



<u>Decision Ref:</u>	2021-0096
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Debit Card
<u>Conduct(s) complained of:</u>	Handling of fraudulent transactions Complaint handling (Consumer Protection Code) Disputed transactions
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

On **23 November 2018**, the First Complainant expressed an interest in purchasing tickets for an event in Dublin. He then visited a ticket sales website and was redirected to a second website. The First Complainant located the tickets, and entered his personal information including debit card payment details. The First Complainant maintains he did not complete the transaction or authorise payment as the tickets were too expensive. The following day, a pending transaction for the tickets in the amount of approximately €250 appeared on the Complainants' account and the account was ultimately debited with this amount. The Complainants requested a chargeback in respect of this transaction. However, the Provider has declined their request.

The Complainants' Case

The Complainants assert that an unauthorised transaction was carried out on their account in amount of €249.76 in respect of tickets to a show in Dublin. On **23 November 2018**, the First Complainant logged on to a ticket sales website to check the price of two tickets for a show scheduled for **19 February 2019**. The tickets were €70 each. The total price was €140 and the First Complainant was happy to proceed with the purchase on that basis.

The First Complainant proceeded to enter his personal information including his email address and bank details. He was then presented with an updated price of €196.00 for the two tickets and a screen that gave him two options: (1) I NEED HELP or (2) PROCEED. The First Complainant believed the tickets were too expensive and decided not to proceed any further and pressed I NEED HELP multiple times.

The website did not present the I NEED HELP screen and eventually the website stalled leaving the First Complainant with no option but to switch his computer off. He emphasises that *“Under no circumstances did I get as far as a screens (sic) that required me to review the overall transaction or make/authorise a payment.”*

The Complainants submit that as far as the First Complainant was concerned, that should have been the end of the matter. However, the following day, the First Complainant noticed a pending transaction on the Complainants’ account in the amount of €249.76. This amount was subsequently debited to the Complainants’ account.

The following week, the First Complainant explains he spent several hours discussing the matter with the Provider’s fraud department and customer disputes department. The First Complainant was told the ticket reseller was within its right to raise the payment transaction and even though it was not authorised, the transaction would only be considered fraudulent if the tickets were not issued or the Complainants were refused entry to the show. The First Complainant did not agree with the Provider’s position, querying how the ticket reseller could legitimately raise and process a payment transaction on foot of browsing the ticket reseller’s website and not authorising the transaction.

The First Complainant contends this is fraudulent activity in that a customer should have to complete the process by finally:

- reviewing the summary of the purchase, personal details and bank details;
- authorising payment; and
- receiving electronic payment confirmation/ID reference immediately after authorising payment.

It is submitted that this fraudulent activity should be subject to a chargeback against the ticket reseller.

The Provider’s Case

The Provider submits that despite the Complainants’ statements to the contrary, the First Complainant provided authorisation for his account to be debited when he visited the ticket sales website(s) on **23 November 2018**. Therefore, the Provider does not consider the disputed transaction to be fraudulent.

The First Complainant confirmed he was on the ticket sales website seeking specific event tickets. The debit card used to purchase the tickets was in the name of the Second Complainant. There is no explanation as to how the ticket seller and the subsequent site the First Complainant was re-directed to, would have known the debit card details, enabling the transaction to be processed, unless they were entered by the Complainants on the ticket ordering system.

The First Complainant has stated that he input the account/card details although he states he did not *finish the transaction 100%*. While the Complainants' debit card was used for the purposes of the transaction, the Provider does not consider the transaction to be fraudulent despite the fact the amount ultimately charged by the seller was more than the Complainants were willing to pay. This was outside of the control of the Provider and it a matter between the Complainants and the seller.

It is also stated that the Complainants have submitted a copy of the purchased tickets in support of this complaint. This clearly shows the Complainants received the tickets which demonstrates they received the product/service that was paid for on **23 November 2018**. This is ultimately why the Provider rejected the request for the chargeback. The Provider states that the transaction was not fraudulent and the Complainants received the service they paid for.

The Provider recognises the amount debited from the Complainants' account, being almost €250, was far greater than the amount they had expected to pay based on the information on the first website. The Provider considers the price difference is a matter for the operator of the second website which is a resale site.

The Provider has also cites section 3, in particular section 3.15(iii), of its *Personal Banking Terms and Conditions*, and references the debit card transaction document which it relies on as evidence to authorise the disputed transaction. The transaction authorisation document states:

“Non-Authenticated Security Transaction without SET merchant certificate, such as a channel-encrypted transaction.”

The Provider states that it is not within its remit to explain the operation of the websites which the First Complainant visited on **23 November 2018**. However, in the normal course of events, tickets for an event would be selected by the consumer followed by an instruction to proceed to the payment area or checkout. It is typically at this point that the consumer is asked to input their payment details for the processing of the selected purchase. Upon successful payment, confirmation is communicated to the consumer, both by immediate screen information and follow-up email confirmation. It is submitted that it is for the ticket seller to explain the operation of their websites. Furthermore, if there was a technical issue with the website in question, the Provider considers this a matter for the seller to explain to the Complainants.

In terms of **section 96** and **section 97** of the **European Union (Payment Services) Regulations 2018**, the Provider submits that it has met its obligations under section 96. The Provider states that it is satisfied the Complainants' account details were provided to allow the execution of the ticket purchase. The Provider submits that section 97 is not applicable as it does not consider the transaction to have been unauthorised.

For a chargeback to occur, the Provider advises it is obliged to adhere to the specific *Chargeback Rules* and all qualifying chargeback claims must proceed through Visa. In doing so, the Provider must abide by their operating rules, regulations and timelines. To raise a chargeback, the Provider must supply full supporting evidence in respect of a claim. While the Provider appreciates the Complainants have stated they did not authorise the transaction, without evidence of this, it states that it is not in a position to consider a claim for an unauthorised payment. The Provider relies on section 11.5.2 for its decision not to apply a chargeback to the Complainants' account. It is submitted that, in the circumstances of this complaint, the only applicable chargeback would be if there was a fraud.

The Complaint for Adjudication

The complaint is that the Provider wrongfully and/or unreasonably refused to process a chargeback on the Complainants' current account in respect of the disputed transaction.

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 Complainants were 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 19 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.

Following the issue of my Preliminary Decision, the Complainants made a submission to this Office under cover of their e-mail dated 25 November 2020, a copy of which was transmitted to the Provider for its consideration.

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Under cover of its e-mail to this Office dated 27 November 2020, the Provider advised that *“in light of the Complainants’ earlier submission, it did not consider it necessary to address the points raised by the Complainants and was satisfied for the Legally Binding Decision to issue”*.

Analysis

The ***European Union (Payment Services) Regulations 2018*** (the **Regulations**) contain a number of important provisions relevant to this complaint. Section 88 states:

“(1) A payment transaction is authorised by a payer only where the payer has given consent to execute the payment transaction.

...

(7) The procedure for giving consent shall be agreed between the payer and the payment service provider concerned.”

Leading on from this, section 93(1)(a) provides that:

“93. (1) A payment service user entitled to use a payment instrument shall—

(a) use the payment instrument in accordance with the terms governing the issue and use of the payment instrument, which must be objective, non-discriminatory and proportionate, ...”

Thus, a payment transaction is authorised when the First Complainant gives his consent to execute the transaction. The procedure for this consent is a matter to be agreed between the Complainants and the Provider. In this instance, this is in the form of the Provider’s *Personal Banking Terms and Conditions*. Further to this, making payment by debit card for example, must also be in accordance with the Provider’s terms and conditions.

The relevant sections of the Provider’s terms and conditions are as follows.

Section B, clause 11:

“11 Unauthorised Transactions

11.1 ... You will not be responsible for Transactions which You did not authorise or consent to in accordance with these Terms and Conditions.”

Section E, clause 3.15:

“3.15 A transaction will be regarded as authorised by You or an additional cardholder and You give your consent to the transaction where You (or the additional cardholder):

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(a) *authorise the transaction at the point of sale by following whatever instructions are provided by the merchant to authorise the transaction, which may include:*

- (i) *entering the PIN or providing any security code;*
- (ii) *signing a sales voucher;*
- (iii) *providing the Card Details and/or providing any other details requested; or*
- (iv) *waving or swiping the card or a card reader or contactless payment unit.*

(b) ...

(c) ...

(d) *instruct a Third Party Provider to initiate a transaction or seek information related to Your Account.”*

Section E, clause 7.9:

“7.9 ... We will refund You immediately on establishing that a transaction was not authorised or consented to in accordance with Condition 3 which transaction was debited to your Account by crediting your Account with the amount and any interest lost due to the unauthorised transaction.”

When a transaction is disputed as not having been authorised, the Regulations place the burden of proving it was authorised on the Provider and a record of the payment instrument, while relevant, is not necessarily determinate. In this respect, section 93 states:

“(1) Where a payment service user denies having authorised an executed payment transaction or claims that the payment transaction was not correctly executed, the burden shall be on the payment service provider concerned to prove that the payment transaction was authenticated, accurately recorded, entered in the accounts and not affected by a technical breakdown or some other deficiency of the service provided by the payment service provider.

...

(3) Where a payment service user denies having authorised an executed payment transaction, the use of a payment instrument recorded by the payment service provider, including a payment initiation service provider as appropriate, shall in itself not necessarily be sufficient to prove either that the payment transaction was authorised by the payer or that the payer acted fraudulently or failed with intent or gross negligence to fulfil one or more of the obligations under Regulation 93. ...”

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Section E, clause 3.15 sets out the circumstance in which a transaction is considered authorised. This is not necessarily consistent with the Complainants' position who assert that express consent, confirmation or authorisation was required before the Provider was obliged to execute payment; and this point had not been reached by the First Complainant.

In an email dated **18 June 2020**, the Complainants set out the steps taken by the First Complainant when he visited the ticket reseller's website:

- Step 1 – logged on to website
- Step 2 – selected event
- Step 3 – selected number of tickets
- Step 4 – selected date
- Step 5 – selected *Proceed*
- Step 6 – entered personal information
- Step 7 – entered debit card details (card number, expiry date and security number)
- Step 8 – selected *Proceed*
- Step 9 – summary screen with two options: *I Need Help* and *Proceed*
- Step 10 – selected *I Need Help*

The Complainants state that as the summary screen remained on screen, the First Complainant continued to press *I Need Help* as the relevant options did not appear. The screen then froze, and the First Complainant powered off the computer. Further to this, the First Complainant received an email on **9 January 2019** providing a link to the tickets, and it appears a copy of one of the tickets has been furnished by Complainants.

The Complainants have not provided the exact procedure or process the relevant seller had in place for completing the online purchase of the tickets or the point at which tickets are considered purchased thus entitling the seller to execute/request payment from the Complainants' bank account. Further to this, no evidence or documentation from the relevant seller has been provided to verify the exact steps taken by the First Complainant while on its website or to show the precise stage in the process reached by the First Complainant before he left website when he powered off his computer. It is also not clear if any terms and conditions were accepted by the First Complainant when he entered the relevant website or whether each time the *Proceed* option was selected, he was giving his consent to process payment. The second time the First Complainant selected *Proceed* was after the debit card details were entered and it is not clear if selecting *Proceed* on this occasion constituted consent to the transaction from the seller's perspective.

The only evidence presented by the Complainants to show the transaction was unauthorised is the statement made the First Complainant outlining the steps he took while on the relevant website, and while he is willing to swear an affidavit to this effect, this is not sufficient to demonstrate the transaction was not authorised or was fraudulent.

The un-contradicted evidence is that the First Complainant entered the Second Complainant's debit card details, having opted to *Proceed* with the transaction on two occasions.

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Therefore, taking the Regulations into consideration and the Provider's terms and conditions, in particular Section E, clause 3.15(iii), I accept it was reasonable for the Provider to conclude that the First Complainant authorised and consented to the transaction for the purchase of the tickets. Further to this, clause 7.9 states that the Provider is only obliged to refund the Complainants in respect of transactions not authorised or consented to within the meaning of section 3. However, as I am not satisfied the transaction was unauthorised, I believe that the Provider is not obliged to process a chargeback or refund the Complainants in respect of the tickets.

Goodwill Gesture

In responding to this complaint, the Provider states that:

"... while the Bank is not liable for any resulting financial loss on the Complainants' part and it is therefore not the Bank's responsibility to recompense them, in recognition of the distress and inconvenience this matter has caused the Complainants, we would like to offer them an ex-gratia gesture of goodwill in the sum of €250, which remains open to them indefinitely."

I consider this goodwill gesture offered by the Provider to be a reasonable attempt to resolve this dispute.

For the reasons outlined in this Decision, 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

20 April 2021

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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.

