complainant and set out that *“the payment will not be done until the questions are answered”*. The Complainant replied explaining that he called the Provider and complained about why *“false information”* had been given to him when he had called on 29th January 2019 and that this issue was registered as a complaint. The Provider’s employee responded that he didn’t know what information was given to the Complainant on the 29th January 2019 but that the questions had to be answered. The Complainant replied saying that he would not answer questions before receiving *“feedback”*.

In the meantime, while waiting for a response, the Complainant was informed by the NGO that the second attempted payment had been rejected.

The Complainant states he called the Provider on the **6th February 2019** but did not receive a call back as promised. He called the Provider again on the **7th February 2019** and spoke with a representative in the Central Complaint Team and queried why he had been asked the questions he was asked. He also queried if he was being asked about three countries on a Sanctions List not including the Country X because of his nationality. The Complainant is from another country which appears on a Sanctions List.

The Complainant states he *“spent a lot of time via phone, and a person [from his employer] spent a lot of time”* on this issue. He sets out that *“[t]his is wasting the time of people who usually spend their time in humanitarian work; this is [their] role toward humanity”*.

The Complainant received a written response from the Provider on the 8 February 2019. He set out that the Provider *“didn’t acknowledge any mistake or maltreatment. Furthermore, [the Provider] ask[ed] [him] to engage with [his] Branch and provide the requested information.* The Complainant states that he did that when he *“called and explained to [his] branch about the payment”*.

The Complainant believes there is a *“systematic discrimination against [him]”* by the Provider. He sets out that the Provider didn’t recognise the *“neglect and disrespectful behaviours of its employees”*. He believes he is being asked about other states on a Sanctions List because of his *“nationality and work”*. In his submissions the Complainant included previous correspondence from the Provider where he had raised other issues.

Therefore, the complaint that has been investigated by this office is that the Provider wrongfully blocked a payment to the Complainant’s account on two occasions. The Complaint also concerns the Provider’s alleged wrongful failure to deal with the Complainant’s queries/complaint about the blocked transfers in a satisfactory manner.

The Provider’s Case

In its Final Response Letter dated **8th February 2019**, the Provider stated it has *“controls in place in relation to payments both directly and indirectly made from certain countries”* and that is why the incoming payment to the Complainant’s account which had a reference *“Travel Expenses [Country X]”* was stopped. It went on to set out that the second time the payment was stopped, the reference had been changed but *“the amount being exactly the same as the payment presented on the 21 January 2019, this was returned under these controls also”*. The Provider said that when the staff member looked into this for the Complainant they were *“unable to see any incoming international payment, as the payment had not been applied to [the Complainant’s] account”*. It went on to set out that the Provider understood the Complainant’s complaint:

“concerns around some of the information we requested, however [the Provider’s] procedures for certain incoming payments required [it] to gather further information which includes details of any future possibility of similar payments coming into [the Complainant’s] account. In order for [the Provider] to ensure [the Complainant’s] payments can be reviewed [it] require[s] [the Complainant] to engage with [his] branch and provide the requested information”

In a later letter dated **30th April 2019** the Provider stated that, contrary to that which the Complainant was told in a call on **29 January 2019**, there was a record of an incoming payment but *“it had been blocked for including a reference to [the Country X] in the narrative”*. The Sanction Team had requested more information from the branch on **30 January 2019**.

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The branch had then sought the information from the Complainant *“which contained internal content which was sent to the Complainant in error”*. The information furnished by the Complainant explaining the payment was not forwarded to the Provider’s *“Sanctions Team”* within the requisite time period and so the payment was rejected a second time. The Provider states if the response from the Complainant had been forwarded to its Sanctions Team within the timeframe and had been *“satisfactory”*, the payment *“would have been allowed”*. The Provider states that it is *“apparent that [the Provider] have failed to provide [Complainant] with the level of service expected”* The Provider’s representative set out that it is never its *“intention to treat customer badly, although [he] agree[s] with [the Complainant] that [it] failed on this occasion”*. The Provider has offered the Complainant €1,000 as a gesture in recognition of the poor experience he had. The Complainant did not accept the Provider’s offer.

It should be noted that the Workplace Relations Commission is the appropriate forum for any complaint of discrimination on any of the grounds listed in the **Equal Status Acts 2000-2015** in the furnishing of financial services to the Complainant by the Provider and that such a complaint will not be investigated by this office.

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 27 November 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.

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Prior to considering the substance of the complaint, it will be useful to set out certain parts of the terms and conditions of the Complainant's account which were operable at the time of the events the subject matter of his complaint:

Terms and Conditions of the Account

When do we not have to follow a payment instruction?

6.51

We don't have to follow a payment instruction if we have a legitimate reason not to, for example if:

- a) The transaction has not been authorised, applicable payment instructions have not been completed or we have not been provided with all the information we need;*
- b) We reasonably think that a payment into or out of an Account is connected to fraud or any other criminal activity;*
- c) You don't have sufficient funds to make the payment and pay all applicable charges;*
- d) By carrying out the instruction we might break a law, regulation, code or other duty that applies to us; or*
- e) It's for a payment involving one or more of a limited number of listed countries where we will not trade.*

Analysis

The Complainant in this case is employed in Ireland by a highly respected and well established Irish University which has seconded him to a recognised international Charity in a different EU country where he lives [I will refer to this other EU country as 'Country E']. The nature of the Complainant's work, which is in receipt of EU-funding, requires him to travel, on occasion, to a non-EU country which appears on an international 'Sanctions List' [I will refer to this country as 'Country X']. Separately, the Complainant is a national of a different non-EU country which also appears on an international 'Sanctions List' [I will refer to this country as 'Country Y'].

On the **21st of January 2019**, a payment in the amount of €203.70 to the Complainant's account with the Provider from a payer in Country E in respect of work undertaken by the Complainant in Country X and labelled "*Travel Expenses [Country X]*" was blocked by the Provider and returned to the payer. The Complainant queried this matter with the Provider by email on the **25th of January 2019** and, four days later on the **29th of January 2019**, by a telephone call during which he was advised that nothing was blocked ("*your account is perfect, there's no flags or anything there, there's no reason the payment shouldn't be coming in*") and was further advised to request the payer to reattempt the payment ensuring that the payee account details were correct.

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The information provided to the Complainant on this occasion was incorrect insofar as the Provider subsequently acknowledged that the payment *“had been blocked for including a reference to [the Country X] in the narrative”*.

The payer attempted the payment for a second time on the **31st of January 2019**. The payment was attempted in the same amount however on this occasion the narrative attaching to the payment stated *“Reimbursement of Travel Expenses”* and omitted any reference to Country X.

This payment was also blocked by the Provider and, on the same day, the Provider emailed the Complainant to advise of this indicating that the payment was *“previously returned to the remitter on 21/01/2019 for containing reference ‘Travel Expenses [Country X]’”*. The email requested the following information so as to enable the completion of the payment:

1. *What is the reason for the payment*
2. *What is the relationship between the Remitter and the Beneficiary*
3. *What types of goods/services are involved in this transactions*
4. *Has the payment any direct indirect link connection to [Country X]. If the payment has a connection to [Country X], a waiver must be completed with a very strong business case why [the Provider] should make this payment and signed by [a Provider employee]. I have attached the waiver. The waiver will then be reviewed by the Head of the Sanctions Unit.*
5. *Where is the end destination of the funds*

The waiver was not however attached to this email. Though this email stated that the payment was refused because of the reference to County X in the narrative, it was not explicitly stated that it was the Provider’s policy to interrogate payments related to countries on the international ‘Sanctions List’.

The Complainant responded to this email the following day (at 07:05 on the **1st of February 2019**) pointing out the erroneous information provided to him in the phone call of the **29th of January 2019**. The Complainant also provided information regarding his employer and the entity to which he had been seconded. The Complainant went on to provide the following details regarding the attempted payment:

[T]he reason for the transfer is reimbursement of some [redacted] expenses. This is an EU funded [redacted] project, and all the spending references and receipts are supported and accepted by EU regulations. And I think this is obvious regarding the organisations involved in this transfer...

The Provider belatedly acknowledged (in its letter of **30 April 2019**) that this email from the Complainant included sufficient information to enable the sanctioning and completion of the transfer.

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The Complainant concluded the email by stating that he expected “to receive a very clear answer about why this happened”. The Complainant made a phone call to the Provider immediately after sending this email restating his complaint.

Later the same day, the Provider responded (at 17:30 on **1st of February 2019**) indicating that answers to the following questions would need to be provided in order for the payment to be processed because the Provider needed “to fully understand the reason for the payment”:

1. Detailed description of what connection you have with [Country X]
2. Has the payment got any connection to [three countries on the international ‘Sanctions List’ not including Country X but including Country Y]
3. What is the connection this payment has to [Country X] either directly or indirectly

There were a number of further emails in this exchange which the Provider has inexplicably omitted from its response to this office. The Complainant has however provided these, and I set out the relevant portions of these emails hereunder in consolidated form:

Complainant @ 17:42

Thanks. I will be happy to answer your questions after receiving the explanation I asked for..

Provider @ 17:45

*What explanation is that?
The payment will not be done until the questions are answered.*

Complainant @ 17:52

*About why [the Provider] gave me a false information when I called on the 29th which is now a registered complaint to you...
It is not a matter of money. It is a matter of dignity.*

Provider @ 17:54

I have no idea what information was given to on the 29th, I am just informing you that these questions must be answered.

Complainant @ 17:59

I contacted the branch via telephone and complained today.. and will not answer before receiving feedback.. they should inform you.. it is an internal issue for [the Provider].. And I did report that

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The Complainant sent one further email at 18:24 on the **1st of February 2019**. Unlike the foregoing emails, this email *is* included in the Provider's response to this office however, again inexplicably, the version included concludes after the entry at number '4' and omits over half of the email. The full email is in the following terms:

To summarise

- 1. I have received a rejection for the payment for "lack of information" and the [County E] Bank advised to contact you.*
- 2. I sent an email to the branch on the 25th of Jan. I have not received any answer... yet..!!*
- 3. I called the branch on the 29th.. They confirmed that they didn't receive the transfer at all.! and advised me to do it again after checking my bank account number well...!! They contacted the payment department before answering..!!*
- 4. I asked the [payer] to do the same job again, supposed it was a mistake..!!*
- 5. a person spent some extra time to process that transfer for me again..!!*
- 6. you confirmed, by your email, that you received the transfer before, and it was not a mistake as [the Provider] said to be on the phone..!!!*
- 7. I send you the email asking about why such treatment..!!*
- 8. I called the branch and registered a complaint.. Which should be on your records.*
- 9. I received an email asking me about [a country on the international 'Sanctions List' other than Country X or Country Y] I don't know what the relationship between me and [the country] is....*
- 10. I will not answer before receiving feedback on my complaint.*

Thereafter, on the **7th of February 2019**, in a phone call between the Complainant and the Provider, the Complainant reiterated his formal complaint and once again outlined the history of events. The Complainant specifically identified the inaccurate information provided to him on **29th of January 2019**. It was in the course of this phone call, for the first time, that it was explicitly explained to the Complainant that the payment was blocked owing to its connection with a sanctioned or "*high-risk*" country. The Complainant queried why he was asked about three other countries on the 'Sanction List' other than County X but including County Y alleging that this constituted a "*discriminative action*". The Complainant was promised a written response before the close of business the following day.

The Provider furnished the Complainant with a formal 'Final Response' on the **8th of February 2019** wherein an explanation for the blocking of the payment was provided, the error of the **29th of January 2019** was acknowledged, certain limited apologies tendered and a somewhat nebulous explanation was offered as to why the Complainant was asked about the other countries on the 'Sanction List' excluding County X but including County Y.

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A second 'Final Response Letter' issued from the Provider to the Complainant, after he made a complaint to this office, on the **30th of April 2019** acknowledging that the Complainant had, in his first email of **1 February 2019**, provided sufficient detail ("*the requested information*") to allow the completion of the transfer but that, owing to internal failings, this information had not been passed to the 'Sanctions Team'. This should have allowed the delayed completion of the transfer of the **31st of January 2019** in circumstances where, though the payment was blocked on **31st of January 2019**, it was not in fact "*rejected*" until three days after it was presented. The letter offered an unconditional apology and a 'gesture' in the form of an offer of compensation of €1,000.

With regard to this letter of the **30th of April 2019**, I might note at this point that, very unsatisfactorily, certain parts of the Provider's response to this office (in particular, in the answer provided to this office in response to question 10 in the Summary of Complaint and Request for Evidence) are inconsistent with the acknowledgements made in the letter of **30th of April 2019** with regard to whether adequate detail was or was not provided by the Complainant in his email of the **1 February 2019**.

The Provider it seems to me, by virtue of the name of a sanctioned country appearing in the payment narrative of the first transfer, and by reference to clause 6.51 of the terms and conditions of the Complainant's account may have been entitled to block the first incoming payment pending satisfactory interrogation of its source and legitimacy. At the very least, it was entitled to question the payment. The Provider however failed to advise the Complainant as to the action it had taken and failed to provide accurate information in the course of the phone call of the **29th of January 2019**. Additionally, with regard to the first payment, the Provider failed to advise the Complainant as to what action he might take to ensure the successful transfer of the funds.

It is not clear why the Provider was entitled to stop the second payment. However, I note the Provider's argument that it did so because it was in the same amount, and from the same payer, as the first payment which had explicitly referenced the sanctioned country. At least the Provider did, on this occasion, promptly contact the Complainant to advise what information it required in order to complete the payment albeit that the 'waiver' form said to be attached to the email of the **31st of January 2019** does not appear to have been attached.

With regard to the manner in which the Provider interacted with the Complainant, I do not view as appropriate the tone adopted by the Provider in the email exchange of the **1st of February 2019**. It is additionally a serious cause for concern that these emails were omitted by the Provider in its response to this office and that a further email was provided in partial form only.

Ultimately, I view the following as the shortcomings in the conduct of the Provider:

- The failure to promptly advise the Complainant that the payment to him of the **21st of January 2019** had been blocked;

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- The failure to advise the Complainant, following the blocking of the payment of the **21st of January 2019**, as to how he might ensure the completion of the payment;
- The failure to respond to the email of the **25th of January 2019**
- The inaccurate information provided to the Complainant in the course of the phone call of the **29th of January 2019**;
- The failure to attach the waiver form to the first email of the **1st of February 2019**;
- The inappropriate tone of the latter two of the Provider's emails of the **1st of February 2019**;
- The failure to forward the information provided by the Complainant in his first email of the **1st of February 2019** to the 'Sanctions Team' and the associated failure to complete the second transfer.

Furthermore, there are unacceptable inconsistencies between the Provider's letter of the **30th of April 2019** and the response it provided to this office to the Summary of the Complaint.

Ultimately, I am of the view that the Provider eventually properly addressed its conduct in its letter of the **30th of April 2019**. This letter provided a thorough and unqualified apology and offered compensation. In the course of the exchange of correspondence with this office subsequent to the Provider's formal response, the Complainant noted that he had donated the €203.70 to charity in circumstances where he was "ashamed" to request the payer to attempt the transfer for a third time. In response to this, the Provider increased its offer of compensation to €1,203.70.

Insofar as the Complainant complains about systematic discrimination against him by the Provider arising from his nationality, such a complaint does not fall within my jurisdiction. As has been highlighted previously, the Workplace Relations Commission is the appropriate forum for any complaint of discrimination on any of the grounds listed in the **Equal Status Acts 2000-2015** in the furnishing of financial services to the Complainant by the Provider. I am of the view that any questions that were asked of the Complainant regarding County Y or regarding the two other countries on the international 'Sanctions List' (i.e. other than County X), fall within the Workplace Relations Commission and, indeed, the Complainant appears to have been of the same view when he described the event as a "*discriminative action*". Accordingly, I have not considered this aspect of the complaint.

For the reasons outlined in this Decision I substantially uphold this complaint and direct the Provider to pay a sum of €2,000 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 substantially upheld, on the grounds prescribed in **Section 60(2) (b), (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 €2,000, 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**

21 December 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.