



<u>Decision Ref:</u>	2021-0427
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Money Transfer
<u>Conduct(s) complained of:</u>	Disputed transactions Failure to provide adequate security measures
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint relates the Complainant's request to the Provider to perform a chargeback on certain disputed payments.

The Complainant's Case

In her complaint to this office of **18 July 2019**, the Complainant submits that she made a series of payments from her bank account to an investment company. She later realised that this company was a fraudulent organisation.

On **21 May 2019**, the Complainant contacted the Provider to seek a chargeback of the disputed sums. She submits that the Provider informed her on **5 June 2019** that a refund would not be possible and that the disputed amounts could not be recovered by the Provider.

The Complainant states that:

*"[u]nder [Card Payment Network's] Core Rules No. ***** *.*.*., before allowing a merchant to accept payments, there must by a physical inspection of the listed premises of the business. As I now know there is nothing at the listed premises (purportedly in Ireland) of these companies that means the condition was not met."*

In an email to this office of **20 October 2019**, the Complainant noted the dates and figures of six disputed sums. These sums added to a total of €11,250 (eleven thousand, two hundred and fifty Euro), and ranged in dates from **29 July 2018** to **13 February 2019**.

The Provider's Case

The Provider submits that in its letter to the Complainant of **5 June 2019**, it outlined the information required from the Complainant for the Provider determine whether it could set up a chargeback. The Complainant did not respond to this letter.

The Provider notes that the Complainant did not specify exactly which transactions were to be the subject of the requested chargeback. The Complainant had provided disputed figures and the name of a third party. However, this third party's name did not appear as a recipient of any of the disputed sums. As a result, the Provider did not have clarity on which sums were in dispute.

The Provider wrote to the Complainant on **1 July 2019** to confirm that it had not received the requested correspondence, and that the transactions had been removed from the dispute process. The Provider did not receive any further correspondence from the Complainant until a complaint was made to the Provider on **18 September 2019**.

In the Provider's **Final Response Letter** of **8 October 2019**, it again requested the specific information that would be required to determine whether a chargeback would be possible. The Complainant did not respond to this request.

In its response to the formal investigation of this Office, the Provider stated that chargebacks are processed in accordance with the card payment network's rules. The Provider must determine whether or not a chargeback would be possible in accordance with these rules. The information requested from the Complainant would allow the Provider to make this determination.

The Provider notes that under Clause 3.11 of its terms and conditions, a customer may request a refund of a transaction within eight weeks of the date that the transaction is debited from the account. The Provider accepts that the Complainant's account is subject to the **European Union (Payment Services) Regulations 2018** ('the Regulations'). It submits that its Framework Contract is in compliance with Regulations 76, 88, and 96. Further, the Provider states that it has acted in accordance with Regulation 112.

The Provider submits that the payments to the various third parties, were executed correctly, and received by the merchants. The Provider acted upon the Complainant's instructions. As the Complainant "*knowingly made and authorised*" the transactions, the payments were treated by the Provider as 'disputed', rather than 'fraudulent'.

The Provider notes that the chargeback procedure can only be utilised in certain circumstances, where "*strict conditions, timeframes and documentation requirements*" are met. It states that not all disputes can be resolved through this process. As the Complainant did not respond to requests for additional documentation, the chargebacks could not be progressed.

Regarding the Complainant's argument that the Provider did not act in compliance with the Card Payment Network's Core Rules, the Provider notes that the rule sought to be relied on by the Complainant does not apply to the Provider. It submits that the rule that due diligence must be conducted of a prospective or speculative Merchant is an obligation upon an 'Acquiring Bank'. The Provider is an 'Issuing Bank' and is not responsible for the required due diligence under the Core Rules.

The Complaint for Adjudication

The complaint is that in **2019**, the Provider wrongfully failed to effect chargebacks on certain disputed transactions, as requested by the Complainant.

The Complainant wants the Provider to "*chargeback, or otherwise credit my account, for the full amount of these payments, in the total amount of 11,100 Euro*" (eleven thousand, one hundred Euro).

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 **27 October 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. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

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I note the following extract from the Provider's letter to the Complainant of **5 June 2019** which states as follows:

"In order to fully review your case and be certain if a chargeback right exists in this instance we need you to provide the following documentation:

- *Dated proof of the funds in the online account.*
- *Provide dated proof you have asked to withdraw the funds in your online account.*
- *Documentary evidence you have had continuous negotiations with the merchant in an attempt to resolve your dispute within 120 days of the above transactions dates.*
- *Please confirm in writing if you have any previous successful attempts to withdraw from this merchant and if so please confirm what these attempts relate to.*

If you are not able to provide any of the above information please be advised we will not be in a position to assist you in your claim.

Please forward this information to our chargeback department within the next 14 days."

I also note that within the Card Payment Network's Core Rules, of **17 April 2021**, the following is stated for the rule cited by the Complainant:

"Acquirer Responsibilities Related to Merchants

...

**.*.* Due Diligence Review of Prospective Merchant or Sponsored Merchant Before contracting with a prospective Merchant or Sponsored Merchant, an Acquirer or a Payment Facilitator must conduct an adequate due diligence review, including a site visit to the business premises (if applicable) or suitable alternative, to ensure compliance with the Acquirer's obligation to submit only legal Transactions to [Card Network]."*

The complaint made in this matter is that the Provider failed to initiate chargebacks for certain disputed payments. However, I note that the Complainant failed to indicate to the Provider exactly which payments were being called into dispute.

The Provider contacted the Complainant for further information in June 2019. The Complainant did not however reply with this information. I note that in the Provider's **Final Response Letter** of 8 October 2019, this information was again requested. The Complainant did not respond.

I accept that the information requested by the Provider was required in order to determine whether a chargeback would be possible. Without this information, the Complainant's instructions could not be acted upon. The Complainant has not explained why she did not supply this information to the Provider. I note that she did not contact the Provider for assistance in gathering this information, nor did she explain any difficulty in doing so.

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As a result, I do not accept that the Provider failed to act upon the Complainant's instructions to initiate a chargeback. The Provider was not given sufficient information to do so, and the Complainant did not engage with the Provider's attempts to gain clarity on her instructions.

In relation to the complaint that the Provider did not act in accordance with the Card Payment Network's Core Rules, I note that the cited rule relates only to Acquiring Banks. As the Provider was not an Acquiring Bank in this instance, for these transactions, I accept that it was not bound by this rule.

Having regard to all of the above, in my opinion, the evidence does not support the Complainant's complaint that the Provider failed to effect a chargeback as she requested. Further it does not support the Complainant's submissions that the Provider failed to act in accordance with the relevant Core Rules. Accordingly, I do not consider it appropriate to uphold the 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.



**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

18 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.