



<b><u>Decision Ref:</u></b>	2021-0464
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Banking Online Facility
<b><u>Conduct(s) complained of:</u></b>	Disputed transactions Complaint handling (Consumer Protection Code) Fees & charges applied Failure to process instructions Failure to consider vulnerability of customer
<b><u>Outcome:</u></b>	Rejected

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

The Complainants hold an account with the Provider bank and their complaint concerns a transfer from their Provider bank account to an account held by another bank (the “**Third-Party Bank**”).

#### **The Complainants’ Case**

The First Complainant authorised a transfer, by Visa Debit Card transaction, of €1,500.00 (one thousand five hundred euros) from the Provider to the Third-party Bank at 21:28 on **30 May 2019**. On the **31 May 2019** the First Complainant telephoned the Provider to query why the Visa Debit Card transaction of €1,500.00 (one thousand five hundred euros) to the Third-party Bank authorised on **30 May 2019** was not appearing on his online account statement. The Provider informed the First Complainant that the transaction was not completed fully and that the First Complainant could put through another €1,500.00 (one thousand five hundred euros) transaction without duplicating the payments. The Complainant proceeded to make a second €1,500.00 (one thousand five hundred euros) payment at 14:07 on the **31 May 2019**. Ultimately, both €1,500.00 (one thousand five hundred euros) transactions were processed and removed from the First Complainant’s bank account held with Provider and were sent to the Third-party Bank.

The Complainants argue by letter dated **7 June 2019**, addressed to the Provider, that:

*“At 13.50 on Friday 31st May I contacted [Provider Online] to check the matter and in that discussion I was informed that it appeared that the payment had not gone through, and I was assured it would be ok to make the payment again.*”

*At approx. 14.09 on Friday 31st May 2019, I made the €1,500.00 Card payment to [Third-party Bank] again. On Monday 3rd June 2019 I again checked the [Provider Online] a/c and found that the original €1,500.00 payment had now been made and the second payment of €1,500.00 was in Pending Transactions. I again contacted [Provider Online] and was assured that no action would be taken on this pending payment as it was a Bank Holiday. It was noted that to make the payment would put our a/c in debit balance, and it would likely drop off the a/c in a few days. On Tuesday June 4th 2019 I again checked the [Provider Online] a/c and found the payment of €1,500.00 was still showing in Pending Transactions.*

*On Wednesday 5th June 2019 I again checked the a/c and was shocked to find that the second payment of €1,500.00 had also been made to [Third-party Bank] from Pending Transactions and our a/c was now overdrawn by over €1,200.00. I found that multiple Direct Debit payments had been bounced and several Rtd DD charges had been applied to the a/c."*

The Complainants submit, by letter dated **7 June 2019**, addressed to the Provider, the following regarding the Provider's conduct:

*"At approx. 2pm on Wednesday 5th June 2019 I met an official at the [location] Branch and requested an explanation for the [Provider's] actions and I requested that the matter be resolved immediately. I explained that with our a/c showing a debit balance of more than €1,200.00 our pension income would be lost to the negative balance when it was lodged to our a/c that day. I explained that this would leave us without money to buy groceries, diesel for the car, etc. and that we were in a difficult situation. In addition we were expecting the lodgment of a Carers Respite Grant this week. which would also be lost if the a/c was not amended as we requested. The only response from the [Provider] was an offer to allow us to apply for a short term loan to be lodged to the a/c to bring the balance into credit. I found this to be an unacceptable solution and a totally inadequate response and it displayed a very poor understanding of the situation that the [Provider's] actions had put us in."*

The Complainants submit that the Provider had assured the First Complainant on the **31 May 2019** that no payment from the day before had been recorded on the account. The Complainants submit that:

*"The sequence of events is not accurately reflected and the assertion in paragraph 1, that [Third-party Bank] somehow caused this issue by reversing the payment of €1,500.00, does not appear to be correct. When the payment did not appear on our [Provider Online] account on May 31st, I contacted [Third-party Bank] to confirm, or otherwise, the payment of €1,500.00. As per telephone conversation of [Third-party Bank] on May 31st, I was assured that no payment had been recorded. Further it has now become clear that a payment was received by [Third-party Bank], was not reversed by [Third-party Bank], but was not recorded at the time of my enquiry. [Third-party Bank] subsequently refunded one of two payments of €1,500.00 made by [the Provider] on June 12th."*

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In terms of the Provider's conduct, the Complainants assert that:

*"The failure by the [Provider] to immediately offer some short term measure to counter their mistake, and the subsequent loss of account funds, caused embarrassment and emotional pain and placed us in a vulnerable and potentially dangerous situation. We are both pensioners, I am 65yrs and my wife is 63yrs old. My wife is in receipt of an State Invalidity Pension, and I am her registered Carer. When I left the [Provider] Branch, on Wednesday June 5th, having registered and discussed my complaint, [Provider] were happy to allow us go into a BH weekend overdrawn by €1,200.00, without access to our Pension income, and deprived of the funds that would allow us to survive until the matter would eventually be resolved. The Manager, when informed of the situation, declined to discuss the matter with me, leaving the embarrassed and flustered Customer Service official to offer the option that I could make an application for a short term Loan Application to the [Provider's] central underwriting department.*

...

*The response from [Provider] has been careless, unconcerned, and seeks only to deflect from its failings in this matter. Three Direct Debits were bounced, including our Life Insurance premium, our Power Supplier ..., and a Club membership. All could have caused major difficulties, and some have levied penalty charges for the failure of the Direct Debits to be honoured. Three Returned Direct Debit charges, and one Referral Fee were levied on our account, and still show on our account, which will damage our credit rating in the future. Finally, I wish to state that if the payment of my Carers Respite Grant had not been paid early by the Department of Social Protection, on Wednesday 6th June 2019, and if [Provider] had not refunded the €1,500.00 payment to our [Provider] account on the 12th June 2019, we would have been without funds for food, fuel, transport and medication, for this entire period and could have suffered major, and possibly life threatening difficulties. The response and the position taken by the [Provider] has been, and continues to be, totally unacceptable and the whole episode reflects poorly on the Company's Consumer Protection Policy and Customer Service."*

The Complainants argue that:

*"We were consciously and callously abandoned by [Provider] even though they acknowledged the situation and how it was affecting us. They denied us any emergency aid that could have lessened the impact. They have been cold, careless, and selfserving their subsequent response....Being retired pensions, and with poor overall health, we believe the actions of [the Provider] were serious."*

On the **13 December 2020** the Complainant submitted the following by email:

*"We can state that we found the submission from [Provider] to be lengthy, complicated and a little disingenuous. While [Provider] have belatedly accepted their multiple failings in processing the transactions in question, the [Provider] seem intent on minimizing the seriousness of this incident, and levelling a significant portion of the blame on some unfortunate [Provider Online] telephone agent, and [Third-party Bank].*

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*The basic issue remains, that the systems employed at [Provider] were such that a second payment of €1,500.00 was be removed from our current account, leaving it with a negative balance of €1,200.00. This left us penniless for days, unable to access incoming pension payments and subject to multiple bank charges. Their in-branch response was unhelpful and lacked understanding and empathy, and was not what one would expect having been [Provider] account holders since July 1978.”*

The Complainants submit that they are dissatisfied with the Provider's systems, its response, its proposed solution and they contend that the Provider has a poor understanding of the events and their concerns. They state that the Provider's response fails to recognise the distress, inconvenience and alarm caused to them, in particular given their personal circumstances and vulnerability.

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

The Provider says that the Complainant authorised a transfer, by Visa Debit Card transaction, of €1,500.00 (one thousand five hundred euros) from the Provider to the Third-Party Bank at 21:28 on **30 May 2019**. Some 28 minutes after 21:28, the Third-party Bank reversed the transaction, removing it from its *pending* status on the Complainant's bank account, but nevertheless retained the capacity to draw down the funds.

Regarding the first €1,500.00 (one thousand five hundred euros) that was authorised on the **30 May 2019**, the Provider, by letter dated **4 December 2020**, outlines the events as follows:

*“On 30 May 2019 at 21:28, the Complainant authorised a payment on his [Provider] Visa Debit Card in the amount of €1,500 when making a payment to [Third-party Bank] using their Automated Payment Facility (APF). A hold was placed on the funds, pending the authorisation of the transaction..... On 4 June 2019, the initial payment of 30 May 2019 in the amount of €1,500 was processed on the Complainant's account and the funds were transferred to [Third-party Bank].”*

Commenting on the process of what occurred during the first €1,500.00 (one thousand five hundred euro) authorisation on **30 May 2019**, the Provider submits by letter dated **4 December 2020** that:

*“When a customer authorises a transaction using their [Provider] Visa Debit Card, the funds immediately are placed on hold, pending completion of the transaction. This hold usually happens instantaneously therefore immediately following authorisation by the Card Holder, the transaction would appear on the account as a pending transaction.*

*In this case, the transaction was authorised by the Complainant on 30 May 2019 at 21:28. Approximately 28 minutes later, [Third-party Bank] issued a reversal for this transaction and so it was removed from the Complainants' account, and no longer appeared as pending.”*

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In relation to the first **30 May 2019** authorisation of €1,500.00 (one thousand five hundred euros) the Provider submits, by letter dated **20 June 2019**, addressed to the Complainant, as follow:

*“On 31st May 2019, you contacted our [Provider Online] Customer Service Department regarding this payment. After reviewing the conversation it appeared that the [Provider Online] Customer Service Advisor was under the impression that this was a manual 3rd party transfer as opposed to a Visa Debit Card payment. The Advisor stated there would be no issue attempting to make this payment again due to the fact that the 3rd party transfer had not gone through. As a result of this information, you completed a payment later in the same day for the same amount to [Third-party Bank] using your Visa Debit Card.”*

The Provider asserts, by letter dated **4 December 2020**, that:

*“the agent was correct when advising the Complainant that there was no record of the transaction pending on his account on 31 May 2019, as this is how it would have appeared on the [Provider’s] systems at that time.*

*.....*

*The Provider can accept that its agent could have made more of an effort during the call of 31 May 2019 to establish the reason why no record of the transaction had appeared on the account. While a pending transaction may not have been apparent, the Provider could have reviewed the account for the reversal request which would have explained this issue. Furthermore, the [Provider] can accept that it was not the most appropriate course of action to suggest the Complainant process a further transaction without contacting [Third-party Bank] first. While the agent was trying to ensure that the Complainant's [Third-party Bank] payment was paid successfully, it would have been prudent to establish the cause of the missing transaction before suggesting a further duplicate transaction.”*

By letter dated **4 December 2020** the Provider also submits that:

*“While it is the [Provider’s] position that it is not at fault for the reversed transaction of 30 May 2019 in the amount of €1,500 being debited to the Complainant's account on 1 June 2019, the Provider can fully appreciate that it could have handled this matter in a more efficient and timely manner.”*

Regarding the second €1,500.00 (one thousand five hundred euros) transferred on the **31 May 2019**, the Provider, by letter dated **4 December 2020**, outlines as follows:

*“On 31 May 2019 at 14:07, the Complainant authorised a further payment on his [Provider’s] Visa Debit Card in the amount of €1,500, as he was of the understanding (having contacted the [Provider] Telephone Banking Service) that the previous transaction of 30 May 2019 had not been processed. A hold was placed on the funds, pending the authorisation of the transaction”*

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Reflecting on the process of what happened regarding the second €1,500.00 (one thousand five hundred euros) transfer on **31 May 2019**, the Provider submits that the reversal first came to light during the Complainant's call to the Provider on **3 June 2019** and it submits by letter dated **4 December 2020** the following:

*"The first named Complainant telephoned the [Provider] on 3 June 2019 ... to query the transactions made to [Third-Party Bank] from his Current account. At that time, the initial transaction in the amount of €1,500 authorised on 30 May 2019 at 21:28 had been debited from the account on 1 June 2019 and the Complainant could evidence same from his online banking statement. Furthermore, the subsequent transaction in the amount of €1,500 authorised on 31 May 2019 at 14:07 was now showing as a pending transaction on the account.*

*On reviewing the Complainant's account during the telephone call, the [Provider's] agent could see that [Third-Party Bank] had issued a reversal for the initial transaction of 30 May 2019, and the Complainant confirmed that he had made a subsequent payment on 31 May 2019 on advice from the [Provider] at the time. It was also noted that the pending transaction of 31 May 2019 had a hold period (pending completion of the transaction) that was due to expire on 10 June 2019 at the latest.*

*Based on the reversal on file from [Third-Party Bank] dated 30 May 2019, and the pending identical transaction on the account, the agent assumed that the identical transaction would expire on or before 10 June 2019 and that the funds would become available once again, as [Third-Party Bank] had in fact received the funds that were due for payment. To clarify, the situation as it was presented at that time, evidenced two identical payments made to [Third-party Bank] by the Complainant, with one of those payments being reversed by [Third-party Bank]. Therefore it was reasonable for the agent at that time to assume that [Third-party Bank] would not proceed to present both transactions for payment on the Complainant's account. In the usual course of business, a pending transaction would simply expire under these circumstances."*

On **5 June 2019**, the Complainants attended at the Provider branch and an offer of a short-term loan was made. The Provider submits, by letter dated **4 December 2020**, the following:

*"The [Provider] discussed the option of an Overdraft facility and a Term Loan facility with the Complainant during his visit to the [Provider], however as any application would have to be reviewed by the [Provider's] underwriters the Complainant understandably did not feel this was an appropriate solution to this issue. The [Provider] would like to note that these discussions were intended to simply offer solutions to the Complainant's situation and it was not the [Provider's] intention to cause any further upset or inconvenience.. While the Complainants may feel that the [Provider's] offer to process a credit facility application may not have been the most suitable course of action at the time, the [Provider's] options were limited and it was the only workable solution available that might have provided access to funds for the Complainants in the short term..."*

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The Provider asserts that due to the [Third-party Bank] reversing a payment made by the Complainants shortly after it was submitted, that the Provider agent could not see this transaction as pending and so advised the Complainant that it would not be finalised. The Provider has apologised and accepts that best practice would have been to check the account for the reversal and to advise the Complainant to contact [Third-party Bank] prior to making a duplicate payment.

### **The Complaint for Adjudication**

The Complainants' complaint is that the Provider provided poor service, including poor advice and/or information, in respect of two payments of €1,500 executed by the Complainants on the 30 May 2019 and the 31 May 2019 respectively, from their current account with the Provider, to a mortgage account with a third party bank.

The Complainants also say that the Provider furnished an insufficient response, and failed to properly understand, address and resolve the Complainants' concerns and complaint.

### **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 **1 November 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.

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The Provider, by letter dated **4 December 2020**, outlines its position on the reversal of the **30 May 2019** payment by the [Third-party Bank]:

*"[Third-party Bank] issued a reversal for the transaction of 30 May 2019 in the amount of €1,500 approximately 28 minutes after it was authorised by the Complainant. However, once a Card Holder authorises a transaction, the merchant (in this case [Third-party Bank]) can present the payment at any time afterwards. The [Provider's] records show that this transaction was presented for payment on 1 June 2019 therefore the [Provider] can only assume that [Third-party Bank] proceeded to call for this payment after a reversal was issued. As the payment was made by the Complainant through the [Third-party Bank] [name] the [Provider] Bank cannot confirm if this was due to a system error on [Third-party Bank's] part, or an oversight..... It is noted that the [Provider] has not been provided with any confirmation from the Complainant, or [Third-party Bank], to confirm that this system was functioning adequately on 30 May 2019."*

I have reviewed the **Reversal Log** dated **30 May 2019** headed "**Reversal Translate**" and note that two times are referenced - "21.28" and "21.56." The [Third-party Bank] is also referenced. I also note that the IT department of the Provider sent an internal email dated **18 June 2019** which says:

*"I have attached a report detailing the holds that we placed on the account - for the first [Third-party Bank] presentation (reference \*\*\*\*\*) we received a reversal message so the POS was reversed and no pending hold was on the account as a result. This needs to be queried with [Third-party Bank] to why this reversal was triggered and the debit was subsequently presented."*

In terms of the report attached to this email, I note that there are many "POS Authorisation Holds" listed in this report which suggests that this is not an uncommon event. I also note that the only one for €1,500.00 (one thousand five hundred euros) is dated **31 May 2019** with a settlement date of **5 June 2019** which appears to be at odds with the Provider's submission that the reversal applied to the first **30 May 2019** payment.

The IT department of the Provider sent an internal email dated **26 March 2020** which says:

*"I am unable to obtain further information in relation to this query, the logs clearly show that a reversal was returned to us for the same reference number as that POS transaction and we actioned same. I understand that [Third-party Bank] are saying that they did not issue any such reversal but the reversal field was populated."*

I am satisfied that the **Reversal Log** dated **30 May 2019** refers to reversals and to the relevant times (21.28 and 21.56) cited by the Provider and I am satisfied that the Provider engaged in an internal IT investigation. Despite the fact that the IT report sent by email on **18 June 2019** seems to reference the second payment made on **31 May 2019**, I am satisfied on balance, that a reversal applied to the **30 May 2019** transaction.

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By Letter dated **4 December 2020**, the Provider issued the following summary of the first payment:

<b>Date of Transaction:</b>	<b>30 May 2019</b>
<b>Time of execution by the Complainant:</b>	21:28
<b>Transaction Amount:</b>	€1,500
<b>Merchant Details:</b>	[Third Party Bank]
<b>Transaction Type:</b>	Visa Debit Card/Point of Sale (POS)
<b>Date Transaction was presented for payment on the Complainants' account:</b>	1 June 2019 (Bank Holiday) at 06:17
<b>Date Transaction cleared on the Complainants' account</b>	4 June 2019 (next Business Day)

In relation to the first **30 May 2019** transfer of €1,500.00 the Provider submits by letter dated **4 December 2020** as follows:

*“On reviewing the call... the Complainant states that the transaction was made using his Visa Debit Card. However, following a review of the Complainant's account, the agent assumed the transaction was a manual credit transfer, and suggests that the transaction was not completed fully at the time of authorisation.*

*The reason for this error was due to the fact that the transaction had been reversed by [Third-party Bank] on 30 May 2019 (the previous day) and therefore it did not show as a pending transaction on the Complainant's account. To clarify, once a Visa Debit Card transaction is authorised by a Card Holder, the transaction immediately appears as a pending transaction on the associated Current account. As this was not evident in the Complainant's case, the agent assumed that the transaction was a manual credit transfer that had not been completed successfully, as there was no trace of the transaction on the account. As a credit transfer is processed immediately, it would have seemed the more likely occurrence in this case.*

*This notwithstanding, the [Provider] can fully accept that had the agent researched the Complainant's account more thoroughly at the time, it would have become evident that the transaction had been reversed by [Third-party Bank], and this confusion could have been avoided.*

*Also... it would have been appropriate for the agent to suggest that the Complainant contact [Third-party Bank] directly prior to processing a further transaction on the account.”*

Recordings of two telephone calls which occurred on **31 May 2019** have been furnished in evidence, which I have considered. One of the calls on the **31 May 2019** between Provider Agent 1 and the First Complainant included the following:

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First Complainant: ....*"We made a transaction last night at 9.20 for €1,500 to [Third-party bank] right using the debit card and it is not coming up on our account statement this morning."*

....

Provider Agent 1: *"with [Third-party Bank]."*

First Complainant: *"with [Third-party Bank], even when we log into our [Provider] account it doesn't show payment being made."*

Provider Agent 1: *"oh from your [Provider], it may not have processed if that is the case."*

...

Provider Agent 1: *"yeah so I checked your account there so the account ending in \*\*\*\* no transaction went out of, ehm let me check, no transaction went out yesterday evening for that amount, sometimes what can happen is when you are going to make the transfer it will say transfer successful, it will give you a transfer number, but unless you click done it actually doesn't complete."*

...

First Complainant: *"okay, right, What is the balance showing there at the moment."*

....

Provider Agent 1: *"on your current account ending in \*\*\*\* the account balance is one thousand and seven hundred and seventy six euro and fifty one cent in credit and the available balance is one thousand five hundred and fifteen euro and sixteen cent in credit."*

First Complainant: *"right so, so you can confirm that that payment wasn't given to [Third-party bank]."*

Provider Agent 1: *"yeah, it didn't actually get processed."*

First Complainant: *"okay, so I can make that again now and it won't be duplicating."*

Provider Agent 1: *"no, it won't."*

I am satisfied that the Provider agent's advice was incorrect and that they failed to exercise appropriate care when advising the First Complainant on **31 May 2019** that the first payment had not been finalised.

By letter dated **4 December 2020** the Provider outlines that the situation that arose was avoidable, and it submits that:

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*“the [Provider] feels it is necessary to apologise for its advice on this call, as it is disappointed to note that the agent did not review the account history for evidence of a reversal request. Had this been done at the time, it would have clarified the matter for the Complainant and avoided the resulting confusion.*

*Furthermore, the [Provider] can accept that it was not appropriate for the agent to suggest the transaction be completed again without first establishing the reason for this issue. It would have been best practice for the agent to suggest the Complainant contact [Third-party Bank] directly before taking any further action.*

*... While the [Provider] is not responsible for both payments being presented, it can accept that the advice provided to the Complainant on this call was certainly a contributing factor.”*

The Provider's submission is that due to the reversal made by [Third-party Bank] its agent on the **31 May 2019** telephone call, could not tell that the initial payment made on the **30 May 2019** remained at risk of being processed by the Third-party Bank. Having reviewed the evidence, I note that where the Third-party Bank exercises its discretion to put a reversal on a payment, this removes the payment from its former pending status, but it nevertheless means the Third-party Bank can still recall the funds within a specified period.

I am satisfied that the Complainants could not have understood the detail of this possibility. Indeed, the Provider's own customer service agents did not seem to be aware of this information. The Provider, by letter dated **4 December 2020**, submits *“is important to note that the Complainant provided his authorisation for the transaction on 30 May 2019 at 21:28. On receipt of authorisation, a merchant (in this case [Third-party Bank]) can call for payment at any time.”* I note that this information was not shared with the First Complainant during phone calls on **31 May 2019** or **3 June 2019**.

Reflecting on the process of what happened during the first €1,500.00 (one thousand five hundred euros) transfer on **30 May 2019**, the Provider, by letter dated **4 December 2020**, says:

*“It is extremely uncommon for the situation above to occur; generally when a transaction is reversed the funds would automatically drop back into the account which is what our Financial Crime Prevention Unit advised during your conversation on 03rd June 2019....*

*I would like to apologise myself, as due to the fact that the situation which occurred in point 1 is so uncommon, I was under the impression that the payment was in pending status until it was presented on 04th June 2019.”*

If in relation to the first **30 May 2019** authorisation, if the Provider *“was under the impression that the payment was in pending status until it was presented on 04th June 2019,”* it is unclear why it did not communicate to the First Complainant that *“pending”* payments may be processed.

On **31 May 2019**, the Provider made a second payment of €1,500 (one thousand five hundred euros) to the Third-Party Bank as follows:

<b>Date of Transaction:</b>	<b>31 May 2019</b>
<b>Time of execution by the Complainant:</b>	14:07
<b>Transaction Amount:</b>	€1,500
<b>Merchant Details:</b>	[Third Party Bank]
<b>Transaction Type:</b>	Visa Debit Card/Point of Sale (POS)
<b>Date Transaction was presented for payment on the Complainants' account:</b>	5 June 2019 at 07:40
<b>Date Transaction cleared on the Complainants' account</b>	5 June 2019

The first payment made on **30 May 2019** was finalised on **4 June 2019** and that was followed by the second payment made on **31 May 2019** being finalised on **5 June 2019**. On the **3 June 2019**, the First Complainant called the Provider to note that the first payment was showing as having been taken out of his account, and the second payment was showing as pending and he queried whether this second payment would also go out. The contents of this telephone call dated **3 June 2019** with Provider Agent 2 are as follows:

First Complainant: *"I paid [Third-party Bank] €1,500 on Friday or Saturday evening, it didn't appear to go through and after talking to your people in [Provider Online] I paid again two days later."*

Provider Agent 2: *"did you say this is on a credit card, just the line."*

First Complainant: *"no it's on a debit card."*

....

First Complainant: *"on my account this morning one payment is shown as been taken out and the other is in pending."*

Provider Agent 2: *"okay you are through to the fraud department here at the minute, [Provider Online] are closed today due to the Bank Holiday. I would say more than likely, what kind of payment did you make to them was it a bill that is due or."*

First Complainant: *"it's a temporary mortgage payment."*

Provider Agent 2: *"okay what I would do is, I will have a look at the account just to see if those two payment, what can happen is, let's say the first payment did go through and [Third-party Bank] then reversed it, it might appear in pending and then it will just fall off the account and go back in. I will just look to see if they are due to refund it."*

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.....

Provider Agent 2: *"I can see there all right [First Complainant] they did take a payment and they have since reversed it so that payment that you see there pending on your account, more than, what will happen is, because obviously today is a Bank Holiday that is why you won't see that going back in the account yet but that will just fall off the account so I can see there is a fifteen hundred euro payment made.... it was done on the 30th which would have been, what day was that, Thursday evening, well night at 9.30 and they reversed that Payment then literally about ten minutes later so that payment that you see there it's just pending at the minute so it should fall back into your account. Did you say after [First Complainant] that you tried making the payment again did you."*

First Complainant: *"I did I spoke to a colleague of yours in [Provider Online] and she confirmed that I could go ahead and make the payment again.....one of those payment is now sitting in pending. Like you say, it probably will drop off in the morning."*

Provider Agent 2: *"Yeah the pending date is the tenth of this month so basically that pending date is the latest that it can pend until, so depending because we are two different banks, it could be during the week that it falls back into your account, because we are two different separate banks so it might take a few working days for it to fall back in. Now it could well be tomorrow but the latest it could be is next Monday, that is the latest there, but what I would do is I would just ring [Provider online] they might be able to give an exact date that it would fall back in I just can't see it in this particular department."*

First Complainant: *"okay it's just that I am expecting a lodgement this afternoon.."*

....

First Complainant: *"I was expecting it either today or this morning and I was afraid that that second, that pending fifteen hundred would be taken from that once it hits the account."*

Provider Agent 2: *"yeah, no it shouldn't no it is pending there anyway so all that pending means is that it is going through on our end but the merchant has to accept the payment, so since they have since reversed it should just fall back into your account like in a couple of working days."*

Reflecting on the process of what occurred during the above telephone conversation of **3 June 2019**, the Provider submits, by letter dated **4 December 2020**, as follows:

*"The Bank regrets that the Complainant was advised that the pending transaction dated 31 May 2019 in the amount of €1,500 to [Third-party Bank] would "fall off", and that the funds would at that point become available once again.*

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*It is important to note that based on the evidence to hand, including the reversal request on file from [Third-party Bank] dated 30 May 2019, this was a valid assumption for the agent to make at the time. However, the [Provider] can accept that the agent could not have known with certainty that the transaction would expire, as there was a chance that the transaction would be processed successfully. Again, the [Provider] notes that it would have been best practice for the agent to suggest the Complainant contact [Third-party Bank] directly in relation to this matter.*

*The Complainant could also have been advised of his options with regards to requesting a refund through the Visa Chargeback process in the event that both transactions were debited to the account. While this process would have taken longer than requesting a refund from [Third-party Bank] directly, it would have perhaps been beneficial to the Complainant to know that he would not be at a financial loss as a result of this matter."*

During the telephone call on **3 June 2019** the First Complainant says "on my account this morning one payment is shown as been taken out and the other is in pending." By letter dated **4 June 2020**, the Provider submits in relation to this call that "to clarify, on reviewing the Complainant's account, the [Provider's] agent could see the subsequent transaction of 31 May 2019 was in pending status, and it was not evident that the initial transaction of 30 May 2019 was pending. The [Provider's] agent noted that [Third-party Bank] had issued a reversal for the transaction of 30 May 2019, and therefore assumed that the transaction would not be presented for payment, and the funds would become available once the pending status had expired."

It is clear that the during the telephone call on **3 June 2019** with Provider Agent 2, that Provider Agent 2 did not clarify which payment the reversal applied to. I am conscious that the most likely scenario, that the first payment in time, the **30 May 2019** payment, was the one that the First Complainant could see as taken from the bank account and the second payment, the **31 May 2019** payment, was now pending and likely to be finalised, did not feature in Provider Agent 2's assessment during the telephone call on **3 June 2019**.

Regarding the **3 June 2019** telephone call, the Provider notes that "it is important to note that based on the evidence to hand, including the reversal request on file from [Third-party Bank] dated 30 May 2019, this was a valid assumption for the agent to make at the time. It is not clear why Provider Agent 2 would have attributed the reversal to the second payment of **31 May 2019** at this point. Furthermore, I note in the evidence of the **Current Account Transaction Log** from **1 May 2019** to **30 June 2019** (printed **27 November 2020**), furnished by the Provider, that the €1,500 left the account on the **4 June 2019** and that the description includes the date of "30/05."

Similarly, the second €1,500 (one thousand five hundred euros) left the account on the **5 June 2019** and the description includes the date of "31/05." I am satisfied that when referring to the **Current Account Transaction Log**, due to the dates being incorporated within the transaction name, it should have been straightforward to differentiate between the transactions.

/Cont'd...

In relation to the **3 June 2019** telephone call the Provider says that:

*“it was reasonable for the agent at that time to assume that [Third-party Bank] would not proceed to present both transactions for payment on the Complainant's account. In the usual course of business, a pending transaction would simply expire under these circumstances.”*

There is however no evidence to back up this assumption, nor is it clear why it was reasonable for the Provider's agent to believe the [Third-party Bank] would not process both transactions.

I note that the Provider's **Terms and Conditions and Personal and Business Banking Charges, 25 March 2019**, says at page 22, under Section 22 (“Our Liability to You”), at subsection (a) (“Liability Generally”) that:

*“In addition to any other duty of care at any time owed by you to us and except as otherwise set out in these Conditions, it shall be your duty to take all proper and reasonable measures in the conduct and management of each Account so as to prevent loss or damage of any kind to either you or us, and you shall be solely responsible for any loss or damage caused by a breach of this duty. To the extent permitted by law and except as otherwise set out in these Conditions, we will not be liable for, and shall be indemnified in full by you against, any loss, damage or other liability that you or we may suffer arising out of or in connection with any payment from, or payment or intended payment to, your Account unless such loss, damage or liability is caused by our fraud, wilful default or lack of reasonable care.”*

The transactions were subject to Council Directive 2015/2366/EC, the Payment Services Directive 2 (“**PSD2**”) which was introduced to Irish law by the **European Union (Payment Services) Regulations 2018** (the “**Regulations**”).

Regulation 82 says as follows:

*“82. (1) After the execution of an individual payment transaction, the payee's payment service provider shall provide the payee without undue delay, in the same manner as information is to be provided in accordance with Regulation 75(1) and (2), with all of the following information:*

*(a) a reference enabling the payee to identify the payment transaction and the payer, and any information transferred with the payment transaction;*

*(b) the amount of the payment transaction in the currency in which the payee's payment account is credited;*

*“(c) the amount of any charges for the payment transaction and, where applicable, a breakdown of the amounts of such charges, or the interest payable by the payee;*

*(d) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider, and the amount of the payment transaction before that currency conversion;*

/Cont'd...

(e) the credit value date.

(2) A framework contract may include a condition that the information referred to in paragraph (1) is to be provided or made available periodically, at least once a month, free of charge and in an agreed manner which allows the payee to store and reproduce information unchanged."

In terms of the customer service made available to the Complainants after the duplicate transactions had been realised, the Complainants are aggrieved by the offer of a short term loan, by additional charges being placed on their account and by the potential impact on their credit rating, due to a loss of funds for a period of time and by the failure of the Provider's Branch Manager to meet with them.

In terms of the financial loss to the Complainants, I note in the evidence of the **Current Account Transaction Log** from **1 May 2019** to **30 June 2019** (printed 27 November 2020) that €1,500.00 left the account on **5 June 2019**. Immediately prior to this the account balance was €303.18 (three hundred and three euro and eighteen cent) and after the withdrawal of €1,500.00, the account balance was – €1,196.82 (minus one thousand one hundred and ninety-six euro and eighty two cent). According to the Provider, by letter dated **4 December 2020** "the following Direct Debit transactions were returned unpaid on 4 June 2019."

Date	Merchant	Amount	Bank Charge Applied
4 June 2019	[Energy Provider]	€78.59	€10
4 June 2019	[Insurer]	€130.48	€10
4 June 2019	[Location] Leisure	€45.08	€10

The Provider also outlines in this letter the penalty fees applied to the Complainants' account which amounted to €40.00 (forty euros). This is the total of the above charges and "as the Complainants do not have an Overdraft facility on their Current account, the overdrawn balance was unauthorised, and accordingly a €10 fee was applied to the account as a result."

Commenting on this, the Provider, by letter dated **4 December 2020**, outlines that:

*"While the [Provider] was unable to recall the transactions of 30 May 2019 and 31 May 2019 from [Third-party Bank], it could have immediately refunded the fees applied to the account in an effort to assist the Complainant. The [Provider] regrets to note that these fees were not refunded to the Complainant until 21 June 2019."*

I note that by letter dated **20 June 2019**, addressed to the Complainant, the Provider also noted that:

*"I am glad to note that an amount of €1,500 was transferred by [Provider] to your Current Account on 12th June 2019 and also as discussed during our telephone conversation that the Department of ...I payment was made earlier than expected on 06th June 2019 which ensured you had access to funds."*

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The Provider's document, the **Terms and Conditions and Personal and Business Banking Charges, 25 March 2019**, page 18, Section 12 subsection (s) says: "we are authorised (but not obliged) to debit any cheques, bills, debits and orders drawn, accepted or made by you, notwithstanding that it may result in the Account becoming overdrawn or any agreed overdraft limit being exceeded." Page 42, headed "Bank Cards – (Excluding Credit Cards)," Section 12 ("Payments"), subsection (a) says: "payments using the card may not be countermanded by a Cardholder for whatever reason and we may debit the amount of any such payment to the card account."

I am satisfied that the **Terms and Conditions and Personal and Business Banking Charges, 25 March 2019** entitled the Provider to take the second payment of **31 May 2019** from the Complainants' account, putting that account into overdraft. I am also however satisfied that the additional penalties charged in the usual manner to the account, in the amount of €40.00 (forty euros) should have been refunded, well in advance of the **21 June 2019**.

I note that no evidence regarding the Complainants' credit rating has been submitted but I acknowledge that failing to pay direct debits ordinarily has a number of consequences. Finally, I note that losing access to €1,500.00 would be a significant loss to most consumers and, in my opinion, in this instance, this was not adequately recognised by the Provider. I am not satisfied that the Government Department payment in any way counteracted the loss of immediate access to the €1,500.00 in question.

The Provider by letter dated **4 December 2020** outlines that:

*"The first named Complainant attended [Location] Branch of [Provider] on 5 June 2019 in an effort to resolve this issue. While the [Provider] can appreciate that this was a very difficult time for the Complainants, there was little that the [Provider] could do by way of an immediate resolution.*

*Unfortunately, as both transactions had been authorised by the Complainant, it was not possible for the [Provider] to recall the funds. Furthermore, as the transactions had been presented for payment by [Third-party Bank], any refund would have to be requested by the Complainant from [Third-party Bank] directly. Therefore, the only workable solution for the staff at [Location] Branch was to offer the Complainants to apply for a credit facility, so that they could have access to funds while the matter was being resolved.*

..

*While the [Provider] is satisfied that every effort was made to assist the Complainant during his visit, the [Provider] can appreciate that perhaps the matter could have been handled better*

.....

*Based on the passage of time, it is difficult for the staff at [Location] Branch to recall if the Complainant requested to speak with a particular member of the Management team, or if a Manager was available to speak to him at the time. However, please be advised that the staff member that dealt with the Complainant during his visit to [Location] Branch on 5 June 2019 is satisfied that all efforts were made to assist the Complainant on the day."*

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A recording of a telephone call dated **5 June 2019** and one on **12 June 2019** have been furnished in evidence and I have considered the content. I note that the telephone call dated **5 June 2019** with Provider Agent 3 is relevant.

During this phone call the First Complainant informed Provider Agent 3 that both €1,500.00 transfers had gone through:

First Complainant: *“what you’ll need to do, is you’ll need to contact [Third-party Bank] in order to get a refund on that amount.”*

Provider Agent 2: *“I did contact [Third-party Bank] and they only have one payment is showing on their system.”*

First Complainant: *“what I will do is give you the transaction IDs for both of these.”*

.....

First Complainant: *“[Provider Agent 2] you can’t do anything from your end, I have to do this.”*

Provider Agent 2: *“we can’t cancel that was a reverse [inaudible] you’d have to contact [Third-party Bank].”*

I am satisfied that the duplicate transaction arose from the direct advice of the Provider as to whether the initial **30 May 2019** payment had been processed. The correct information should have been available and in the alternative, the First Complainant should have been advised to seek clarification directly from the Third-party Bank.

In my opinion, having realised its error, the Provider should have made arrangements to have immediately given the Complainants access to emergency funds, until the refund was processed by the Third-party Bank. The ***Terms and Conditions and Personal and Business Banking Charges, 25 March 2019***, at page 24, Section 30 (“Complaints Procedure”), subsection (i) says: *“we will deal with your complaint fairly, courteously and promptly.”*

I am not satisfied that the offer of applying to the Provider’s underwriters for a credit facility was a ‘fair’ way of dealing with the particular circumstances which had arisen, although I recognise that the branch staff may well have been limited in the options which they were authorised by the Provider to offer, in their discretion. Be that as it may, the failure to provide access to emergency funds for the Complainants (whether by emergency overdraft or otherwise) until such time as the issue was resolved, amounted in my opinion, to poor customer service.

Although the Complainants were longstanding customers of the Provider, I am not satisfied that it was necessary for the Manager to have met with the First Complainant on **5 June 2019**; it is the nature of the customer advice that is at issue.

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The Complainants also submit that they

*“found the submission from the [Provider] to be lengthy, complicated and a little disingenuous. While [Provider] have belatedly accepted their multiple failings in processing the transactions in question, the bank seem intent on minimizing the seriousness of this incident.”*

The Provider in its Final Response Letter dated **20 June 2019**, addressed to the Complainant, submitted as follows:

*“if the Advisor did check your pending transactions as should have been done, this transaction would not have appeared for the reasons explained in point 1 outlined, which may have led to you making the payment again regardless.”*

The Provider by letter, dated **4 December 2020**, outlines that:

*“To clarify, the Final Response Letter is suggesting that due to the fact that there was no pending transaction evident on the account, the Complainant may have decided of his own accord that the best course of action to ensure payment to [Third-party Bank] would be to process a further payment at that point. On review of this matter, the [Provider] can appreciate that this is confusing and would like to apologise for this suggestion. The Complainant called the [Provider] on 31 May 2019 to query this transaction and to request guidance therefore it is in fact unlikely that he would have processed a further transaction without seeking information from the [Provider] first.”*

The Provider further submits in this letter that:

*“The [Provider] acknowledges that the Final Response Letter did not adequately clarify the matter for the Complainant and may have caused additional confusion. The [Provider] apologises for its failing in this regard.”*

The Provider’s suggestion in the Final Response Letter dated **20 June 2019** is that if its customer service agent had confirmed that there was no pending transaction, that the Complainants may nevertheless have processed the payment for a second time. However, in fact, at the time of the **31 May 2019** call the **30 May 2019** payment had been reversed but was still open to being finalised by the Third-party Bank. As a result, the Provider’s suggestion in the Final Response Letter dated **20 June 2019** in my opinion, misses the point which is that the First Complainant was entitled to rely on the Provider’s assessment about the status of their payment.

If the Complainants had acted differently due to a lapse in the Provider’s advice, that would not absolve the Provider of its responsibility to act reasonably in its dealings with its customers. I can therefore understand why the Complainants took the view that the Final Response Letter dated **20 June 2019** was somewhat *“disingenuous”*.

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I am satisfied that the Provider's submission that the Visa Chargeback process "*would have taken longer than requesting a refund from [Third-party Bank] directly*" is correct but nevertheless, in my opinion, the full details of the Visa Chargeback process should also have been outlined to the Complainants.

On the balance of the evidence before me, I consider that the Provider's advice on the **31 May 2019** to have been incorrect and in my opinion, this led to the Complainants making a duplicate transaction, thereby causing a loss to them of €1,500.00 for the period between the **5 June 2019** and **12 June 2019**, resulting in direct debits that were returned, an overdrawn account, penalties and inconvenience to them.

By letter dated **4 December 2020** the Provider said in relation to the **31 May 2019** call that "*the advice provided to the Complainant on this call was certainly a contributing factor*" to the making of the second payment. However, the call made by the First Complainant on the **31 May 2019** was a safeguard against making a duplicate payment and so the advice given during that call was in my view, more than a *contributing factor* towards making the second payment – in fact I take the view that the second payment was made *on foot of* the advice given on the **31 May 2019** call.

The Provider has apologised and accepts that best practice would have been to check the account for the reversal and to advise the Complainant to contact [Third-party Bank] prior to making a duplicate payment. Nevertheless, the Provider's actions after realising the error and up to and including the Final Response Letter dated **20 June 2019** fell short in my opinion, of reasonable conduct, as referenced in its ***Terms and Conditions and Personal and Business Banking Charges, 25 March 2019*** or fair customer service.

The Complainants received the Provider's final response letter dated **20 June 2019** in which the Provider stated it was happy to refund the €40 charges applied to the current account, and that the refund would be completed within 5 working days. The Provider referred to a €100 gesture of goodwill it had offered, and stated that it was not in a position to increase the offer due to the fact that the payment being reversed by the third party and being debited at a later date was something that was outside of the control of the Provider.

I note that subsequently, a settlement proposal of €1,000.00 (one thousand euros) compensation was issued by the Provider and detailed within its formal response to the investigation of this Office, by letter dated **4 December 2020**. By email dated **13 December 2020** the Complainants declined this settlement proposal, and on **30 December 2020**, the Provider issued a letter which says: "*[The Provider] regrets to note the Complainants have declined the [Provider's] offer of compensation in the amount of €1,000.00 (one thousand euros) however please note this offer will remain open.*"

In my opinion, it is regrettable that at the time when the Provider first examined the Complainants' complaint, it failed to recognise its failures to the Complainants in **May 2019**. It was only some 18 months later, at the time when the Provider submitted its formal response to the investigation by this Office, that the Provider at that stage acknowledged its errors and made what I consider to be an appropriate compensatory offer to the Complainants, at that later time, for the issues which had arisen.

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I am conscious that the Provider at that point acknowledged its wrongdoing and, in circumstances where that compensatory offer remains open to the Complainants to accept, when I issued my preliminary decision in this matter on **1 November 2021**, I indicated that I did not consider it necessary or appropriate to uphold this complaint, as it would be a matter for the Complainants to make direct contact with the Provider if they wish to accept that compensatory offer which remains available to them.

Since that preliminary decision of this Office was issued the Complainants have submitted, amongst other things, that:

*“The Complainants submit that the facts and evidence, identified and established during the FSPO Adjudication process, and which are recorded in the Preliminary Decision document, fully affirms and substantiates their stated claim.*

*The Complainants submit that this evidence, together with the admissions of error and culpability made by the Provider, make the refusal to uphold their claim inappropriate.*

*The Complainants submit that the decision not to uphold the proven claim must therefore be considered to be a material error and an incorrect interpretation of the facts.*

*The Complainants submit that, in the circumstances, such a refusal, would fundamentally undermine the integrity of the investigation process, and could be considered unfair process.”*

I do not accept this. I am satisfied that within the response from the Provider to the formal investigation of this complaint, the Provider adequately acknowledged its wrongdoing, as it was appropriate to do, and in addition, it offered what I consider to be an appropriate compensatory payment to the Complainants, in order to redress that wrongdoing. Indeed the provider confirmed in late 2020 that this offer remains open to the Complainants to accept. In those circumstances I do not consider it necessary to make any direction for the payment of compensation, because in addition to acknowledging its wrongdoing, this appropriate compensatory measure has been available to be paid by the Provider to the Complainants since December 2020, and remains so, if they wish to accept it.

The Complainants have also submitted:

*“The Complainants state that the existence of a Settlement offer in itself should not be a compelling factor in the Adjudication process. The Complainants argue that a claim, proven and accepted, should be upheld in all instances, and must be the initial basis for, and accepted route to, appropriate redress. The Complainants submit that for their claim to be upheld has immense significance. It is important to them that the Provider, should not avoid a declaration that the claim against them was upheld. The Complainants submit that any decision made in such circumstances would be unfair and unreasonable to them, and would be contrary to the FSPO stated values of Fairness, Integrity, Accessibility, Independence and Effectiveness.”*

The existence of a settlement offer is not always a compelling factor in the outcome of a formal investigation by the FSPO. This Office however at all times seeks to actively encourage financial service providers and their customers who make complaints, to resolve the issues which have been raised by a complaint.

The FSPO is called upon by its governing legislation to resolve complaints *“in an informal manner and according to equity, good conscience and the substantial merits of the complaint without undue regard to technicality or legal form.”*

In those circumstances, the relevance to an adjudication by this Office, of a settlement offer made in open correspondence, being available to a complainant, will be dependent upon (i) the timing of that settlement offer, (ii) whether it represents an appropriate measure of redress, and (iii) whether it remains available to the complainant for acceptance, without the need for a direction from this Office.

This indeed is the approach which is reflected in the FSPO’s published **Overview of Complaints for 2020**, which reported on the work of this Office during that calendar year. The Overview notes at page 3, that a total sum of €6,340,000 was secured by complainants during 2020, through mediation, investigation and offers from providers. This overall figure was noted to include a total of €1,060,000, where complaints were not upheld following the formal adjudication, because the provider had made an offer which the Ombudsman determined was satisfactory to resolve the matter. This report is available at:

[https://www.fspo.ie/documents/Overview\\_of\\_Complaints\\_2020\\_Final.pdf](https://www.fspo.ie/documents/Overview_of_Complaints_2020_Final.pdf)

In the context of the investigation of complaints by this Office, it is not the role of this office to in some way seek to sanction or punish a provider, where there has been wrongdoing on its part, which has been acknowledged. Rather, the appropriate resolution of a complaint requires that redress be recovered by the customer who has been impacted by the wrongdoing in question, where such redress is appropriate; this is the approach I have adopted in my adjudication of this complaint.

Accordingly, it will be a matter for the Complainants to make direct contact with the Provider if they wish to accept that compensatory offer available to them, to redress the Provider’s wrongdoing, and as previously indicated, in that event, the Complainants should make direct contact expeditiously, as the Provider cannot be expected to hold this compensatory offer open indefinitely.

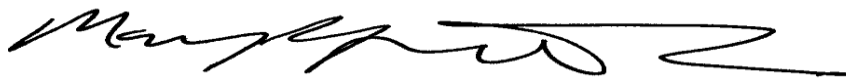
Accordingly, for the reasons outlined, I do not consider it appropriate to uphold this complaint.

### **Conclusion**

My Decision, pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

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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

1 December 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.