



<u>Decision Ref:</u>	2021-0226
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Lodgements
<u>Conduct(s) complained of:</u>	Disputed transactions Failure to provide product/service information Failure to process instructions Errors in calculations
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint relates to a disputed payment transaction.

The Complainant's Case

The Complainant states that on **19 August 2019** he had lodged a cheque worth €4,300 with the Provider. The Complainant states that he subsequently enquired with the Provider to get an update on his balance but he was advised that the systems were down. The Complainant states that he contacted the Provider on **23 August 2019** when he noticed that the cheque had not cleared into his account. The Complainant states that the Provider advised him that the cheque he had attempted to lodge had been returned to him by post, along with a letter explaining that the cheque did not have an account payee noted on it and as such couldn't be lodged into his account. The Complainant states that he was unaware of this, and that he had not received the letter and cheque.

The Complainant states that the Provider had advised him if he was able to obtain the name and phone number for the individual who had issued the cheque, then the Provider would make enquiries on his behalf. The Complainant states that he obtained this information and when he issued this to the Provider, he was informed that the Provider could not speak to a third party in this regard.

The Complainant states that he escalated his issue to the Provider's customer care team stating that the Provider had reneged on its previous offer to make enquiries on his behalf. The customer care team reviewed this and advised that the employee in question denied ever saying that she would approach the third party.

The Complainant states that he requested a copy of the call recordings and was advised that there were no recordings. The Complainant states that the Provider advised him that it had concluded its investigation into his complaint and issued a final response letter to him in **October 2019**.

By way of letter dated **9 July 2020**, the Complainant replied to the Provider's submissions to this Office. The Complainant explains that on the day he lodged the cheques, he was forced to use the self-service machine because *"the computer was down"*. He states that he gave the assistant in the branch the cheques and she *"done everything"*.

Initially, the Complainant wanted the Provider to *"lodge the €4,300 in [his] account"* but given that since the initiation of his complaint a new cheque has been issued to the Complainant, he now wants the complaint to proceed *"on the basis that the Provider made life difficult for him and he went without that payment for a period of time"*.

The Provider's Case

The Provider issued its Final Response Letter on **4 October 2019**. The Provider acknowledges that the Complainant was unhappy in relation to a lodgement he had made through its cash and cheque lodgement machine on **19 August 2019**. The Provider states that it reduced the lodgement by €4,300 as the applicable cheque did not have a payee listed on it. The Provider states that it wrote to the Complainant on **19 August 2019** to advise of the issue and that this letter also had the cheque enclosed. The Provider submits that the customer states that he did not receive the letter or cheque.

The Provider states that the Complainant informed it that an employee assisted him during the lodgement process at the designated machine and that he received a copy of the cheque deposit on the receipt that is generated from the machine upon lodgement. The Provider states that this receipt states all lodgements are subject to verification. The Provider states that upon review it was clear that the cheque was incomplete and as such the lodgement was reduced by the value of this cheque. The Provider again submits that the cheque was posted back to the Complainant.

The Provider states that when the Complainant enquired about the cheque in branch he was advised of the issue and was also informed that the cheque had been posted back to him. The Provider submits that the Complainant contends that he was asked to obtain the name and telephone number of the person who had issued him the cheque and upon receipt of this information the Provider would *"look into it for"* the Complainant.

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The Provider states that it was the Complainant who had requested if the Provider could contact the individual on his behalf. The Provider states that it cannot contact this third party, nor does it have any relationship with this person. The Provider states that it explained this over various phone calls and submits that the Complainant was *“very unhappy about this situation”*.

The Provider contends that the issue surrounding the cheque is a business transaction and as such the Complainant will need to resolve this personally with the individual that issued the cheque to him. The Provider submits that the Complainant states he no longer holds the contact details for this third party and he once again requested that the Provider attempt to contact this person on his behalf. The Provider reiterates that it cannot do this and states that it returned the cheque to the Complainant and having made checks with the financial service provider which issued the cheque, the Provider states that as of **20 September 2019**, the cheque had not been cashed. The Provider states that it appreciates the feedback received from the Complainant regarding registered post when sending cheques back to customers and submits this feedback has been forwarded to the relevant department.

The Provider made submissions to this Office dated **30 June 2020**. The Provider states in these submissions that it provides a self-service option for customers to lodge cash or cheques and the Complainant had used the self-service device to make a lodgement of three cheques, including the cheque the subject matter of this complaint. When the transaction was complete, the Provider states that the Complainant received an acknowledgment slip with the lodgement details and a copy of the cheques. The Provider states that at various intervals throughout the day, it removes the cheques from its self-service devices for verification. At this point in time, the cheques are checked for, among other things, alterations, counterfeit, account details, signature, proper endorsement and payee details. The Provider states that when the cheque, the subject matter of this dispute was checked, the ‘payee’ was omitted from the cheque and it was also undated and therefore the cheque could not be lodged to the Complainant’s account. Only the drawer of a cheque can write/amend or alter a cheque and the cheque was returned by post to the Complainant for this purpose on **19 August 2019**.

The Provider submits that it does not contact a customer of other financial institutions where a cheque has not been completed correctly. It states that the contract for payment by cheque is between the drawer of the cheque and the payee of the cheque. It states that it is the drawer’s responsibility to be satisfied with the payment instrument.

The Provider states that when the Complainant advised it that he had not received the cheque that the Provider had returned to him by post, it advised the Complainant to contact the drawer of the cheque directly to place a stop on the cheque and request a replacement. The Provider submits that the Complainant advised the Provider that he did not want to contact the drawer of the cheque as there was a disagreement over the goods purchased/sold. The Complainant was advised that this was a business transaction that would need to be resolved between the Complainant and the drawer of the cheque and it was not prudent for the Provider to act as an intermediary in the matter.

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The Provider states that on foot of the Complainant insisting that he had no contact details for the drawer and in an effort to assist him, the Provider contacted the drawer's financial institution and asked them to contact the drawer with a request for him to contact the Complainant's financial institution.

The Provider states that the purpose of this was to ask the drawer to put a stop on the cheque as it was a signed cheque with no payee details. The Provider states that it advised the Complainant of this and stated that it would contact the Complainant if the drawer made contact. The Provider states that unfortunately no contact was received from the drawer of the cheque.

The Provider states that on **12 September 2019**, the Complainant contacted the Provider's branch and provided the name and contact telephone number for the drawer of the cheque. On **13 September 2019**, the Provider's branch phoned the Complainant and stated that after referring to its customer care department, it would not be in a position to contact the drawer of the cheque directly.

The Provider states that it does not record phone calls inbound or outbound with its branches. The Provider has furnished copies of the recorded telephone calls between the Complainant and the Provider's customer care department.

The Provider states that its practice relating to post and issuing of letters to customers is to send them by standard post. The Provider states that it does not register these letters. The Provider states that it posted the letter with the cheque enclosed to the Complainant on **19 August 2019** and that neither the letter nor the cheque have been returned to the Provider "undelivered".

The Provider states that in reviewing the complaint and preparing its submissions in respect of the complaint, it has established that its procedures for handling discrepancies in cheque lodgements received through self-service machines were not followed in this case. Specifically, the Provider did not phone the Complainant on **19 August 2019** to advise him of issues with the cheque and did not retain a copy of the cheque with the Provider's records of the day.

The Provider apologises to the Complainant for the errors made in not following its procedures and for any inconvenience or upset caused as a result. The Provider also states that it understands that the matter has now been settled directly between the Complainant and the drawer of the cheque and that the Complainant has been issued with a fresh cheque for €4,300 from the drawer.

The Provider has stated that in recognition of its service failings on **19 August 2019**, it would like to offer a goodwill gesture of €1,000 to the Complainant in full and final settlement of his complaint.

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The Complaints for Adjudication

The complaint is that the Provider has:

- Failed to offer adequate customer service to the Complainant and reneged on assisting him as it previously advised it would, which has resulted in a financial loss of €4,300; and
- The Provider issued the disputed cheque to the Complainant by regular post and this has never been received.

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 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.

Following the issue of my Preliminary Decision, the Complainant made a submission under cover of his letter to this Office dated 3 May 2021, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

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

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I note that both parties to this complaint accept that a cheque, made out to the Complainant, was lodged at the self-service machine at the Provider's branch. A machine receipt submitted by the Provider to this Office shows that this took place at 10.25am on **19 August 2019**. There is a dispute between the parties as to whether the Complainant himself used the machine or whether an employee of the Provider used the machine in the presence of the Complainant. In the circumstances, this is immaterial to the determination of this complaint.

It is also accepted by the parties that there was a deficiency with the cheque lodged, which meant that it was unable to be processed by the Provider. I note that the Provider has furnished this Office with a printout of the procedure that should be followed in the event that there is a discrepancy with a cheque which is lodged in the absence of a customer. This procedure states that:

"A second Official must confirm the value of the discrepancy.

The Customer must be contacted by telephone on the day and advised of the discrepancy.

A 'Cash and Cheque Lodgement machine Error in Lodgement' letter must be prepared.

A copy of the amended cheque, or the original rejected cheque(s) must be attached to the letter.

The 'Cash and Cheque Lodgement machine Error in Lodgement' letter must be signed by the Bank Official who processed the lodgement.

A copy of the letter and the cheque(s) must be retained with the Cash and Cheque Lodgement Device work of the day".

I note that the Provider has accepted that it did not adhere to this procedure in that it did not phone the Complainant on **19 August 2019** to advise him of issues with the cheque and did not retain a copy of the cheque. In light of this, the Provider has made an offer of €1,000 to the Complainant.

I note that initially, the substantive element of this complaint, concerned the Complainant wanting the Provider to lodge funds commensurate with the amount of the cheque (€4,300) into his account. Due to interaction between the Complainant and the third party who wrote the cheque, I note that a fresh cheque has been issued to the Complainant and therefore this aspect of the complaint is no longer in issue.

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Despite the substantive element of the complaint being resolved, the Complainant still maintains that *“the Provider made life difficult for him”*, however, aside from not following its internal procedure, accepted by the Provider, I can find no evidence of this. In fact, the evidence submitted by both parties discloses that the Provider made every effort to assist the Complainant. It contacted the drawer of the cheque’s financial institution to attempt to resolve the matter and checked with its customer care department as to whether it could contact the drawer of the cheque directly. I also note that the Provider issued an acknowledgment letter on **4 September 2019** in response to the Complainant’s complaint made on **29 August 2019** and telephoned the Complainant to discuss the complaint on **19 September 2019, 20 September 2019** and **24 September 2019** before issuing a final response letter on **4 October 2019**.

While it is unfortunate that the letter sent by the Provider which enclosed the deficient cheque was not received by the Complainant, ultimately the Complainant was not prejudiced by this, especially given the steps to assist him made by the Provider.

Bearing the foregoing in mind, I cannot accept the Complainant’s contention that the Provider *“made life difficult for him”*. There is certainly no evidence to indicate it did so deliberately. On the basis that the Provider has accepted deficiencies in the manner in which it failed to follow its internal procedure for deficient cheques and bearing in mind 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**

29 June 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.

