



<u>Decision Ref:</u>	2021-0147
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Money Transfer
<u>Conduct(s) complained of:</u>	Handling of fraudulent transactions Failure to provide adequate security measures
<u>Outcome:</u>	Rejected

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

The complaint concerns a chargeback request.

The Complainants' Case

The Complainant states that, in the period between **19 June 2017** and **4 August 2017**, he fell victim to a “scam company” presenting as an investment platform, where “wire transfers and credit card payments were charged from my account, in the total amount of 60,000 EUR”. The Complainant attests that “since no service or investments were supplied to me, I request to file a dispute regarding these transactions and I demand that you chargeback and recall these payments”.

The Complainant states that “the banking community in the UK and EU was alerted” to the status of the company during the period in which the Complainant was affected, and that “under the rules and bylaws of the Prudential Regulation Authority (PRA) at the Bank of England, and of the Financial Conduct Authority (FCA), the bank or credit institution is jointly and severally liable for any breach of contract or misrepresentation by the payee”. The Complainant further states that “in accordance with Visa Core Rules ID#0004630 5.2.1.2., before allowing a company or merchant to accept payments via credit or debit card, there must be a physical inspection of the listed premises of the business”. The Complainant adds that “I will add that in accordance with international SWIFT rules, before allowing a company or merchant to accept payments, there must be a physical inspection of the listed premises of the business.” The Complainant states that “I have proofs that there is nothing at the listed premises of this company that means that this condition was not met as well”.

The Complainant states that the Provider is a *“financial institution who not only operate as a bank but give your customers banking and financial investment advice. To do this service you need to be aware of the good and bona fida (sic) companies that you would recommend your customers investing with”*. The Complainant also contends that the company did not offer a service as it *“did not invest or trade that money and did not give any return”* because *“they just keep the money”*.

The complaint is that the Provider has erroneously refused to issue the requested chargebacks.

The Complainant wants the Provider to recoup his *“significant financial loss”* of €60,000.

The Provider’s Case

The Provider states that the Complainant *“provided the merchant with your details and created the accounts with them”*, and that, under chargeback rules, *“it is deemed that you have agreed to their terms and conditions”*. The Provider contends that *“as the merchant provided you with some service as funds were deposited to the account to be used for trading, it is more complex to dispute”*.

The Provider states that *“although you authorised these transactions you feel [the Provider] had a responsibility to prevent you from doing this. You willingly participated in these transactions and never queried or disputed them with us until recently.”* The Provider attests that *“as a card issuer, we are not the merchant’s bank”* and that *“we can only advise that if you doubt the merchant’s legal standing or regulatory status you refer this matter to the relevant legal authorities and financial regulators”*.

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.

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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 23 April 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.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

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 as well as the 'Visa Core Rules' relied upon by the Complainant:

Terms and Conditions of the Account

The Provider relies on Conditions 49, 50 and 89 of the terms and conditions of the account in support of its decision.

Queries and Disputes

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You should carefully examine all Statements and other Account information received by you or accessed by you online and immediately report any disputed Transactions, or omissions to us. We recommend that you review your Account details online on a regular basis. In the event you have a query concerning a Transaction on your Account please contact us immediately. Our contact details are set out in the 'Contacting us' section of these Conditions.

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(a)

...

(b)

Where the Payer's bank and the Payee's bank are both located in the EEA and you contact us within 8 weeks from when the funds are debited, we will refund you within 10 Business Days of your request, where you can show us that:

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- *Your authorisation did not specify the exact amount of the payment when the authorisation was made; and*
- *The amount of the payment exceeded the amount that you could reasonably have expected taking into account your previous spending pattern.*

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Save to the extent that we are unable under applicable law to disclaim such liability, we are not responsible for the delivery or condition of any goods and/or services paid for by a Card. We accept no liability for any loss or damage suffered in connection with any goods and/or services paid for by a Card.

Visa Core Rules and Visa Product and Service Rules

The Complainant relies on Section 5.2.1.2 of the 'Visa Core Rules' These are the 'Visa Core Rules and Visa Product and Service Rules' and the version of these relevant to this complaint is the version published on 14 October 2017. The section relied upon by the Complainant provides as follows:

5.2.1.2 Due Diligence Review of Prospective Merchant or Sponsored Merchant

Before contracting with a prospective Merchant or Sponsored Merchant, an Acquirer or a Payment Facilitator must conduct an adequate due diligence review to ensure compliance with the Acquirer's obligation to submit only legal Transactions into VisaNet. In the Europe Region, an Acquirer must conduct a physical inspection of the business premises of the prospective Merchant to ensure that the prospective Merchant conducts the business that it has stated to the Acquirer. The Acquirer must also obtain a detailed business description from a prospective Mail/ Phone Merchant and Electronic Commerce Merchant.

The term 'Acquirer' is defined as follows:

A Member that signs a Merchant or Payment Facilitator, provides a Cash Disbursement to a Cardholder, or loads funds to a Visa Prepaid Card, and directly or indirectly enters a Transaction into Interchange.

In the Europe Region, a Member that either:

- *Enters into an agreement with a Merchant for the display of any of the Visa-Owned Marks and the acceptance of Visa products and services*
- *Disburses currency to a Cardholder, except where "Acquirer" is otherwise defined for the Europe Region in the Visa Rules*

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The term 'Issuer' is defined as follows:

In the AP Region, Canada Region, CEMEA Region, LAC Region, and US Region, a Member that enters into a contractual relationship with a Cardholder for the issuance of one or more Card products.

There are other sections of the Visa Core Rules which are relevant to requests for chargebacks or 'disputes', in particular Section 11.

Certain relevant sections are reproduced hereunder including the provisions applicable where, as the Complainant alleges, services were not provided:

11.1.10 Chargeback Reason Code 30 – Services Not Provided or Merchandise Not Received

11.1.10.1 Chargeback Conditions – Reason Code 30

Table 11-13: Chargeback Conditions – Reason Code 30

Condition	Chargeback Conditions – Reason Code 30	Country/Region
1	The Cardholder participated in the Transaction but the Cardholder or an authorized person did not receive the merchandise or services because the Merchant or Prepaid Partner was unwilling or unable to provide the merchandise or services.	All

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11.1.7 Time Limits

11.1.7.1 Chargeback Time Limit

A Chargeback must be processed according to the time limit specified in Table 11-9, "Chargeback Time Limits."

The Chargeback time limit begins on the calendar day following the Transaction Processing Date.

Table 11-9: Chargeback Time Limits

Reason Code	Chargeback Description	Time Limit (calendar days)
30	Services Not Provided or Merchandise Not Received	120 ¹
41	Cancelled Recurring Transaction	120
53	Not as Described or Defective Merchandise	120 ¹
57	Fraudulent Multiple Transactions	120
62	Counterfeit Transaction	120
70	Card Recovery Bulletin or Exception File	75

11.1.10.4 Chargeback Time Limit – Reason Code 30

Table 11-16: Chargeback Time Limit – Reason Code 30

Chargeback Condition	Chargeback Time Limit – Reason Code 30	Country/Region
General	<p>If applicable, before initiating a Chargeback, an Issuer must wait 15 calendar days from either:¹</p> <ul style="list-style-type: none"> • The Transaction Date, if the date the services were expected or the delivery date for the merchandise is not specified • The date the Cardholder returned or attempted to return the merchandise, if the merchandise was returned due to late delivery <p>A Chargeback must be processed no later than either:</p> <ul style="list-style-type: none"> • 120 calendar days from the Transaction Processing Date • If the merchandise or services were to be provided after the Transaction Processing Date, 120 calendar days from the last date that the Cardholder expected to receive the merchandise or services or the date that the Cardholder was first made aware that the merchandise or services would not be provided, not to exceed 540 calendar days from the Transaction Processing Date 	All
General	<p>If an Issuer was required to obtain reimbursement from a bonding authority/insurance scheme, a Chargeback must be processed no later than 60 days from the date of the letter or advice from the bonding authority/insurance scheme, not to exceed 540 days from the Transaction Processing Date</p>	Europe

¹ Unless the waiting period would cause the Chargeback to exceed the Chargeback timeframe

ID# 0007464

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Analysis

The Complainant in this case transferred a total of €60,000 to a third party with a registered address in the UK (hereinafter, ‘the Merchant Payee’) between 19 June 2017 and 4 August 2017 for the intended purpose of investing and trading in certain financial products. All relevant transactions to the Merchant Payee were properly authorised by the Complainant at the time. The Complainant states that it eventually became apparent to him, after his request to withdraw his funds was refused, that the Merchant Payee had not invested his money and that it had simply fraudulently stolen his money.

The Complainant states that at this point, in a letter received by the Provider on 23 May 2019, he submitted a chargeback request to the Provider. The Provider declined this request on the basis that the request was out of time and on the basis that the chargeback facility is not available where the dispute relates to the quality or ‘condition’ of the services provided. With regard to the latter point concerning the quality of services provided, the Complainant maintains that no services were in fact provided.

In support of his complaint, the Complainant invokes the following:

1. The rules and bylaws of the Prudential Regulation Authority (PRA) at the Bank of England,

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2. The rules and bylaws of the Financial Conduct Authority (FCA)
3. Visa Core Rules ID#0004630 5.2.1.2

The Provider, against which this complaint is made, is not subject to the 'rules and bylaws' of the PRA or of the FCA. Both of these institutions are regulators in the UK with jurisdiction over financial providers operating in the UK.

The conduct that I am investigating is that of the Provider, which is regulated in Ireland and is subject to the laws and regulations of Ireland.

The Complainant has also cited the 'Visa Core Rules'. These are the 'Visa Core Rules and Visa Product and Service Rules' (hereinafter, the 'Visa Core Rules'). The Provider points out that these rules do not form part of the terms and conditions of the Complainant's account. Whilst these rules are of course relevant, it is correct to say that they do not constitute the basis of the relationship between the Complainant and the Provider. The terms and conditions of the Complainant's account govern the relationship between the parties. Nonetheless, it seems to me that the Complainant has fallen outside the time limits stipulated in the Visa Core Rules.

The Rule invoked by the Complainant relates to the carrying out of a "*due diligence review*" in respect of a merchant to include a "*physical inspection of the business premises*". This obligation is stated to fall on the "*Acquirer*" or on the "*Payment Facilitator*". It seems to me however that the Complainant has misconstrued the Provider here as an 'Acquirer' or a 'Payment Facilitator' in the context of the transactions he sought to rescind. The Provider was neither of those things in the circumstances which pertained here. Rather, the Provider was the 'Issuer' as understood within the Visa Core Rules. Accordingly, Rule 5.2.1.2 has no bearing on the determination of this complaint.

The Rules which do potentially have a bearing in respect of the Complainant's grievance provide that any request for a chargeback or dispute must be made within a time limit of 120 days from the 'Transaction Processing Date' except where the services were to be provided subsequent to the Transaction Processing Date. However, the Rules set out a strict time limit of 540 days from the 'Transaction Processing Date' regardless as to whether the services were to be provided subsequent to the Transaction Processing Date. The last Transaction Processing Date in this complaint was 4 August 2017. 540 days after 4 August 2017, the last of the transactions, was 26 January 2019. The request for a chargeback or dispute was not received until 23 May 2019. On any analysis, the Complainant's request was made outside of the mandated time limits.

Whilst it will not have a bearing on this analysis given the reasoning set out in the previous paragraph, I would note that the Provider has pointed out that the first occasion on which the Complainant raised a concern with the relevant transactions was not in his letter sent in May 2019, but rather was communicated in a phone call of 9 August 2017.

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In the course of this phone call, the Complainant indicated that he wished to dispute the transactions. In response, the Provider indicated that it would send the Complainant the necessary documentation, which it subsequently did. The Complainant however omitted to send in any written request to dispute the transactions. The delay over and above 540 days in raising the dispute would thus appear to lie solely with the Complainant.

In relation to the terms and conditions of the Complainant's account with the Provider, I note that the Complainant has not identified any term or condition which he alleges the Provider has breached. The Provider, on the other hand, points to Section 50(b) of the policy wherein a time limit of "*8 weeks from when the funds are debited*" is referenced. It is clear from the evidence submitted that the Complainant did not raise a query or dispute within this period.

Finally, I might address the Complainant's assertion that the Provider should have in some way vetted the entity to which the Complainant sent the money and discovered that it was a fraudulent enterprise and thereafter warned the Complainant off the transaction. This is an untenable proposition. It would be utterly unfeasible for a financial service provider to vet every individual payee to whom/which its customers wished to voluntarily transfer funds. It would be unreasonable and impractical for a duty to be imposed on a bank to carry out the vetting envisaged by the Complainant. I might also note that the Complainant has provided no evidence to support his assertion that the Provider gave 'financial advice'.

For the reasons set out 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**

14 May 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.

