



<u>Decision Ref:</u>	2021-0437
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Money Transfer (between accounts/between banks/3rd)
<u>Conduct(s) complained of:</u>	Handling of fraudulent transactions Dissatisfaction with customer service Failure to process instructions in a timely manner Failure to provide adequate security measures
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to the Provider's failure to make a SEPA Credit Transfer recall request when instructed to do so by the Complainant.

The Complainant's Case

The Complainant took out a loan with the Provider to purchase a car. The Complainant sent the funds to a third party in two instalments via online bank transfer, for the total sum of €6,850 (six thousand, eight-hundred and fifty Euro). The first instalment was sent on **25 November 2019** and the second was sent on **26 November 2019**.

The Complainant later learned that the third party had been acting fraudulently. On **3 January 2020**, after the Christmas break, the Complainant rang the Provider to seek the return of the funds. The Provider's Agent informed the Complainant that the funds would be returned, and the process would be completed within 30 days.

On **4 February 2020**, the Complainant contacted the Provider to seek an update on the recall requests. The Provider's Agent informed the Complainant that the recall requests had not been made on **3 January 2020**. The recall requests were then set up.

On **5 March 2020** the Provider sent two letters to the Complainant, notifying him that the recall requests had been rejected by the recipient bank.

The Provider's Case

The Provider acknowledges that its Agent made an error on **3 January 2019**. Upon speaking to the Complainant, the Agent raised a Visa Debit Merchant Dispute instead of processing a SEPA Credit Transfer recall request.

The Provider notes that error became apparent on **15 January 2020**, when the Visa Department responded to that Agent directly via email. The Provider acknowledges that it failed to act on this information, as the Agent had left the Provider's employment on **10 January 2020**.

The recall request was made on **4 February 2020**, upon the Complainant's call. The Agent dealing with this call realised the error that had originally been made, and lodged a complaint, with the Complainant's consent, so that the matter could be investigated.

This office asked the Provider how it had met its obligations under General Principle 2.4 of the **Consumer Protection Code 2012** (CPC). In its response dated **3 February 2021**, the Provider submitted that all of its Agents in that department receive ongoing training to ensure proficient customer service. It stated that the Agent who took the call of **3 January 2019** was fully trained and experienced. However, she made an error on the day in question.

The Provider submits that this error would normally have become apparent within 24 hours. However, due to the Christmas period, the response from the Visa Department was delayed. In addition, due to the Agent leaving the Provider's employment, the correction from the Visa Department did not come to the Provider's attention. The Provider states that it "*is currently reviewing its procedures to ensure this type of error does not reoccur*". The Provider submits that its procedures successfully facilitated investigation of the matter, following the phone call of **4 February 2020**.

The Provider argues that it is "*unrealistic to speculate*" that the recall requests would have been successful if processed on **3 January 2020**.

The Provider set out the procedure to be followed when an instruction for a SEPA recall request is received. The Provider must first check the timeframe in which the relevant transfer was made, to ensure that the recall request can be made. The Provider must then determine the reason for the request. It must "*inform the customer that their request for recall does not guarantee that the customer will receive back the funds of their SEPA Credit Transfer*".

The Provider also notes the technical steps to be taken in the recall request, stating that the beneficiary bank must respond either positively or negatively to the request within 10 banking business days. The beneficiary bank will present the request to the beneficiary. If the beneficiary gives a negative response, the beneficiary bank will communicate the refusal to recall the funds to the payer bank. This communicated decision finalises both banks' obligations in respect of the transaction.

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The Provider states that if there is no response from the beneficiary bank within 10 days, the payer bank may send a “Request for Status Update” to the beneficiary bank. If no response is then received after 20 banking business days, the payer bank issues a letter to the customer, confirming that the recall request was rejected. This information, stemming from the SEPA Credit Transfer Scheme Rulebook, was not provided in customer-facing documentation.

In this situation, the Provider submits that the Complainant set up a SEPA Bill Pay/Credit Transfer to the third party via its online transfer service. He made the first payment of €4,000 (four thousand Euro) to the third party on **25 November 2019**. The Complainant made the second payment of €2,850 (two thousand, eight-hundred and fifty Euro) on **26 November 2019**. Each payment left the Complainant’s account on the day that it was made.

Formal recall requests for the transactions were made by the Provider on **5 February 2020**. After 20 banking business days, the Provider wrote to the Complainant to confirm that the recalls had been rejected.

In its response to the investigation of this Office, the Provider indicated how its Framework Contract with the Complainant complied with Regulation 76 of the **European Union (Payment Services) Regulations 2018** (‘the Regulations’). It submits that the Complainant has not denied authorising the relevant transfers. The instructions to make both payments were received, authorised, and recorded through the Provider’s online service. Consequently, the Bill Pay/SEPA Credit Transfer Mandate was created on **25 November 2019**.

The Provider submits that it *“regrets the misinformation and poor customer service provided to the Complainant by the Bank on 03 January 2020.”*

The Provider had previously offered the Complainant a gesture of €50 (fifty euro), which was accepted. In its response to this Office, the Provider noted that *“[t]o acknowledge our shortcoming in service, the Bank would like to offer the Complainant an ex-gratia payment of €1,000.00”* (one thousand Euro).

The Complaint for Adjudication

The complaint is that the Provider wrongfully failed to act on the Complainant’s instructions to instigate a recall of funds request.

The Complainant wants the Provider to refund him the total of the €6,850 (six thousand, eight-hundred and fifty Euro) transaction, *“plus the interest I have paid at 8.5% in the meantime”*.

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Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

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

Evidence

I note that page 28 of the **SEPA Credit Transfer Scheme Rulebook 2017** states as follows:

CT-02.04 *If needed the Beneficiary is asked for his authorization for a Recall.*

...

CT-02.08 *The Beneficiary Bank receives a negative answer or no answer from the Beneficiary to process the Recall and generates therefore a negative answer message."*

Page 31 of the Rulebook states as follows:

Step 1

...

The Originator Bank communicates to the Originator that the Request for Recall by the Originator is no guarantee that the Originator will effectively get back the funds of the initial SEPA Credit Transfer."

I also note that General Provision 2.4 of the CPC states as follows:

“A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

...

2.4 has and employs effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with this Code”

I note that during a phone call between the Complainant and the Provider of **4 February 2020** (003), the following was stated:

“Provider: In terms of the credit transfer recall. I’ve your details. Once I hear anything in regards to it, whatever they may say, I’ll get in touch with you directly myself...”

...

Complainant: And what do you think the timescale would be whereby the money could be recovered...

Provider I’m going to mark it as high importance. I’ll get it sent off for you now. No, the – with the recall request I have that marked as high importance sorry and hopefully they will get it actioned. Once it gets actioned the longest they can take is 30 days.”

I am conscious that pursuant to Regulation 95 of the Regulations: *“a payment service user is entitled to rectification of an unauthorised or incorrectly executed payment transaction”*. I accept however, as stated by the Provider, that the Complainant does not suggest that the transfers to the third party were unauthorised or incorrectly executed. Accordingly, the Complainant is not entitled to rectification, as per Regulation 95.

I accept the Provider’s submission that the outcome of the process by which recall requests are made was not necessarily affected by the delay caused by the Provider. The success of any recall transfer was dependent on authorisation to be given by the third-party beneficiary. The Complainant has noted during phone calls with the Provider that he suspects the third party to have been a fraudulent person. As a result, it seems unlikely to me that the delay of one month in making the recall request to the third party’s bank would have had an impact on the authorisation that was required. At that stage, I note that the funds had been received by the third party beneficiary nearly 6 weeks earlier.

I have considered the Provider’s submission that it complies with General Principle 2.4 of CPC, insofar as it ensures that its staff are properly trained for their roles. I accept in that regard that it is possible for the Provider to be in compliance with Provision 2.4, even in circumstances where a staff member makes an error when dealing with a customer’s account. However, in this situation, the error made by the Provider’s staff member was compounded by a procedural or systematic oversight by the Provider.

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The Provider's Agent left the Provider's employment five days prior to the clarification email being sent. The clarification to the Agent's error was not addressed by the Provider until the Complainant brought the issue to the Provider's attention, almost three weeks later. The Provider is reviewing its procedures to ensure that this does not reoccur. However, I consider that the error formed a part of "*policies and procedures, systems and control checks*" that were not in place to ensure compliance with the CPC.

I also note that, in addition to the Provider's error of implementing the incorrect procedure on **3 January 2020**, the Provider's Agent did not expressly inform the Complainant of the process of making a recall request on **4 February 2020**. The Provider was under an obligation to inform the Complainant in 'Step 1' of the recall request process that there was "*no guarantee*" that the funds would be returned.

The extract of the phone call of **4 February 2020**, quoted above, illustrates the information given to the Complainant on that issue. It is clear that the Complainant was not fully informed as to Step 1 of the process, until he received written correspondence of **12 February 2020**, after the request had been made. Whilst I believe it likely that the Complainant would have sought to have the recall request actioned, in any event, nevertheless the Provider ought to have warned at that stage that any such request can be made by the Provider only on a "best efforts" basis.

Additionally, I note that the Provider had the option to issue a Request for Status Update to the beneficiary bank after 10 banking days elapsing with no response. There is no evidence that this was done. Nonetheless, I note that this was a discretionary option that may not have had any effect on the success or otherwise of that recall process.

I am conscious that the Provider in its formal response to the investigation of this complaint, acknowledged the mis-information and poor customer service made available to the Complainant by the Provider on **3 January 2020**. The Provider also acknowledged its wrongdoing in that regard and offered the Complainant a compensatory payment of €1,000 in recognition of this wrongdoing.

In circumstances where the Provider has acknowledged its wrongdoing in early course, in response to the investigation of this Office, and made what I consider to be a more than appropriate compensatory gesture to the Complainant, I am satisfied, on the basis that this compensatory measure remains open to the Complainant for acceptance, that it is not appropriate or necessary to uphold this complaint.

Rather, it will be a matter for the Complainant to make direct contact with the Provider if he wishes to accept the compensatory gesture offered by the Provider in recognition of its wrongdoing.

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**

22 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.