



<u>Decision Ref:</u>	2021-0408
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Money Transfer (between accounts/between banks/3rd
<u>Conduct(s) complained of:</u>	Disputed transactions Dissatisfaction with customer service Failure to provide accurate account/balance information
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants hold a joint account with the Provider.

On **4 November 2019**, the First Complainant carried out a money transfer in one of the Provider's branches in order to purchase a vehicle from a UK vendor.

Two weeks later, on **18 November 2019**, the First Complainant suspected the situation may have been a scam and he notified the Provider in an effort to reverse the transaction and to have his money refunded.

The Complainants' Case

In a letter to this Office dated **18 February 2020**, the First Complainant explained his dispute with the Provider in respect of a transfer to a *fraudsters account* and the manner in which this was handled by the Provider.

On **4 November 2019**, the First Complainant says he went to the Provider's branch to make a money transfer using his debit card details. The First Complainant explains that the transfer was to facilitate the purchase of a van and the amount of the transaction was **€8,889.62** which was to be transferred from the Complainants' account into "*what the guards now know was a fake [online payment system] holding account.*"

It was on **18 November 2019**, the First Complainant advises, that he came to suspect something was wrong and that he could be the victim of a scam. The First Complainant explains that the money had been transferred to a UK bank and that he acted fast and contacted the UK bank.

The First Complainant says he spoke with a UK bank representative at **6:21pm** on **18 November 2019**, who expressed concern at the transaction and asked for all of the transaction details, and told the First Complainant he would look into the matter straight away. The First Complainant says the UK bank representative told him to contact the Provider's fraud team as they were the only people

"who could get this account locked immediately, and that the said account was active and under investigation at this time."

The First Complainant explains that after this call, at **6:38pm**, he telephoned the Provider's fraud team to explain that he had made a money transfer and feared he may have been the victim of a scam. The First Complainant explains that he spoke with two separate agents during this call and explained the situation to them. In respect of the second agent and having explained matters, the First Complainant says he was told that because the transfer was an 'intra pay' transaction, *"it's something the [Provider] branch would have to look into ... because of how it was sent."* The First Complainant has outlined these conversations in his letter.

The First Complainant says that: *"i was totally taken aback by this lack of customer service and maladministration. [The second agent] was told the serious nature of this matter concerning my account and the large amount of money involved."* The First Complainant says he was expecting the second agent to take immediate action *"to cancel the card, lock account, contact [the UK bank] etc."* because it was clear to the First Complainant that he had been scammed.

The First Complainant advises that the second agent told him she would email the branch with the details and the branch would be in contact the following day. The First Complainant explains that he went to an ATM at 11:55pm on the night of **18 November 2019** to check his account balance and all was well. The First Complainant says he decided to *"cancel the card and account myself"* and spoke to an agent in the Provider's card services section and told him everything that had happened, including his earlier conversations with the Provider's agents, and his card was cancelled. At this stage, the First Complainant says:

"I was feeling really let down not only by their lack of urgency and care, But indeed, there lack of professionalism on matters of this serious nature."

On **19 November 2019**, the First Complainant says a branch staff member telephoned him who

"seemed to have no urgency on this matter, and started off the conversation by addressing me as ... the very person who had scammed me."

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The First Complainant states he explained the situation to the branch staff member, the urgency of matters and that it needed immediate attention. The First Complainant says the branch staff member said to him

'I don't know if I can do it today, are you around tomorrow.'

The First Complainant states that he was told there was only two staff members in the branch and the branch staff member would contact the fraud team and get them to contact the First Complainant. The First Complainant says he insisted that they get things moving straight away, knowing that he would have to report the matter to An Garda Síochána. The First Complainant says the staff member then told him that he would see him after lunch. The First Complainant says:

"again I was shocked at the lack of care, professionalism, and nobody sure of the correct procedure to take, Total maladministration, incompetence, and being down right rude to me was the feeling I was getting."

The First Complainant says he also reported the matter to An Garda Síochána on **19 November 2019**.

During the afternoon of **19 November 2019**, the First Complainant says he attended his local branch with his wife and was interviewed by a branch staff member. The First Complainant says he gave the staff member various paperwork in relation to the transaction and a statement of events. The First Complainant says the staff member told him that he would forward the information to the fraud team and they would be in touch with the First Complainant and liaise with him.

During this meeting, the First Complainant says he mentioned the possibility of a chargeback to his debit card: *"As It was taken from me and swiped by the bank clerk, and indeed the bank took their charges from it at this time for doing the transaction."*

The First Complainant says the staff member *"went straight into defensive mode and even suggested it was my fault that I had been scammed."* When the First Complainant protested at this, he says the staff member told him that *"if he was to change anything, his job would be on the line."* It was at this point, the First Complainant says:

"I knew for sure I was going to get know nowhere, his total lack of professionalism was shameful and that there procedures of dealing with such matters, just isn't there, I have never been so rudely insulted, spoken to, and been let down by this bank in all the years our family and I have banked with them. I certainly did not authorize any funds to be transferred from my account to a fraudster."

The First Complainant has also provided a statement from his wife in respect of this meeting. He explains that he needed clarity in respect of the chargeback to his account and *"it prompted me to address the question in a letter to [the branch staff member] which [the Provider] complaints received on 27/11/2019."* The First Complainant says that:

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"I have heard absolutely nothing else from them whatsoever, other than the response from [the Provider] concerning the chargeback, and not seemingly also seeing this as a customer being scammed. I note at the ending of the response or indeed throughout the letter they fail to mention their fraud team and suggest I must go the gardai to report the crime. ...".

The First Complainant also describes the concern at the lack of progress being made by the Provider in investigating the matter, expressed by the member of An Garda Síochána dealing with the criminal investigation on **9 December 2019**. Following this, the First Complainant says he immediately went to his local branch and expressed his concern at the lack of customer care on the part of the Provider and the fact the Provider had failed to keep the First Complainant informed in respect of matters. The First Complainant says the Provider branch staff member wasted no time in telephoning the fraud team. After this telephone conversation, the First Complainant says the staff member told him that the UK bank account to which his money had been transferred had been *stopped*.

The First Complainant explains that:

"I really do feel, it could have been a much better outcome if the [Provider's] fraud team had acted and contacted the [UK bank] fraud team immediately, As I did, and got this account blocked and my money refunded, Instead I was pushed from pillar to post and I felt no person in [the Provider] was sure of a correct procedure to take. the lack of customer care and maladministration was shameful, I expect a much better standard from the [Provider]."

The Provider's Case

The Provider explains that on Monday **4 November 2019**, the First Complainant attended at his local branch to make a sterling transfer of **£7,450** from a joint account, to a UK bank.

The Provider says that in order to proceed with the transaction, a branch official swiped the First Complainant's debit card to check the account and to ensure funds were readily available to complete the transfer. The Provider explains that in order to carry out the transfer, the First Complainant was required to complete and sign an 'interpay' form wherein the sender and receiver bank account details were inserted. The Provider say this form was then checked and signed by the bank official, and the transaction was processed.

On Monday **18 November 2019**, the Provider says the First Complainant contacted its Card Security Department at **6:49pm** and was transferred to a customer service agent. The First Complainant advised that he had completed an international payment transfer in branch on **4 November 2019** to purchase a motor home which was due to be delivered on **18 November 2019**. The Provider says the First Complainant believed the transaction was a scam, as he had tried to contact the seller, without success.

The Provider says its customer service agent advised the First Complainant that as the transaction was completed through an international payment in branch, the branch would need to trace the transaction as they would hold the relevant details of the transaction. The Provider says the First Complainant provided the reference number he received when he completed the transfer. As this telephone call was outside the branch's working hours, the Provider states that the customer service agent advised the First Complainant that she would send a message to have the branch contact him the following day.

The Provider advises that the First Complainant asked the customer service agent whether he had any chargeback rights, and was advised that the Provider had a chargeback department that deals with card transactions but because the First Complainant had completed an international payment, the policy would be different and the branch would explain the process further.

On Tuesday **19 November 2019**, upon receiving a message from the customer service agent, the Provider says a branch official at the First Complainant's branch telephoned the First Complainant. The Provider says the First Complainant advised that he had several documents and the best thing to do was to come to the branch immediately to discuss the matter. The Provider advises that the branch official already had meetings scheduled for the morning and because there were only two members of staff present in the branch on that day, he was not in a position to meet the First Complainant straight away.

The Provider says the branch official advised the First Complainant to report the matter to An Garda Síochána before coming to the branch as he would require a 'crime number' in order to complete the necessary forms for the Fraud Department.

After the call, the Provider says the branch official commenced the process to make a recall request, and logged a message for the Payments Investigations Team advising of the suspected fraudulent transaction.

The Provider advises that the First Complainant attended at the branch at 1:30pm and met with the branch official. The Provider has referred to a summary of this official's recollection of the meeting is set out in a statement prepared by this individual.

The Provider says the First Complainant explained the events which led to his suspicion around the transaction being fraudulent. The First Complainant asked whether he had any chargeback rights and the branch official explained that this was only applicable if he had used his debit card for this transaction. The Provider says the First Complainant was convinced he had used his card with the cashier, as she had taken it from the First Complainant, swiped it and asked that the PIN be entered. The Provider says the branch official explained however that the swipe was done for identification purposes, and in order to check the account.

The Provider says the branch official attempted to further explain the difference between an interpay transaction and a debit card transaction. The Provider advises that the First Complainant also sought assurances that the funds would be refunded, however, the branch official could not provide such an assurance. The Provider says the branch official said he would liaise with the Fraud Department which, in conjunction with the Gardaí, would conduct an investigation.

On Wednesday **20 November 2019**, the Provider says its Payments Investigation Team reverted to the branch seeking confirmation that the transfer was a fraudulent transaction which was confirmed by the branch.

On Thursday **21 November 2019**, the Provider says its Payments Investigation Team sent a call request to the beneficiary bank via authenticated swift messaging.

On Monday **25 November 2019**, the Provider says its Financial Crime Unit sent an email to the Payments Investigation Team seeking an update. The Provider says on Tuesday **26 November 2019**, the Payments Investigation Team *“referred the request for a further 5 business days.”*

The Provider says its Group Customer Complaints Department received a letter on Friday **29 November 2019** from the First Complainant raising issues regarding his charge back rights in relation to the fraudulent transaction. The Provider states that a Final Response letter issued on **2 December 2019**. However,

“[u]nfortunately, the investigator who issued this letter did not fully investigate the type of transaction carried out to effect the sterling transfer and accepted the content of the First Complainant’s letter that he had carried out the transaction using his ... Debit Card and not by way of any ‘interpay’ form.”

The Provider says it sincerely apologises for the misinformation provided in this letter.

On Tuesday **3 December 2019**, the Provider says its Payments Investigation Team advised the branch that a message had been received from the beneficiary bank and the recall had been unsuccessful, as no funds remained in the account and therefore, a refund was not possible. The Provider says *“[u]nfortunately this information was not relayed to the Complainant at that time due to a misunderstanding by the branch official that the Financial Crime Unit would advise the Complainant directly.”* The Provider says it sincerely apologises for the failure to communicate the outcome of the recall at this stage.

On Tuesday **10 December 2019**, the Provider says the First Complainant attended at the branch and met a senior branch official to discuss the fraudulent transaction. The Provider advises that this official made further enquires with the Financial Crime Unit on the First Complainant’s behalf and provided details of the Garda investigation. After this, the Provider says the Financial Crime Unit followed up with An Garda Síochána on the matter.

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In terms of the chargeback request, the Provider says the First Complainant completed and signed an interpay form in respect of the transfer and the form included details relating to the transferor and transferee and the amount to be transferred. Further to a completed interpay form being completed, the Provider says its duties when processing such a request are to:

- Check that funds were readily available
- Check the IBAN supplied for the third party account
- Check whether the payment is being sent same day transfer
- Advise as to the timeframe of the funds reaching the beneficiary account.

The Provider explains that the transfer was not carried out using the First Complainant's debit card and therefore, a chargeback did not apply to this transaction.

The Provider says that clause 1 of the terms and conditions attaching to the interpay form states that: *"Cleared funds must be available to meet all proposed transfer of funds"* and that:

"once the application and payments instruction is received from the Customer it is irrevocable and the Bank cannot guarantee that any request subsequently received from the Customer to cancel payment can be complied with."

The Provider advises that it offered to place a recall on the non-SEPA interpay transaction and this is done on a "best efforts" basis. The Provider explains that this involves requesting a return of funds from the beneficiary bank on the basis that there would be no guarantee of a return of funds and that the Provider relies solely on the beneficiary bank to return the funds.

The Provider says the earlier a recall is placed on a transaction and the earlier it is notified, the greater the chance of preventing the completion of the fraud. In this case, the Provider explains, given that there had been a 14 day period between the date of the transaction (**4 November 2019**) and the notification of the potential fraud (**18 November 2019**) a successful recall would prove difficult.

Regarding the call received by the First Complainant on **19 November 2019**, the Provider says it disputes the position that there was no urgency to the matter. It refers to the statement of its branch official in this regard. The Provider submits that the branch official telephoned the First Complainant at the earliest opportunity on **19 November 2019** upon receipt of the message from the customer service agent.

The Provider says that a recall request was sent to the beneficiary bank via swift message on Thursday **21 November 2019** by the Payments Investigation Team and there is no minimum response time for the beneficiary bank to respond. The Provider advises that the following response was received on **3 December 2019**:

"Refer to your MT192 DD 21.11.2019 under ref [number]. We confirm no funds remain from this payment and we close our case as we are unable to refund."

The Complaint for Adjudication

The complaint is that the Provider:

1. delayed in taking action once the fraudulent transaction was reported to it by the Complainant;
2. failed to process a chargeback; and
3. proffered poor customer service.

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 Complainants were 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 March 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.

Background

The First Complainant completed and signed one of the Provider's InterPay forms for the purpose of transferring **£7,450** to a beneficiary account in a UK bank on **4 November 2018**. On the form, just above the Complainant's signature, the First Complainant was referred to the terms and conditions of an InterPay transfer, which were located on the reverse side of the form.

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The First Complainant telephoned the Provider 2 weeks later, on **18 November 2019** and spoke with a customer service agent. The First Complainant explained that he believed he had been the subject of a fraudulent transaction. The Provider's agent advised that because it was an InterPay transaction, it was something that the First Complainant's branch would have to inquire into and try to resolve. The Provider's agent advised that she could email the First Complainant's branch about the transaction to see if the branch could trace it, as the branch would have all the transaction details. She advised the First Complainant that because it was an InterPay transaction, she was unable to advise the First Complainant as to the likelihood of recovering the funds.

The First Complainant then enquired about the Provider's chargeback policy. The Provider's agent explained that because this was an InterPay transaction, there would be a different policy and it would be something the branch could clarify for the First Complainant.

One of the Provider's branch officials telephoned the First Complainant the following day, on **19 November 2019**. During this call (which appears to have been recorded by the First Complainant), the First Complainant explained that he had been scammed and had been speaking with the Provider's Fraud Department which had not been particularly helpful. The branch official asked the First Complainant to explain what had happened. In response, the First Complainant requested to come to the branch to discuss matters and he had certain documentation relating to the transaction. The branch official indicated that he may not be available that day and asked if the First Complainant could call in to the branch the following day. The branch official advised that if the First Complainant could provide a 'Crime Number' it would facilitate matters. The First Complainant stated that he would go the An Garda Síochána before coming to the branch.

The First Complainant explained that there was a lot of documentation to go through and the parties would have to sit down and go through everything. The branch official told the First Complainant that he understood the situation he was in, but there were only two staff members in branch. The parties agreed that the First Complainant would come to the branch that afternoon.

I note that the Provider issued the following 'Swift' message to the UK bank on Thursday **21 November 2019**:

"Please cancel our attached payment and consider it null and void. Please return funds to us as soon as possible we have been advised that this payment is fraudulent ..."

It appears that the UK bank responded with an undated message, as follows:

"We confirm no funds remain from this payment and we close our case as we are unable to refund."

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It appears that an internal email was sent by one of the Provider's agents on **25 November 2019** seeking an update regarding the recall request. It is unclear what sections within the Provider were communicating, as redactions have been applied to the sender and recipient details. However, I note in the 'Schedule of Evidence' furnished by the Provider, the Provider advises that these emails were between its Payment Investigations Team, and the Financial Crime Unit.

The First Complainant wrote to the Provider on Thursday **21 November 2019** (which appears to have been received by the Provider on **29 November 2019**) seeking clarity as to why he was not eligible for a chargeback because, as he understood it, he used his debit card to carry out the transfer:

"... I was using my Visa debit card, the counter clerk took it from me and swiped it in front of me during this transaction, and even took 25 euro for the banks charges to do the transaction."

A Final Response letter was sent to the First Complainant on **2 December 2019** explaining that:

"The Bank's records confirm that you made a PIN verified transaction debited on 05/11/2019 in the amount of €8889.62. The Bank does not dispute that a Visa Debit card was used in payment for your transaction. I understand from your letter that you, of your own volition, made this payment following communication and/or an instruction that transpired to be fraudulent. Please note that when you use your Visa Debit card and PIN you are requesting a payment, verifying to whom you wish to transfer and confirming your payment instruction. As you must appreciate, none of these actions were within the control of [the Provider] who facilitate the payment.

Once you have confirmed such a payment by Chip and PIN card the Bank does not have chargeback rights. I must advise you that the Bank's transactions are secure and that your card and PIN offer you great assurance when conducting transactions. However, the Bank does maintain any details of to whom you are electing to transfer funds.

The Bank expects that customers have satisfied themselves as to the credentials and trustworthiness of any party to whom they are transferring funds. Any transaction, as noted above, is subject to your verification and instruction.

There are a number of specific circumstances in which chargeback rights apply. A chargeback is a reversal of a disputed sales transaction on a credit or debit card. For example, you can contact your card provider to ask them to refund the cost of a purchase if you paid for goods you did not receive or never ordered or if a business fails to cancel recurring payments. The card provider will decide if you are entitled to a refund based on the circumstances. ..."

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A further internal email was issued by the Payment Investigations Team on **3 December 2019**, containing the message quoted above on Page 9, received from the UK bank in response to the Provider's Swift message.

Statement of Branch Official

The Provider has supplied the following statement from the branch official with whom the First Complainant met on **19 November 2019**:

"... I received a request to call [the First Complainant] on the morning of the 19th of November which I did. [The First Complainant] after reporting via ... phone of a suspect fraud perpetrated on his account was directed to contact the branch as they informed him that they could not help him.

[The First Complainant] wished to come in immediately but unfortunately I was not in a position to see him in the morning as I had meetings and also there were only two staff members present in the branch that day.

I suggested to [the First Complainant] to attend the Garda Station first and to get a Pulse number, name of the Garda and their I.D. number as this is a requirement for Form 23-684R Fraudulent InterPay Instruction Form and I thereafter agreed to meet him after lunch which was 1:30pm.

On completion of the call, I contacted the Hunter team and acquired the Payment Reference Number and immediately submitted a request on our internal message platform to recall the payment, due to the suspected fraudulent nature of the transaction.

[The Complainant and his wife] arrived at the branch at 1:30pm for our meeting with the information I requested from the Gardai for form 23-684R. The purpose of this form is to gather the relevant information off the fraud and sent to Retail Fraud Prevention Unit.

[The First Complainant] went into great detail to explain what happened to him. He informed me that he was on to [the Provider's telephone line] and our Fraud Department and expressed exasperation as to why the process was so onerous as I was now the third or fourth point of contact. I apologised and empathised with him. He then went on to explain that he had recorded every phone conversation he had with the Bank and asked if I would like to listen. I politely declined. He also had everything documented, all the security checks he conducted and copies of all correspondence with the fraudulent vendor. I took photocopies of everything to submit with form 23-684R.

[The First Complainant] explained to me that there was a specific fund set up by financial institution in the United Kingdom to reimburse people who were victims of fraud and he asked if there was such a fund set up in Ireland. I replied that I was not aware of any such fund set up in the Republic of Ireland.

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He did not accept my reply. At which point he asked about Chargeback rights. I explained that this was only applicable if he had used his VISA Debit card for this transaction. He was convinced he did use his card with the cashier as she took it from him and swiped the card and asked to enter him PIN number. I explained to him we do this to confirm the account number and to identify the customer, if not known to the branch.

I attempted to further explain the difference between an InterPay transaction and a VISA debit card transaction but the customer still did not grasp the difference between the two, as he kept insisting that he was charged €25.49 from his account for the Interpay thereby believing this was a VISA debit card transaction and he had Chargeback rights. This conversation went on for a while.

[The First Complainant] went on to demand an assurance from me that he would be refunded. I could not give him this assurance. I informed that all I could do is submit to our Fraud Department who in conjunction with the Gardaí conduct an investigation, the results of which would be communicated to him in due course. Furthermore I informed him that the Fraud Department would take ownership of the case which was my understanding and they would deal with [the First Complainant] directly....”

Analysis

It appears the First Complainant first began to suspect that the transaction was fraudulent on **18 November 2019**. The First Complainant telephoned the Provider that evening and he appears to have initially spoken with an agent in the Provider’s Card Security Department who was unable to assist the First Complainant and who transferred him to a customer service advisor.

Believing he had now been transferred to the Fraud Department, the First Complainant was advised by the customer service advisor that he would have to contact his branch, to seek to reverse the transaction, due to the fact the transaction was an InterPay transfer. Because the call took place after business hours, the customer care advisor also advised the First Complainant that she would email the relevant branch in respect of the transaction and request that a call back be placed to the First Complainant by the branch, the following day.

I note that the following morning, **19 November 2019**, the branch official telephoned the First Complainant. On listening to this conversation and the circumstances outlined by the First Complainant, and while I appreciate that there were only two members of staff in branch, I do not consider that it was appropriate for the branch official to ask that the First Complainant come to the branch the following day, particularly as, at that point in the conversation, the branch official did not appear to have sufficient information about the transaction to allow him to initiate a recall request during the intervening period for example. However, I note that the parties agreed to meet in branch later that afternoon.

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The branch meeting took place as arranged on **19 November 2019** and, according to the branch official's statement, he

"immediately submitted a request on our internal message platform to recall the payment due to the suspected fraudulent nature of the transaction."

In the Provider's Complaint Response dated **8 September 2020**, the Provider says that its Payment Investigations Team contacted the branch on **20 November 2019** to confirm that the transaction was fraudulent. However, I note that copies or records of these communications do not appear to have been made available.

As can be seen, a recall request was sent on **21 November 2019**. Given the statement of the branch official, it is not clear to me why this request was not sent on 19 November, or at least by the following day, 20 November 2019. The First Complainant does not appear to have been kept up to date or informed of the action being taken.

Separately, it is not clear when the Provider received a response to the Swift message. However, the response appears to have been known to the Payment Investigations Team on **3 December 2019** but there is no evidence to show that this information was conveyed to the First Complainant.

Based on the evidence presented, the First Complainant does not appear to have been advised as to the Provider's recall procedure for InterPay transfers. Further to this, the First Complainant does not appear to have been advised that a recall request was made, or indeed that a response had been received from the UK bank. This is disappointing.

It is my view that the Provider should have written to the First Complainant outlining its recall procedure, that a recall request had been sent, the likely timeframe for a response, and it should have explained the likelihood of recovering the transferred funds. Additionally, the Provider should have notified the First Complainant of the UK bank's response to the recall request, as soon as it was received. In addition, I believe that the Provider should have made efforts to update the First Complainant regarding status or progress of the recall request.

In terms of the First Complainant's request for a chargeback, I note that the First Complainant was advised by the Provider's customer service agent on **18 November 2019** that the Provider had a different policy for refunds in respect of InterPay transfers and that his local branch would be better able to explain the relevant process. Having considered the evidence, I am satisfied that the branch official did explain the chargeback process to the First Complainant, but the First Complainant nevertheless believed that he was entitled to a chargeback on the basis that he had used his debit card during the transfer process.

I accept that the First Complainant transferred the funds to the UK bank using the InterPay transfer method and I am satisfied this is a distinct method of transferring money entirely separate from a transfer using a debit card. While the evidence shows that the First Complainant used his debit card during the transaction, I accept the Provider's evidence that the debit card was used only for the purpose of verifying the First Complainant's account details and ensuring that sufficient funds were in place to execute the transfer.

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I do not accept that this means the transfer was a debit card transaction. As a result, I accept that the debit card chargeback rules did not apply to this transaction.

Clause 1 of the InterPay terms and conditions makes clear that a transfer instruction is irrevocable and that the Provider does not guarantee any transfer cancellation requests will be complied with. In this respect, clause 1 states that:

“Once an application, and payment instruction, is received from the Customer it is irrevocable and the Bank cannot guarantee that any request subsequently received from the Customer to cancel the payment can be complied with.”

[My emphasis]

Having considered the InterPay terms and conditions, I note that they do not provide for a refund or chargeback in respect of transactions such as the one which is the subject of this complaint. Similarly, the Provider’s current account terms and conditions do not appear to provide for a refund or chargeback in this situation either. While it is unfortunate that the First Complainant was the victim of fraud, I do not consider that the First Complainant is entitled to a refund from the Provider.

Whilst the Complainant believes that if the Provider had acted more swiftly to respond to his concerns, that he would have recovered some or all of the monies he had transferred by InterPay, 2 weeks earlier on **4 November 2021**, it is simply not possible to confirm what might have occurred, had the recall message been issued, on 19th or 20 November 2021, instead of on the 21st, which does indeed seem to have been a less than urgent response by the Provider to the Complainant’s situation.

The Complainants have pointed out that

“All I can add is to reaffirm my true belief from the phone call I made to [UK bank] fraud department on the 18th of the 11th, 2019, which is logged by that department, again I spoke to [name] he was limited at what he could tell me but he was extremely helpful to the point at how he was pushing and pushing me to contact [Provider] immediately to retrieve these funds, I certainly got the message from him that he was aware that funds were still there in that account that was under investigation at that time.. there lies my evidence.. I contacted [provider] immediately... I wasted no time... I note that [Provider] is a member of fraud smart They state for you to contact the bank immediately. the quicker you do the quicker they act to safeguard accounts if you have been a victim of fraud... This I did... Of course I expect the same from them and not to take 3 days to act and contact the [UK bank], This and many other mishaps, mistakes, being pushed from pillar to post by them, nobody seemed to know how to actively go about this.. All this evidence is contained in the phone calls that I have kept and in my statements.”

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I am very conscious that the Complainants believe that they acted swiftly, but of course this was 2 weeks after the funds had already been transferred. Whilst they are of the opinion, based on their conversation with the representative of the UK bank during the evening of the 18th, that there were funds in the account at that time, there is simply no independent evidence of that position, or indeed at what level any such funds might have stood.

It is in those circumstances that I cannot make a finding that the delay on the part of the Provider gave rise to the inability of the Complainants to recover some or all of their funds. I do not consider it appropriate to speculate as to that possibility, in the absence of clear evidence as opposed to the Complainants' belief, on the basis of their discussions during this stressful time.

The First Complainant also made a formal complaint to the Provider regarding the chargeback process and his entitlement to a chargeback in respect of the transfer. The Provider issued a Final Response letter on **2 December 2019**.

I have reviewed the Provider's Final Response letter and it is quite clear that it failed to address the First Complainant's complaint. As acknowledged by the Provider in its Complaint Response to this Office, the Complaints Investigator simply accepted that the transfer was a debit card transaction. However, if the Complaints Investigator had properly enquired into the transaction, he would have seen that it was an InterPay transfer and that the chargeback rules did not apply. The Final Response letter then proceeded to address the complaint on the basis that the transfer was performed as a debit card transaction. As a result, the information regarding the manner in which the transfer took place was wrong and resulted in the Provider issuing an incorrect and misleading response, which in my opinion simply added to the confusion surrounding the transaction.

In particular, I note that the letter states:

"The Bank does not dispute that a VISA Debit card was used in payment for your transaction."

Given the First Complainant's belief that this was essentially a debit card transaction, the Provider's Final Response letter supported and prolonged the First Complainant's misunderstanding and was contrary to the information imparted by the branch official on **19 November 2019**. This is very unsatisfactory.

Goodwill Gesture

In its Complaint Response, the Provider stated:

"The Provider would like to offer its sincere apologies to the Complainants for the delay in communication of the unsuccessful recall request for funds from the beneficiary bank. The Provider also acknowledges that incorrect information was provided in the final response letter on how the international payment was transferred in the branch ... [and] ... the confusion the final response letter may have caused the Complainants. In acknowledgement of the service issues the Provider

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would like to offer to the Complainants the sum of €1,000 by way of compensatory payments.”

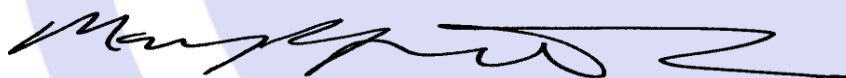
I consider this goodwill gesture to be a reasonable sum of compensation for the customer service failings on the part of the Provider, particularly as it is entirely unclear as to whether the Complainant would have succeeded in recovering any of the funds transferred, even if the recall request had been made more swiftly by the Provider. In these circumstances, whilst the Complainants believe that this compensatory amount is lower than it should be, I take the view that the gesture is reasonable. Given that this compensatory gesture was offered as part of the formal response to the investigation by this Office, and on the basis that this offer remains available to the Complainants to accept, I do not consider it appropriate to uphold this complaint.

It will be a matter for the Complainants to make direct contact with the Provider, if they wish to accept that compensatory gesture, and in that event, they should make that contact expeditiously, as the Provider cannot be expected to hold that offer open to them indefinitely.

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**

8 November 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.