



<u>Decision Ref:</u>	2021-0430
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Money Transfer
<u>Conduct(s) complained of:</u>	Fees & charges applied Dissatisfaction with customer service Failure to provide correct information
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the transfer of funds from the Complainant's account with the Provider, to an international bank account, with an incorrect beneficiary name on the transfer. These funds were subsequently transferred back to the Complainant's account with the Provider, and converted into Euro.

The Complainant's Case

The Complainant contacted the Provider via telephone on **2 August 2019** to arrange an international transfer of €28,000 (twenty-eight thousand Euro) from her personal account, with conversion into the international currency. The intended beneficiary of the transaction was the Complainant's personal account with an international bank.

The Complainant says that the quality of the phone calls made on this date were very poor. The Complainant gave a beneficiary name, which she says was misheard by the Provider. The incorrect name was read back to the Complainant and confirmed. This Provider's Agent subsequently called to the Complainant to indicate that a .2% fee, capped at €50 (fifty Euro), would also be applied to the transfer.

The Provider called the Complainant again during the same day to confirm that the details on the transaction were correct. The line dropped on a number of occasions, and the audio was not clear. The Complainant says she provided the beneficiary name, which was similarly misheard by the Provider's Agent. The Agent used this name in conversation with the Complainant, and the Complainant did not correct the Agent.

The transaction to the international account was made on **7 August 2019**, with an incorrect beneficiary name.

On **7 August 2019**, the Complainant received a notification from her international bank that the funds could not be transferred into her account due to the incorrect beneficiary name. In an email from the international bank to the Complainant of **7 August 2019**, the international bank requested that the Complainant seek a "*name correction/amendment (MT199)*" from the Provider.

The Complainant contacted the Provider via email on **7 August 2019**, seeking the Provider's assistance in having the beneficiary name amended. The Provider responded on **12 August 2019** that it had not received any request from the international bank to amend the transfer. In reply, the Complainant forwarded the email correspondence from the international bank to the Provider.

In correspondence with the international bank, the Complainant learned that the international bank required the Provider to make the request to amend the transfer. The Complainant contacted the Provider via email on **19 August 2019** seeking an MT199 form. On **21 August 2019**, the Provider responded via email that no query had been received by the international bank. It noted that it no longer amended payments, and that the funds could be recalled. The Provider noted that:

"it appears the MT199 form does not exist any longer and an amendment to the original payment request can only be made by the beneficiary bank to [the Provider]."

As the Complainant could not compel the international bank to request this amendment from the Provider, she instructed the international bank to return the funds to the Provider. She says that she expected that the Provider would contact her once the funds had been returned. The instruction was made on **22 August 2019** and the funds were transferred into her account the following day on **23 August 2019**. The Complainant was not however contacted by the Provider upon this transfer.

Upon checking her account, the Complainant learned that the funds had been converted from the international currency into Euro. The figure transferred into the Complainant's account was €25,803.76 (twenty-five thousand, eight hundred and three Euro, and seventy-six cent), and a fee of €5 (five Euro) was applied by the Provider. Due to the transfer fees and conversion, the Complainant submits that she is at "*a loss of €2203*" (two thousand, two-hundred and three Euro). The Complainant subsequently contacted the Provider to transfer the funds to the correct international bank account.

In a letter to this office of **30 September 2020**, the Complainant submitted:

"23 Aug 2019

...

- I contacted the Provider immediately telephonically to enquire about this transfer. As far as I am concerned I was given incorrect information regarding the transfer and costs involved at the time.*
- As a result I was forced to arrange a new transfer with new costs!"*

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In the conclusion of this letter, the Complainant submitted that there was “*unfair consumer practice*” and that the Complainant was not given correct information. She reiterated that she had not provided an incorrect account name. The Complainant noted that she was not advised that the transaction of **23 August 2019** would be credited to her account without the Provider informing her.

Finally, the Complainant noted that the Provider had applied an “*unfair fees structure*” in relation to banking fees for three international transactions and three currency conversions. She submitted that “*a standard universal process do not apply (sic).*”

The Complainant clarified in an email to this office of **13 January 2020** that:

“I am not complaining about the faulty account name. I am complaining about the transferred funds that reached [the Provider] in [international currency] and was changed to Euro without my knowledge or instruction.”

However, in her letter to this office of **30 October 2020**, the Complainant stated that the Provider’s systems to prevent errors such as this were “*clearly not sufficient*” and should be reviewed.

The Provider’s Case

The Provider submits that the Complainant provided an incorrect name to the Provider on **2 August 2019**. In a letter to this office of **19 October 2020**, it relies on a submission from the Complainant stating that she had “*missed the incorrect beneficiary account name*” during the final call with the Provider.

The Provider submits that Clause 6.3 of its **Terms and Conditions** places liability on the customer for the processing of transactions when incorrect information is provided by the customer. The Provider quoted a provision in its formal response to the investigation of this Office, which corresponded to Clause 6.4 of its **Terms and Conditions**. The Provider cannot provide evidence that the **Terms and Conditions** were given to the Complainant, but it submits that it has a general practice of sending copies of same to customers when there are updates to the document.

The Provider submitted on **2 September 2020** that the transfer of funds from the international bank to the Provider of **23 August 2019** was a distinct and separate transaction from that of **2 August 2019**. The Provider noted that the transfers were conducted through the SWIFT system, which functions as a messaging system between banks that allows for indirect funds transfers. In circumstances where a customer holds an account in two banks and seeks to set up a transfer, the sending bank can debit the funds from the customer’s account and instruct the receiving bank to transfer the funds into the customer’s account. However, if the customer does not hold an account with the receiving bank, an intermediary bank is required for the SWIFT transaction. Both sets of circumstances usually incur processing fees, with higher fees applicable where an intermediary is used.

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The Provider says that as the name given in the transaction of **2 August 2019**, did not correspond to the name on the Complainant's account with the international beneficiary bank, an intermediary bank was used in the transaction. An intermediary was also used in the transaction of **23 August 2019**. The Provider submits that it is not aware of the Complainant's level of knowledge of the SWIFT system prior to the first transaction. However, it states that:

"[I]t would not be reasonable or practicable to require financial service providers to explain complex processes of international finance to customers in circumstances such as this."

The Provider notes that it had no control over the funds transfer of **23 August 2019** until it was completed. As the Complainant's account was Euro-only, it would not have been possible for the funds to be deposited into the Complainant's account without conversion of the currency. It submits that the conversion was applied automatically to the transaction, as per Clause 6.11 of the **Terms and Conditions**. This clause allowed the Provider to deduct transaction charges from the payment, before it was credited to the account.

The Provider submits that it is *"not generally an aspect of customer banking relationships that customers are asked for their instruction or consent prior to money being paid into their accounts by third parties"*. It notes that it is also not standard practice for the Provider to inform customers when funds are received.

In relation to the communication between the Provider and the Complainant, the Provider notes that the Complainant emailed the international bank stating that she had tried on several occasions to resolve this issue with the Provider, but that the Provider informed her that this needed to be *"raised and processed on an internal bank to bank process"*. The Provider accepts that it was made aware of the Complainant's request to amend the beneficiary name on or about **7 August 2019**. However, it submits that it cannot locate any record of the above-cited communications with the Complainant.

Regarding the inability of the Provider to amend the beneficiary name on the transfer to the international bank, the Provider states that it *"does not permit amendment by MT199 or otherwise"*. The Provider explains that it has a *"strict no-amendment policy"* in place for SWIFT transfers, such as those in this complaint. It notes that this policy is entirely within its own commercial discretion.

The Provider submits that the Complainant's loss is wholly attributable to the provision of the incorrect name in the first transaction, and that it cannot be held liable for the conversion rates on the relevant dates of the transactions.

The Provider was asked by this office to respond to the Complainant's contentions that she was not informed of the transfer of the funds to the Provider, or given an opportunity to make an instruction in relation to them. It was asked to refer, in particular, to its compliance with Provisions 4.1 and 4.2 of the Central Bank of Ireland's **Consumer Protection Code 2012** (CPC). The Provider stated that *"these provisions clearly have no relevance to the present complaint"* in light of the context of the SWIFT transaction system.

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The Provider submits that it has met its obligations under Provision 10.7 of CPC by virtue of issuing a **Final Response Letter** within the mandated timeframe.

In response to the Complainant's submission that the Provider had given her incorrect information, the Provider notes that the only transaction over which the Provider had control was the transfer of **2 August 2019**. The Provider submits that the Complainant has not demonstrated how any information it provided in relation to that transaction, was incorrect.

Regarding the Complainant's submissions that there was an "*unfair fees structure*" and that a "*standard universal process*" did not apply, the Provider submits that these complaints relate to the SWIFT system, over which the Provider has no control

The Complaint for Adjudication

The complaint is that in August 2019, the Provider received a transaction in an international currency and wrongfully converted the funds into Euro, without authorisation, before crediting it to the Complainant's account, resulting in financial loss to the Complainant.

The Complainant has been specific in her submissions regarding what she is seeking in resolution of the complaint:

"I suffered a loss of €2203 and seek a refund."

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.

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A Preliminary Decision was issued to the parties on **26 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.

I note that General Provisions 4.1 and 4.2 of the CPC state as follows:

“GENERAL REQUIREMENTS

4.1 A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.

4.2 A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following:

- a) the urgency of the situation; and*
- b) the time necessary for the consumer to absorb and react to the information provided.”*

An extract of the email from the Provider to the Complainant of **12 August 2019** states that:

“We contacted our payment team regarding your query, they have reverted with the below:

“We have not received any request from the foreign bank in regards to requesting an amendment for payment [reference]”,

So it seems the receiving bank can contact our payments team in relation to any query arising from the application of a payment request made by ourselves on your behalf. If this query is still outstanding can you ask your bank in [Country] to contact [the Provider] in relation to same.”

An extract of the email from the Provider to the Complainant of **21 August 2019** states as follows:

“Our payment investigations team have reverted with the below:

“Please be advised that we have not yet received a query from the foreign bank in relation to this payment. We do not amend payments anymore. We can recall these funds. If you wish us to set up a [illegible] to recall these funds please provide us an account number to debit...”

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[Complainant], it appears the MT199 form does not exist any longer and an amendment to the original payment request can only be made by the beneficiary bank to [the Provider]. Please advise us on how you wish to proceed.”

I note that the Provider’s **Terms and Conditions** document states the following, at page five:

“6.11 If a payment into your Account is received on a banking day, the relevant cut-off time has not passed, and the payment does not require currency conversion, other than a conversion from euro to another member state currency, or visa versa, we will credit your Account with the payment on the same banking day that we receive it. All other payments requiring a conversion will be credited to your account as soon as the relevant conversion has been completed. You also agree that we have the right to deduct transaction charges from any payment into your Account before crediting it to your Account.”

The Complainant’s position is that the Provider should have informed her when the transfer of **23 August 2019** was received. She could have then given instructions for the funds to be transferred to her international bank, and the funds would not have required any further currency conversion.

The Provider’s position is that it had no control over the transaction until it was received on **23 August 2019**. It does not usually inform personal customers of transactions that enter their account. Furthermore, it says that the conversion applied was an automatic process that was set out in the Provider’s **Terms and Conditions**.

I accept the Provider’s explanation that it merely acted as a recipient for the transaction of **23 August 2019**. I also accept that it was entitled to automatically convert the currency into Euro, so that the funds could be credited, as the Complainant’s account was one holding Euro only. This procedure was set out in the **Terms and Conditions**. Although the Provider could not offer specific evidence that the Complainant had received the **Terms and Conditions**, I note the Provider’s usual practice and the Complainant has not suggested that she was not furnished with a copy. I am therefore prepared to accept that the Complainant was on notice of the Provider’s contractual entitlement in this respect.

In relation to the incorrect and misleading information alleged to have been given by the Provider, I note that this part of the complaint appears to relate to the transaction of **23 August 2019**. As the Provider was the recipient bank to this transaction, I accept that it would not have been in a position to provide information on the transfer to the Complainant, when the transfer was being made. However, the Provider retains an obligation to comply with Provisions 4.1 and 4.2 of the CPC.

In my opinion, the communications from the Provider to the Complainant via email on **12 August 2019** and **21 August 2019** were misleading. I take the view that the emails implied that an amendment of the transaction would be possible, if the international beneficiary bank made a request directly to the Provider.

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The Provider's submissions to this Office are to the effect that it has a "*strict no-amendment policy*" for this type of transfer. However, the Provider's email of **21 August 2019**, in particular, shows confusion in communicating this policy to the Complainant. The result of this miscommunication was that the Complainant spent a number of weeks needlessly corresponding with the international bank, in an attempt to have it request the Provider to amend the transfer.

I further note that, in relation to the transfer of **2 August 2019**, the Complainant was not provided with information on the fees that would be applied to her transaction under the SWIFT system. The Provider has submitted that it would be unreasonable to require it to provide information on this 'complex process' to customers. However, during the phone call of **23 August 2019**, the Provider's Agent did in fact explain to the Complainant that an intermediary bank was used for this SWIFT transfer, and that this resulted in a higher fee being applied. As a result, I do not consider that providing the Complainant with some additional information on the fees to be expected from the SWIFT process, would have been unduly burdensome. In circumstances where information on the SWIFT system is not provided in customer-facing documentation, it would have been helpful in my opinion, if this information had been brought to the Complainant's attention when making the transaction of **2 August 2019**.

Ultimately, this secondary aspect to the Complainant's complaint relates to an alleged miscommunication regarding the transaction of **23 August 2019**. I am satisfied however, that the Provider did not make any communications to the Complainant in respect of this transaction. Furthermore, the procedure by which transactions are credited to the Complainant's account is set out at Clause 6.11 of the Terms and Conditions. In this respect, I am satisfied that the Provider has complied with Provisions 4.1 and 4.2 of the CPC.

The Complainant made additional submissions to the effect that the Provider had applied an unfair fees structure, insofar as she was charged for three international transfers and three currency conversions. I am sympathetic to the Complainant's frustration in this regard. However, the Provider is not responsible for the fee structure of the SWIFT system in respect of what clearly were three separate transactions. The specific fees and currency conversion that took place within the Provider's control, are as set out in the Provider's **Terms and Conditions**.

Similarly, I consider that the Complainant's submission that a "*standard universal process*" does not apply, to be a complaint directed at the SWIFT system, rather than one that is answerable by the Provider.

Finally, I note that the Complainant submitted that the Provider should have a more effective system in place to prevent errors in taking down information for transactions. In circumstances however where the Provider's Agent confirmed the account details directly with the Complainant, and then the Complainant was contacted later in the same day by a different Agent to again confirm the transaction details, I accept that the Provider had an adequate system in place.

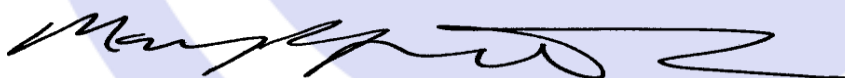
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Having regard to all of the above, I am satisfied that the Provider acted correctly in allowing the transfer to the Complainant's account to be converted into Euro and credited to her account in August 2019. Accordingly, I do not consider it appropriate to uphold the substantive complaint. I am conscious however, of the misinformation given by the Provider to the Complainant in the period between 12 and 21 August 2019. I take the view that this miscommunication was unreasonable and unjust within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017** and I consider it appropriate in those circumstances, to partially uphold this complaint, and to direct an appropriate compensatory payment by the Provider to the Complainant, as detailed below.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider make a compensatory payment to the Complainant in the sum of **€350**, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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.