



<u>Decision Ref:</u>	2021-0206
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Standing Order
<u>Conduct(s) complained of:</u>	Disputed transactions Dissatisfaction with customer service Failure to process instructions in a timely manner
<u>Outcome:</u>	Rejected

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

The complaint relates to a standing order on the Complainant's account.

The Complainant's Case

The Complainant was a tenant of a landlord to which he paid a rent of €289.46 per month. On **17 November 2017** the Complainant asserts he gave one month's notice that he was ending his tenancy. According to the Complainant, the next week he called into his local Provider's branch office to request it cancel his standing order to the landlord. The Complainant says the Provider's 'Official A' told him that:

"since it was after the 16th Nov. 2017 as it was in the system [the Provider] would not be able to cancel it until the next month Dec. 2017".

According to the Complainant he is "reg[istered] as blind" and therefore does not use online banking. He asserts that in **July 2018** he requested bank statements from the Provider with regard to another matter and contends that he then discovered that the standing order for rent was "still being paid" to the landlord. The Complainant says that in **August 2018** he called into the Provider's branch office regarding this and asserts that the Provider's 'Official B' cancelled the standing order "immediately" and then rang the landlord to explain the situation.

The Complainant submits a letter from the landlord which sets out that the money received from the Complainant in the period **December 2017** to **July 2018** paid off arrears of €597.59 and a credit balance of €1,428.63 was re-paid to the Complainant.

The Complainant submitted a statement from the landlord which shows the standing order transactions being applied to the arrears between the periods **November 2017** to **February 2018** and a credit accumulating on the account, thereafter, until a credit adjustment in **August 2018**.

The Complainant disputes that the Provider has no record of his attendance at its branch in or about **November 2017** and contends that 'Official A' must have entered the Complainant's bank card into the Provider's computer system in order to inform him of the date the standing order went out.

The Provider's Case

In its Final Response Letter of **February 2019** the Provider contends that it has "*no record of the issue being raised with the branch*" before the Complainant attended the branch at the end of **July 2018** and his request to cancel the standing order was received by the branch on **1 August 2018**. The Provider states it also notes that the Complainant's statement's address remained unchanged until **July 2018**. The Provider contends that the Complainant stated that he was unable to obtain a refund of monies owing from the beneficiary of the standing order.

The Complaints for Adjudication

The complaint is that the Provider wrongfully failed to act on the Complainant's instruction to cancel his standing order in or about **November 2017** and wrongfully and without authorisation debited monies from his account to pay the standing order until **July 2018**.

The Complainant wants the Provider to acknowledge that he requested the standing order to be cancelled and he leaves to the "*discretion*" of this office as to the appropriate remedy.

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.

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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 31 May 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 the relevant terms and conditions of the policy.

Account Terms and Conditions

The Bank has expressly relied upon Condition 10.3 of the terms and conditions of the Complainant's account which provides as follows:

You can (a) postpone an individual payment under a standing order; or (b) change or cancel a standing order set up on your Account, by giving a written instruction to the branch where you have your Account by close of business one banking day before the standing order is due to be paid. If (a) your written instruction (to postpone, change or cancel) arrives later than that; and (b) we make a standing order payment which does not comply with your written instruction, we will not compensate you or anyone else for any loss or expense which results.

Analysis

The Complainant maintains that in November 2017 he "contacted" the Provider in branch to cancel a standing order. The Provider states that it has no record of any such instruction, in particular that it has no record of any written instruction. In this regard, the Provider maintains that a written instruction is required for postal or 'in branch' instructions. It is also possible to manually cancel standing orders via the Provider's online banking portal however the Complainant states that he does not use the Provider's online banking portal.

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The Complainant goes on to state that he realised that the standing order had not been cancelled in July 2018 following which he attended at the Provider's branch in August 2018 whereupon an employee of the Provider "*was able to cancel my standing order immediately*". The Provider however states that the standing order was not cancelled in branch but was cancelled through the Provider's online banking portal on 1 August 2018. The Provider has furnished screenshots of its internal records supporting this.

There are a number of anomalies relating to the foregoing however it seems to me, on the basis of the complaint form completed by the Complainant and on the basis of his various other submissions, that he does not maintain that he provided a written instruction in November 2017 to cancel the standing order. Rather, my understanding of the Complainant's position is that he gave a verbal instruction to the Provider to cancel the standing order.

I must accept that the Complainant failed to issue a cancellation instruction in compliance with the terms and conditions of his account which expressly require "*a written instruction*" in order to cancel a standing order. In these circumstances, specifically in the absence of a valid instruction, it would not be reasonable to hold the Provider responsible for not cancelling the standing order

I note that the Complainant is registered as blind. This places obligations on the Provider to extend appropriate and reasonable facilities. Such facilities could conceivably comprehend some form of allowance or modification to the procedure for giving instructions to cancel standing orders.

In this instance, the Provider has listed a number of different ways in which it will facilitate a visually impaired customer including through the use of a proxy. The Provider states that for any such facility to be extended, "*for data protection reasons, a customer must confirm to the Provider that they wish their visual impairment to be recorded by the Provider, at which stage the Provider will seek to assist the customer in the customer's desired manner*". The Provider states that the Complainant "*did not utilise, authorise, or request any of these services*". In the absence of the Complainant having requested and been refused a facility, the Provider cannot be held accountable for not providing a special facility.

I do not doubt that the Complainant attended at the Provider's branch in or around mid-November 2017 and that he did have a discussion with the Provider's employee regarding the standing order. However, I have not been provided with evidence that he provided a valid instruction to cancel the standing order.

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**

22 June 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.