



<u>Decision Ref:</u>	2021-0069
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Money Transfer (between accounts/between banks/3rd)
<u>Conduct(s) complained of:</u>	Disputed transactions
<u>Outcome:</u>	Rejected

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

The complaint concerns the Complainant's current account with the Provider.

The Complainant's Case

On **20 March 2019**, the Complainant contacted the Provider, against which this complaint is made, and advised that a third party merchant he had been making payments to was fraudulent. The Complainant requested the Provider to process a chargeback for all transactions he had made to this merchant in respect of his current account, pursuant to the debit card provider's 'Scheme Rules'. The payments to the merchant had been made using the Complainant's debit card and the transactions occurred between **21 February 2018** and **17 February 2019**.

The Complainant states that on **30 April 2019** the Provider raised a chargeback on his behalf and credited the transaction amounts to his account. The Complainant contends that on **15 May 2019** and **17 May 2019** the Provider then debited his account with the amounts as the merchant had declined the dispute.

On **23 May 2019**, the Complainant wrote to the Provider disputing the merchant's response to the chargebacks that were exercised and disputing the merchant's statement that it did in fact provide the services contracted. He stated that:

"I signed up for the merchant's advertised service – to trade in the products they offered via their service..."

As a factual matter to enable one to offer the ability to trade in these products, you must have requisite licensing. Without it, you cannot create funded accounts or obtain access to these financial products to enable one to trade. Therefore, services were NOT in fact provided.”

The Complainant states that on **28 May 2019** he wrote to the Provider requesting it to bring the matter to pre-arbitration, and that the Provider did so the next day. The Complainant further states that the Provider advised him at this time that the merchant had 30 days to either accept or reject the dispute. The Complainant states that on **27 June 2019** the Provider wrote to him advising that the merchant had declined the pre-arbitration dispute.

On **9 July 2019**, the Complainant wrote to the Provider further to receiving the Final Response Letter dated **7 July 2019** and expressed his dissatisfaction that the merchant had declined the pre-arbitration dispute.

The Complainant made further submissions to this Office dated **24 July 2020**. In these submissions, the Complainant again stressed that the merchant “*was a fraud firm*”. The Complainant also stated that he paid a third party consultant a service charge of \$900 in relation the chargeback and he is out of pocket for this also.

Ultimately, the Complainant wants the Provider to progress his dispute to the debit card provider’s arbitration stage, or, failing that, to refund the funds that were not recovered, a sum of €13,750.

The Provider’s Case

The Provider stated, in its Final Response Letter dated **7 July 2019** that as the Complainant had willingly given his debit card details to the merchant, the transactions did not fall into the category of fraudulent dispute. However, the Provider states that it agreed to raise a dispute under “Misrepresentation”:

***“Table 11-18: Dispute Condition 15.5: Misrepresentation – Dispute Rights
Dispute Condition 13.5: Misrepresentation Dispute Rights***

The Dispute applies for any of the following:

- *Business opportunities in which the Merchant suggests that an income will be generated or recommends that the Cardholder purchase additional items (such as better sales leads) to generate more income.*
- *Investment products or services (for example: binary options or foreign exchange trading), where the Merchant refuses to allow the Cardholder to withdraw available balances”.*

The Provider submits that in order to raise such a dispute, it required further information from the Complainant, which it duly requested. The Provider advises that on **30 April 2016** it raised a chargeback, but that this was declined by the merchant.

The Provider submits that at the request of the Complainant, it brought the matter to pre-arbitration on **29 May 2019**, but that this was subsequently declined by the merchant on **27 June 2019**. In its letter dated **11 July 2019** the Provider states:

“...the Merchant has declined our pre-arbitration stage therefore [the Provider is] unable to dispute this any further on your behalf”.

The Provider made submissions to this Office dated **15 July 2020**. In these submissions the Provider stressed again that as the Complainant had willingly provided his debit card details to the merchant and authorised each disputed transaction, the transactions could not be disputed as fraudulent and the *“only option open to the [Provider] under [the debit card provider] Scheme Rules was to process a chargeback under dispute condition 13.5 “Misrepresentation”.*

The Provider states that on **9 April 2019** it issued correspondence to the Complainant and advised that in order to process a chargeback for the disputed transactions, further information would be required, including evidence of the Complainant’s attempts to contact the merchant, screen prints of the Complainant’s account with the merchant showing a credit balance at the time of his withdrawal requests, and evidence of the Complainant’s attempts to withdraw funds.

The Provider states that on **26 April 2019** the Provider received correspondence from the Complainant dated **23 April 2019** advising that he was not in a position to provide the requested documentation as he submitted that he had not received a service from the merchant. As stated in its Final Response Letter, the Provider stated that on **30 April 2019**, the Provider processed a chargeback for the disputed transactions on the Complainant’s behalf, under the dispute condition 13.5 “Misrepresentation”. In line with the chargeback process, the Provider states that the disputed transactions were refunded to the Complainant’s current account.

The Provider stated that on **14 May 2019**, it received documentation from the merchant in accordance with the debit card provider’s Scheme Rules, comprehensively outlining its position and providing documentation to support its assertion that the disputed transactions were legitimate and in accordance with its contract with the Complainant. The Provider stated that in light of the documentation received, the chargeback was unsuccessful as the evidence disclosed that the Complainant’s dispute was invalid due to the fact that the terms of his engagement with the merchant had not been misrepresented. The Provider stated that the merchant outlined, in a comprehensive report, that the Complainant had been trading successfully for 12 months (164 trades) and that the merchant alleged that the reason the Complainant had made a complaint now was because of a downturn in his selected trades.

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The merchant further stated that it was not a financial service provider or a broker but merely provided a platform for its customers to allow them to trade independently on regulated financial products. Furthermore, the merchant referred to its terms and conditions of its agreement with the Complainant which state that all open trades must be settled prior to a withdrawal of funds request can be completed and the merchant stated that at the time of Complainant's withdrawal request, several open trades were active and therefore the request could not be completed.

The Provider stated that it issued correspondence to the Complainant on **14 May 2019**, **15 May 2019** and **16 May 2019** confirming that the chargeback was unsuccessful and outlining the reasons for same. The Provider stated that it also sent the Complainant a copy of the documentation provided by the merchant.

The Provider stated that it received a request from the Complainant on **28 May 2019** to progress the matter to pre-arbitration in accordance with the debit card provider's 'Scheme Rules' and on **29 May 2019** it advised that it would progress the dispute to pre-arbitration.

The Provider stated that on **1 June 2019** the Complainant issued correspondence to the Provider confirming his request to progress to pre-arbitration and refuting the merchant's assertions that the disputed transactions were legitimate.

On **10 June 2019**, the Provider brought the dispute to pre-arbitration but the merchant rejected the Provider's pre-arbitration request and so the process was unsuccessful. The Provider stated that the merchant had fulfilled its obligations under the debit card provider's 'Scheme Rules' in providing relevant documentation and information to support the legitimacy of the disputed transactions and could evidence by providing documentation that the Complainant's claim of misrepresentation was not justified.

The Provider stated that it advised the Complainant of the outcome of the pre-arbitration process in its Final Response Letter dated **7 July 2019** as well as its correspondence dated **8 July 2019** and **17 July 2019**.

The Provider outlined the relevant debit card provider's Interlink Core Rules and Interlink Product and Service Rules stating that a "misrepresentation" applies in the following scenarios:

- Business opportunities in which the merchant suggests that an income will be generated or recommends that the cardholder purchases additional items to generate more income; or
- Investment products or services where the merchant refuses to allow the cardholder to withdraw available balances.

The Provider stated that as the Complainant had outlined that he was unable to access his funds through the merchant's online platform when attempting to make a withdrawal, the Provider was satisfied that "Misrepresentation" was the correct dispute condition in this case.

The Provider stated that the dispute could not progress to arbitration as the merchant had supplied sufficient evidence to support the validity of the service provided. Therefore, the Provider stated that it could not progress the dispute any further on the Complainant's behalf.

The Provider stated that it cannot confirm whether or not the merchant's website is fraudulent and it is not within its remit to do so.

In its submissions to this Office, the Provider stated that it should have been clearer when discussing the chargeback, pre-arbitration and arbitration process with the Complainant. In particular, the Provider stated that it should have provided a full and comprehensive explanation to the Complainant as to why arbitration was not an option in his case. As a result of this failure in service, the Provider has made an offer of €1,000 in compensation to the Complainant.

The Complaint for Adjudication

The complaint is that the Provider wrongfully refused to progress the Complainant's dispute to the debit card provider's final stage in the chargeback process, that is, arbitration.

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.

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A Preliminary Decision was issued to the parties on 3 February 2021, 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.

Following the issue of my Preliminary Decision, the Complainant made a submission under cover of his e-mail to this Office dated 7 February 2021, a copy of which was transmitted to the Provider for its consideration.

The Provider advised this Office under cover of its letter dated 17 February 2021 that it had no further submission to make.

Having considered the Complainant's additional submission and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

The Complainant has requested in his post Preliminary Decision submission dated **7 February 2021** that I "*consider [my] decision based on [the Complainant's] fraud case*". He states:

"The preliminary decision did not address my basic complaint that is the Trading Firm and the trading platform is an Authorised Licensed entity.

In the preliminary decision state that i have raised my fraud by the trading frim (sic) and the trading platform and hence i have approached the bank with chargeback and arbitrations.

The preliminary decision state as "As a factual matter to enable one to offer the ability to trade in these products, you must have requisite licensing. Without it, you cannot create funded accounts or obtain access to these financial products to enable one to trade. Therefore, services were NOT in fact provided."

As such kindly please consider your decision based on my fraud case."

The Complainant, in his post Preliminary Decision submission is referring to the third party trading firm and not the Provider against which this complaint is made. I must highlight that I have no jurisdiction to investigate any allegation of fraudulent activity. Fraud is a criminal offence, and I am not in a position to investigate or to give the appropriate sanctions in relation to such matters. This Office is neither established nor equipped to deal with situations involving fraudulent actions.

Therefore, I cannot make a determination on whether the merchant in this complaint has acted in a fraudulent manner, nor is such a determination required by me. My adjudication is not concerning the actions or legitimacy of the merchant, but rather, I am adjudicating on whether the Provider wrongfully refused to progress the Complainant's dispute to the debit card provider's final stage in the chargeback process, that is, arbitration.

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The merchant alleges that the Complainant left his details on a third party site affiliated with the merchant with an explicit request for information about the merchant's services, however, no evidence has been provided of this so I will not make any comment on this.

What is clear, is that the Complainant began making payments to the merchant on **21 February 2018** and continued to do so up until **17 February 2019**. The disputed payments amount to €13,750 spread over eight transactions. I note that the transactions were processed online using the Complainant's personal visa debit card number, expiry date and CVV number. I accept that by providing these secure details to the merchant, the Complainant provided his consent for funds to be transferred to the merchant and authorised each of the eight transactions.

I pay particular attention to Page 38 of the Provider's Terms and Conditions, under the heading "2 The Card", which outlines a variety of means by which a customer can authorise transactions and provides for "*authorisation by means of your Card number and in some circumstances where required, a security code*". As the Complainant processed the disputed transactions by providing his card information and security code, I accept that he did properly and validly authorise all of the disputed transactions. I also note that the Complainant signed a form entitled "*Declaration of Deposits*" in respect of his deposits with the merchant.

I note that the Complainant has been unable to provide any cogent evidence to support his assertion that the merchant is fraudulent. The reality of this situation is that the Complainant made the informed decision to lodge money onto a platform which allowed investment in regulated financial products. The merchant is the provider of the platform but it does not provide investment management services, financial services or brokerage services directly; it merely facilitates these services through the platform. The documentation disclosed by the merchant shows that the Complainant was fully aware that he was trading on this platform through the medium of Contracts for Differences which offered him an opportunity to profit from price movement of an asset without owning the underlying asset.

Indeed, it wasn't until after he had made 164 trades over the course of 12 months that the Complainant raised an issue with the merchant and the services it provided. There is an element of risk involved in the investments of the nature taken on by the Complainant and unfortunately, the trading history disclosed by the merchant shows that the Complainant's trades/investments on the merchant's platform were ultimately not successful.

I note that the terms and conditions of the merchant's website disclose that a user of the platform is only able to submit a withdrawal request to the platform as long as that user has no open trades extant. Unfortunately, for the client he requested withdrawal of funds and closure of his account at a time when open trades existed and therefore this withdrawal requests were not granted.

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I accept that as the disputed transactions took place through the use of a debit card, the Provider was correct to refer to the debit card provider's dispute management guidelines and the debit card provider's Interlink Operating Regulations.

Both of these documents have been provided to this Office and clearly outline what documentation/information is required from a merchant to defend a chargeback request. In essence, the merchant has to provide documentation which validates the service provided to the client. It is clear in this case that the merchant provided a significant volume of material which stipulated in detail the service it provided for the Complainant. This service consisted of a platform for the Complainant trade online. The merchant provided screenshots of the Terms and Conditions of the platform which were presented to the Complainant prior to signing up for this platform and set out the trading supports it provided to the Complainant through its platform. Based on the foregoing and due to the provision of this documentation from the merchant validating the service it provided, I accept that the Provider was correct in its decision to refuse to refer the dispute from pre-arbitration to arbitration.

I note that the Provider has accepted that it should have provided a clearer explanation to the Complainant concerning the process and procedure for pre-arbitration and arbitration. I note that pre-arbitration is a process which allows for the exchange of documentation between the Provider, the merchant and the customer to establish if the merchant's obligations and the customer's obligations have been fulfilled in accordance with the debit card provider's 'Scheme Rules'. If the evidence provided by either party does not fulfil these requirements, the dispute would be progressed to arbitration. This failure by the Provider to make full disclosure of "*all relevant material information*" to the Complainant concerning the pre-arbitration and arbitration process is a breach of provision 2.6 of the Consumer Protection Code 2012 (as amended). I note that the Provider has made an offer of €1,000 in respect of this failure. I accept that this is a reasonable offer.

The reality of the Complainant's situation is that he has engaged in a high-risk investment and has been unsuccessful in that, resulting in a loss of a significant sum of money. As a result of this financial loss, the Complainant has sought to apportion the blame for this investment loss on both/either of the merchant and the Provider.

There is no evidence to support this contention nor is there any evidence to suggest that the Provider acted inappropriately, improperly or unfairly in its application of the debit card provider's dispute management guidelines and/or the debit card provider's Interlink Operating Regulations in its attempts to resolve the dispute between the merchant and the Complainant or in its refusal to refer the dispute from pre-arbitration to arbitration.

For the reasons outlined in this Decision and on the basis that the Provider has made an offer of €1,000 to the Complainant and on the basis that this offer is still available to the Complainant, I do not uphold this complaint.

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.



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

15 March 2021

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.