



<b><u>Decision Ref:</u></b>	2021-0281
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Current Account
<b><u>Conduct(s) complained of:</u></b>	Handling of fraudulent transactions
<b><u>Outcome:</u></b>	Rejected

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

The complaint concerns a current account.

**The Complainant's Case**

The Complainant submits that on 30 October 2018 through to 6 December 2018, a series of payments were debited from his debit card totalling €47,473 to a scam merchant. The Complainant argues that the merchant in question did not invest his money but stole it. The Complainant states that he submitted a chargeback dispute with the Provider on 24 January 2019.

The Complainant states that the Provider denied his claim on 29 January 2019 on the grounds that *"disputes for gains, losses or returns on financial investment, trading or binary transactions cannot be addressed under the dispute process"*. The Complainant submits that the Provider advised him to approach the merchant to resolve the case.

The Complainant argues that at the time he authorised payments on his account and debit card, he was not aware that the merchant was a scam merchant.

Following a review of the complaint submitted by the Complainant, the Provider's chargebacks department affirmed its decision by letter dated 26 June 2019 in relation to its ability to recoup the funds that were invested. The Provider emphasised that the transactions were authorised by the Complainant without any background checks being completed by the Complainant prior to authorisation.

The Complainant does not accept the decision. He emphasises that no services or investments were actually supplied by the merchant in question. He argues that there were warnings issued during the relevant period warning the “*banking community*” against allowing the instruction of payments to the particular merchant. The Complainant points to a rule of VISA that prior to allowing a merchant to accept payments, there must be a physical inspection of the premises of the business. The Complainant argues there is nothing at the listed premises of the merchant in question. Further, he argues that under section 75 of the Consumer Credit Act 1974, the credit card company is jointly and severally liable for any breach of contract or misrepresentation or fraud by a merchant for a period of six years.

The Complainant wants the Provider to chargeback or otherwise credit his account for the full amount of the disputed payments in the total sum of €47,473.

### **The Provider’s Case**

The Provider states that on 22 January 2019, the Complainant sent a letter to its chargeback department requesting that a chargeback dispute be registered on multiple transactions totalling €47,473 on the basis that “*no service or investments were supplied*” to the Complainant. By letter dated 29 January 2019, the Provider states that it sent a letter to the Complainant advising him that, having reviewed the information provided, there existed no dispute rights in the case. The Provider advised that “*disputes for gains, losses or returns on financial investment, trading or binary transactions cannot be addressed in the dispute process*”. The Provider states that it advised that the Complainant should contact the merchant directly.

The Provider argues that a complaint was received from Complainant on 16 June 2019 in respect of its failure to complete the chargeback. The Provider states that it issued its final response to the Complainant on 26 June 2019, reiterating the decision set out in its letter of 29 January 2019.

The Provider argues that the legal relationship between the Provider and the Complainant in respect of the debt credit agreement is governed by the terms and conditions that accompanied the debit cards and personal current accounts issued to the Complainant. The Provider refers to a clause in the personal account terms and conditions in respect of unauthorised payments but argues that it is not in dispute that the transactions were in fact authorised by the Complainant, so the relevant clause does not apply. The Provider submits that there are no contractual terms between it and the Complainant being relied on; rather the Complainant has sought a chargeback in relation to the transactions at issue.

The Provider argues that it is not privy to the terms and conditions furnished to the Complainant by the merchant at the time he established his relationship with it. It argues that it assumes that the Complainant subscribed to the merchant’s terms and conditions before engagement of its services and it is the Provider’s understanding that subsequent transactions took place under the contract between the Complainant and the merchant.

The Provider does not accept that the transactions at issue were unauthorised.

The Provider argues that the debit card was issued by the Provider and processed by VISA. It argues that VISA processes payments between the banks or merchants and the card issuer in making purchases. In order to ensure that both the cardholder and merchants rights are upheld, all parties involved must adhere to chargeback rules imposed by VISA. The Provider argues that the chargeback scheme confers no legal rights on customers. It argues that chargeback does not a guarantee a refund; instead, a bank must employ their “*best endeavours*” to process and apply chargebacks.

The Provider argues that where a customer disputes or otherwise takes issue with a charge on their debit card, a refund should first be sought from the merchant from whom they transacted. If this fails, the next step is to contact the Provider to establish if the payment on the debit card can be reversed using the chargeback scheme. It states that this is done by completing a Transaction Dispute Form, which provides personal details and advises as to the reason the transaction is disputed. The Provider states that its chargebacks department will investigate the disputed transaction and determine whether a chargeback will be permitted under the scheme.

The Provider determined that the Complainant’s letter of 22 January 2019 had sufficient information contained within to allow its chargeback department to investigate the dispute in determining whether a chargeback would be permitted under the scheme. Having investigated the matter, including confirming the position in respect of the dispute with VISA, the Provider’s chargeback team informed the Complainant that in accordance with the VISA rules, there were no dispute rights in the case. Once it had established that there were no chargeback rights accruing to the transaction, the Provider did not formally issue a chargeback request to the card company. The Provider argues that it engaged in a best efforts investigation of the circumstances surrounding the disputed transactions based on the evidence supplied by the Complainant. It states that having reviewed the information in conjunction with the VISA rules on chargebacks, it was satisfied that no chargeback rights existed in the case. The Provider reiterates its earlier advice that the Complainant should contact the merchant directly in relation to the dispute.

The Provider points out that the Complainant does not rely on the terms and conditions underlying his agreement with the Provider in respect of the account and debit card. The Provider argues that the terms and conditions applicable to chargeback scheme exist between the Provider and VISA. It argues that the chargeback scheme is operated on a discretionary and goodwill basis, and insofar as any provisions of the chargeback scheme are enforceable, they are enforceable only between the Provider and VISA. It argues that no rights are conferred on customers and the Complainant would not have been furnished with a copy of the scheme in these circumstances.

The Provider argues that the transactions in question were effected by the Complainant using the merchant’s online point of sales system. In order to process the transactions, the Complainant was required to enter details of the relevant debit cards, including all required security information.

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It notes that Complainant does not dispute that he knowingly entered his details for the purpose of making these payments to the merchant. The Provider argues that the dispute arises in circumstances where the Complainant asserts that the merchant failed to provide the services he paid for. The Provider has identified the relevant transactions and states that the total sum of the disputed transactions is €47,473. The Provider states that the Complainant would have been notified of the successful payments by the merchant's website after initially making payments.

The Provider states that it was first made aware of the Complainant's allegation that the merchant's website was fraudulent through the content of the Complainant's letter of 22 January 2019.

The Provider states that Consumer Credit Act 1974 was enacted by the Parliament of the UK and as such the provisions of the Act do not apply to the Provider who has a registered address in Ireland.

The Provider argues that it is satisfied that it has complied with its obligations under the Consumer Protection Code 2012, including provision 4.22 which provides that it must provide consumers with the terms and conditions attaching to a product or service before the consumer enters into a contract. The Provider argues that it provided the relevant terms and conditions of the personal account and debit card account at the time of advancing these facilities to the Complainant. The Provider emphasises that the Complainant is not taking issue with the terms and conditions of either of the personal current accounts from which funds were transferred to the merchants, or the debit card used to make the transactions. The Complainant's complaint concerns the Provider's decision, further to investigation, not to issue a chargeback request on those transactions. It states that it made this decision with reference to the VISA rules on chargebacks, rather than any terms and conditions agreed between the Provider and the Complainant. The Provider argues that it is under no contractual obligation to issue a chargeback request when such a request is made by customers. Instead, it will engage with such a request on a best endeavours basis and in accordance with the rules on chargebacks as set out by the card company that is, VISA. The Provider argues that it has not breached any terms and conditions agreed between the Provider and the Complainant.

### **The Complaint for Adjudication**

The complaint is that the Provider incorrectly declined to raise or process a chargeback relating to payments made by the Complainant between October and December 2018.

## **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 26 July 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.

This complaint concerns the question of whether the Complainant has any enforceable chargeback rights where he asserts that a series of payments that he made by way of debit card payment with the merchant were fraudulent, in the sense that the merchant did not provide the services he paid for. While no evidence of the underlying fraud or a failure to provide services has been submitted, I am prepared to adjudicate the complaint on the assumption that no services were provided by the merchant in question as this has not been disputed by the Provider.

The transactions in question occurred between October and December 2018 in a total sum of €47,473. There were 12 transactions in total, ranging between a payment of €250 on 30 October 2018 to 4 transactions of €10,000 each between 28 November 2018 and 4 December 2018. The merchant was the same in each case.

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It appears that the merchant was operating as an online trading broker or platform, offering trading services through a web trading platform. The website of the UK Financial Conduct Authority (FCA) currently states that the merchant in question is not authorised by it to provide financial services within the UK, and it believes that the firm may be providing such services within the UK without authorisation. It appears that other regulators, such as the German regulator, issued a similar warning in respect of the unauthorised provision of financial services within Germany from about February 2018. It does not appear on the list of unregulated providers kept by the Central Bank of Ireland. It would appear that an online search of the online platform in question reveals a number of warnings from various broker websites recommending that individuals should not invest through the merchant in question as it is unregulated. I have not, however, been furnished with any evidence of any warnings or directions to payment service providers not to execute the payment instructions received from customers to the merchant in question. Therefore, I cannot accept that any such warnings or directions have been given, as asserted by the Complainant.

The Complainant has not sought to argue that the transactions in question were unauthorised. He accepts that he authorised all the transactions in question to the merchant.

Rather, he argues that he did not receive the services that he paid for from the merchant in question. He requested that the Provider raise a chargeback in respect of the transactions and refund him under the chargeback system.

As is clear from the Provider's response as set out above, the Provider argues that the Complainant has no rights under the chargeback system with Visa. It has argued that any enforceable rights that exist under the system, which it claims to mainly operate on a goodwill and discretionary basis, arise only between the Provider and VISA itself. Further, it argues that it fully investigated the chargeback request, consulted the VISA chargeback rules, and consulted VISA directly, before coming to the conclusion that the type of transactions that were being disputed were not transactions that could be dealt with under the chargeback system. As a result, the Provider decided not to raise a chargeback request.

I have examined the terms and conditions applicable both to the Complainant's personal current accounts and debit cards. There are no terms that mention or provide for any chargeback entitlements to the Complainant. Provision 11.4 of the terms and conditions of the personal current account provides for a refund of unauthorised payments in certain circumstances, but this provision is not applicable in the Complainant's case. The Complainant accepts that transactions were authorised. In respect of the debit card terms and conditions, the following provision is relevant

*"5.11 We have no obligation to you or the Retailer concerning goods and services provided. You should contact the Retailer if you have any query or dispute about the goods or services they provide."*



On the basis of the terms and conditions of the current accounts and debit cards, there is clearly, no obligation on the Provider to refund the Complainant in respect of the transactions at issue. Rather, he is obliged to deal with this dispute directly with the merchant in question.

I accept that a chargeback scheme operates between the Provider and VISA under the VISA rules. The Provider has relied on these rules in refusing to request a chargeback in respect of the transactions at issue. By letter dated 29 January 2019 to the Complainant, and in response to his initial request of 22 January 2019 to raise a chargeback, the Provider stated as follows

*"Having reviewed the information you provide, we regret to inform you that, in this case, under Visa Europe and MasterCard International Rules and Regulations, we have no dispute rights with this case.*

*Disputes for gains, losses or returns on financial investment, trading or binary transactions cannot be addressed in the dispute process.*

*We would recommend you contact the Merchant directly to solve the dispute."*

When the Complainant raised a formal complaint in respect of the issue on 16 June 2019, by final response letter 26 June 2019 the Provider wrote to him as follows:

*"On 29 January 2019 our Chargeback Department issued a letter stating we are unable to dispute transactions relating to investments, traders and brokers. On receipt of your complaint I referred this matter to our Chargeback Department to review and respond. They confirmed on review of the full case again, the decision remains unchanged in relation to the ability to recoup the funds you invested with [the merchant].*

*Further to your complaint I note you state that this is a scam merchant who did not invest funds on your behalf. The transactions were authorised by you prior to any background checks being completed in relation to the validity of the merchant. The Bank would never recommend investment with such merchants without seeking prior advice in relation to the risk involved in such investments.*

*I also note you wish to dispute this payment under Visa Core Rule 5.2.1.2. Please note that [the Provider is] not the Acquiring Bank for [the merchant] and therefore have no responsibility in relation to the Due Diligence checks that need to be completed by the Acquiring Bank prior to processing payments.*

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*The Chargeback scheme is a form of protection in relation to transactions undertaken on the card. The scheme is not a [Provider] scheme and therefore, all rules and regulations in relation to disputed transactions are laid down by Visa and MasterCard and the Bank have a responsibility to adhere to these rules in full. The Bank has received confirmation from Visa that this type of transaction cannot be disputed under the Chargeback scheme rules."*

It appears from the above and from responses to queries raised by this Office that the chargeback scheme operated by Visa does not apply to transactions relating to investment, traders and brokers. Unfortunately, the Provider has not provided a copy of the relevant rules for consideration by this Office but there is no information before me that would suggest that the Provider is incorrect in its interpretation of the relevant scheme rules. I accept that the scheme provides no direct entitlements to a customer in the position of the Complainant. It further appears that having satisfied itself that the transactions in question did not fall within the Visa chargeback scheme, the Provider contacted Visa directly to confirm the position. As Visa has confirmed to it that the transactions are not eligible for a refund under the chargeback scheme, I cannot hold the Provider responsible for its failure to formally request a refund under the chargeback scheme.

The Complainant has not established any entitlement to a refund from the Provider for transactions which he authorised with the merchant. Any dispute that he has in relation to the services that were or were not provided by the merchant is a matter between the Complainant and the merchant directly.

Nothing in the terms and conditions agreed between the Provider and the Complainant (which I accept were furnished to the Complainant) would entitle the Complainant to a refund in the circumstances. There are no directly enforceable rights to the Complainant under the Visa chargeback scheme.

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

**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

20 August 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.