



<b><u>Decision Ref:</u></b>	2021-0350
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Money Transfer (between accounts/between banks/3rd
<b><u>Conduct(s) complained of:</u></b>	Dissatisfaction with customer service Disputed transactions Fees & charges applied
<b><u>Outcome:</u></b>	Rejected

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

This complaint relates to two transfers each of €900 (nine hundred euro), made from the Complainant's current account to his credit card, which were executed on **29 January 2020**.

#### **The Complainants' Case**

The Complainant submits that he had €1,000 in his current account on Wednesday **29 January 2020** and that he transferred €900 from his current account to a third party bank in order to make a payment toward his credit card. Having checked his balance after having executed the transfer, he noted that it remained the same. He subsequently executed a further transfer of €900 on the same day. The Complainant submits that his balance continued to remain the same.

When he checked his current account balance the next day, **30 January 2020**, he noticed a deficit/debit balance of €897. on his account. The Complainant submits that he cannot understand how the deficit on his account occurred, given that his authorised overdraft on the account is only €100. The Complainant says that when his pension monies were transferred into his account later that week, this money was not made available to him. The Complainant submits that as a result, he was without funds for five days. He also says that he incurred penalty charges when there were insufficient funds to meet calls for direct debits, as they fell due to be paid from his account.

### **The Provider's Case**

The Provider states that in order to complete the transactions on **29 January 2020**, having entered the recipient details, the Provider requires three random digits of the Complainant's online pin to be entered in order to complete the security procedure for a transfer of funds. The Provider contends that further to completing this security check, the request was sent to the Provider's middleware services database for communication to the Provider's mainframe database at 19:11:47. Once the transfer request was confirmed, the Provider's online service displayed a message which stated:

*"Important: your balance may not update immediately".*

The Provider says that this was sufficient caution to the Complainant that his balance may not update immediately further to the initial payment at 19:11. The Provider noted that the Complainant has submitted that he went back to see if the transaction had gone through, but the balance was the same as before he started, so he tried to make the same transaction again. However, the Complainant states that the result was the same.

The Provider has submitted that this identical transfer request led to completion of security protocols at 19:13:47. The Provider has stated that although the two transfers were communicated to this mainframe database, there was a connectivity delay for approximately seven minutes. The Provider submits that this caused both instructions to transfer to be processed while the delay was in progress, and it gave the appearance that there were sufficient funds in the account to allow the transfers to be completed. After this delay, the Provider processed the transfer requests, and the transactions were completed on 19:20:51 and 19:20:53 respectively.

The Provider, in its final response letter to the Complainant dated **7 February 2020**, made an offer of €150 as a once off gesture in full and final settlement of the Complainant's complaint, which was declined by the Complainant.

### **The Complaints for Adjudication**

The Complainants' complaint is that the Provider provided poor service to him in respect of two transfers of €900 executed on **29 January 2020**, made from his current account to his credit card account.

### **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

/Cont'd...

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. Recordings of telephone calls have been furnished in evidence and the content has been considered.

A Preliminary Decision was issued to the parties on **9 September 2021**, outlining the preliminary determination of this office 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 consideration of additional submissions from the parties, the final determination of this office is set out below.

I note that on Thursday **30 January 2020**, the Complainant notified the Provider through its online portal about his issues in respect of the transfers and the deficit of €897.00 (eight hundred and ninety-seven euro) on his account.

The Complainant has stated to this Office that he is questioning "*how this could have happened*" and he stated that he was very stressed about the situation because he knew that any money that was going into his account, was going to be taken to cover this overdraft. To this end, he notes that on **31 January 2020** both this age-old pension and private pension credits were applied within his account, to pay the overdraft and he was left with practically no money.

In that regard, the bank statement provided in evidence to the Office indicates that he had a balance of €203.14 on **31 January 2020**. The Complainant argues that he contacted the Provider and the third-party bank, but to no avail. The Complainant further states that the situation caused him stress and he was without funds in his account for nearly five days. He further stated that he "*was taken advantage of it*" and "*was ignored when he pleaded his case*".

On Monday **3 February 2020**, an agent of the Provider called the Complainant regarding his message from **30 January 2020**. During this telephone call, the Provider's agent confirmed that the Provider would refund the Complainant the €12.70 unpaid direct debit fee and that an investigation had been opened in respect of his issue. The Complainant explained that

/Cont'd...

he had also been charged €17.50 by his communications provider, for non-payment of a direct debit.

The Complainant stated that he had been in contact with the third-party bank, with which he holds his credit card, and which was the recipient of the additional €900. The Complainant described to the Provider's agent on the call, about how he had made the two payments on **29 January 2020**. He stated after he made the initial payment of €900, he checked his balance and saw that *"nothing had shifted from my bank account"* so *"stupidly, and I agree stupidly, I did it a second time"*.

The Complainant also queried how he could be put into an overdraft when his overdraft limit was €100. The Provider's agent apologised for the situation after the Complainant stated he was *"stressed to bits"* over the issue. The Complainant told the Provider's agent that because the €1,800 was paid into his credit card account with the third-party bank, he intended to use the *"positive balance"* once all the credit had been paid off and then take it out from the bank ATM (automated teller machine).

The Complainant stated that this was the simplest way to address the situation, and the Provider's agent confirmed that

*"this would be the quicker option as [the Provider] would have to recall it from the [third party bank]....which could take a few days."*

The Complainant stated that, after he had messaged the Provider on **30 January 2020**, he received a response stating that he would be contacted by the Provider on **31 January 2020**. However, *"nobody from [the Provider] rang [the Complainant]"* to which the Provider's agent again apologised.

I have examined the Provider's online banking Terms and Conditions which state at Clause 9.3 that:

*"9.3 we make every reasonable effort to ensure the information we give you and any Third Party (for example a TPP) about balances is accurate and complete. However:*  
*9.3.1 The information we give you is not conclusive evidence of the state of your account (if you need a conclusive statement, please contact your branch):*  
*9.3.2 We will not compensate you or anyone else for any loss or expense which occurs as a result of any inaccuracy in information we give you regarding your Account balance."*

The Provider has sought to rely on Clause 9.3 in its submissions to this Office, arguing that the Complainant's visible balance is not conclusive evidence of the true balance of the account. The Provider goes on to state that the Complainant's first transaction was ultimately completed and posted on the online facility, 9 minutes after the initial request, so would have been visible from that time (19:20). The Provider contends that the Complainant chose to make the second transfer request straight after the first request, despite the caution message given by the Provider.

/Cont'd...

I note that Clause 3.5 of the Provider's Personal Current Account Terms and Conditions states as follows:

*"Sometimes, we may allow you to pay money from your current count even where that causes your account to go into unauthorised overdraft [where there is one]. No matter how often we allow you to do this, we may refuse to allow it on other occasions".*

In response to the Complainant's complaint that he had understood his overdraft to be limited to €100, the Provider has submitted that the Complainant authorised both transfers on **29 January 2020** after the security protocols were completed, namely the entering of the three random digits of his online PIN. Even though this resulted in an unauthorised overdraft, the Provider has submitted that it is permitted under Clause 3.5 and under the general condition under Clause 3.1 of the terms and conditions which states as follows:

*"If your account is overdrawn for any reason, you must repay the overdraft to us."*

The Provider also refers to Clause 3.6 which states *"if your account goes overdrawn, we will charge you the interest and fees which we described in clause 13"*. In short, the Provider has submitted that the said terms and conditions, outline the availability of an unauthorised overdraft together with fees and interest and that this overdraft must be repaid.

The Complainant has referred to penalty charges which were applied to hi account because of the insufficient funds. The Provider has confirmed that an unpaid direct debit fee was charged to the Complainants account in the sum of €12.70 in respect of a direct debit called for by his communications provider. The Provider has also noted the Complainant's complaint that a late charge of €17.50 was charged by that communications provider.

In response to this, the Provider referred to its letter of **7 February 2020** which offered the Complainant, the payment of €150 to include the said penalty fees. The Complainant has not accepted this payment and has submitted that this is a *"poorly veiled apology"*. He further states that compensation is not the reason for making his complaint, the real reason is that he would not like this to happen to someone else in worse circumstances than himself.

I note that the Complainant confirmed during the **3 February 2020** call that he did not want the second transferred payment of €900 to be refunded to his personal account, as he anticipated solving the problem, by withdrawing the excess cash from his credit card account, using an ATM.

I note that Clause 9.3 of the Provider's online banking terms and conditions states clearly that the online balance is *"not conclusive evidence of the state of your account"*. In addition, the online service message on the day of the transactions, clearly stated:

*"Important: your balance may not update immediately."*

/Cont'd...

I also note the Provider's explanation that there was approximately a nine-minute delay between the initial request to transfer, and the time when the updated balance became visible. I accept that the Complainant's mistake in interpreting that the transfer had not been carried out correctly, was an understandable one for him to make in the circumstances. However, I accept that under Clause 9.3, the balance on the screen immediately after the Complainant made the transfer was not conclusive evidence of his actual balance, and I accept that he was given adequate warning in respect of the notice that his balance might not update immediately.

Turning to the overdraft, I accept that Clause 3.5 of the Provider's Personal Current Account Terms and Conditions permits the Provider to allow payment of "*money from [the Complainant's] current account even where that causes [his] account to go into unauthorised overdraft.*" Indeed, there are many instances when an account holder might consider this to be a supportive position for a provider to take, to ensure the transfer of funds even when the account balance is short. Accordingly, although his authorised overdraft was limited to €100, I accept that the Provider was permitted under Clause 3.5 to facilitate the transfer of the additional €900, upon his request.

The Provider's Personal Current Account Terms and Conditions under Clause 3.1 and Clause 3.6 provide for the creating of an unauthorised overdraft, and makes clear that this overdraft must be repaid.

I note that the Complainant contacted the Provider at 17.45 on Thursday **30 January 2020** setting out the circumstances surrounding the transfer of the €1,800 and that he was "[minus] – 800 euro position" explaining that he is "retired and have no other funds available". He also stated "I am at a loss as to what to do. I need funds in my account to survive." The Complainant also included his mobile number in the message so he could be contacted.

I note that the Provider has submitted in its "**Timeline of Relevant Events to Complaint**" that this message was received on Friday **31 January 2020**, but the Provider did not contact the Complainant until **3 February 2020** (the following Monday).

Although the Provider's agent who contacted the Complainant on **3 February 2020** was apologetic and helpful in attempting to rectify the issue, I am satisfied that the message sent to the Provider during the evening of Thursday **30 January 2020** was sufficiently urgent to warrant a quicker response from the Provider. Therefore, I accept that the Provider's conduct fell below that expected of a provider in the circumstances, and in my opinion, it should have followed up with the Complainant before Monday **3 February 2020**.

I am satisfied that the payment of the additional €900 caused an overdraft and also led to fees and a charge from a third party, though I note that the Provider has confirmed that in the circumstances, the Complainant's account did not incur charges for the overdraft.

### **Goodwill Gesture**

The Provider explains that:

*“In light of the inconvenience this matter caused to you, I would like to offer €150 as a once off gesture in full and final settlement of the your complaint. The €12.70 unpaid direct debit fee and the €17.50 charges incurred from [communications provider] are included in this gesture. Should you wish to accept this offer, please sign and return the attached copy and I will then arrange for the payment to be credited to your account.”*

I am satisfied that the situation in which the Complainant found himself, was largely caused by his own mistake in transferring funds from his current account to the third party bank with which he held his credit card account, not once, but twice within a number of minutes on Wednesday 29 January 2020.

In my opinion, the Provider was not at fault in completing the two separate transfers of funds which the Complainant had validly authorised, meeting all appropriate security requirements. Although the Provider responded to the Complainant’s plight a little more slowly than would have been ideal, I note that by the time the agent of the Provider discussed the matter with the Complainant, he had himself identified a potential solution which indeed transpired to be the fastest method to address the situation.

I also note that the Provider responded very quickly to the Complainant’s complaint and issued a Final Response Letter within a matter of days. That Final Response Letter dated **7 February 2020** made a goodwill gesture to the Complainant of €150 and although I note that this letter indicated that this offer would remain open to the Complainant for a period of 8 weeks only, the Provider subsequently, on **5 August 2020** in its formal response to the complaint investigation of this Office, confirmed that this goodwill gesture remained open to the Complainant for acceptance, should he wish to resolve the complaint on that basis.

I am satisfied that the Provider’s offer of compensation of €150 very early in its interactions with the Complainant, was a very reasonable effort on its part to redress the issues caused by its slow response to the Complainant’s situation. Given that this offer remains open to the Complainant and given the absence of evidence of any further wrongdoing on the part of the Provider, I am satisfied that there is no reasonable basis upon which it would be appropriate to uphold this complaint. I note that since the preliminary decision of this Office was issued to the parties last month, the Complainant has indicated a desire to accept that goodwill gesture, and the provider has indicated its intention to make the payment in question to the Complainant, once this decision has been issued.

In my opinion, this is appropriate and it will be a matter for the Complainant to make direct contact with the Provider, as required, to facilitate the payment in question.

Insofar as the substantive complaint is concerned however, on the basis of the evidence made available, I am satisfied that this complaint cannot be upheld.

/Cont’d...

**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.



**MARYROSE MCGOVERN**  
Deputy Financial Services and Pensions Ombudsman

4 October 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.