



<u>Decision Ref:</u>	2022-0058
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Cards
<u>Conduct(s) complained of:</u>	Disputed transactions Complaint handling (Consumer Protection Code) Maladministration Misrepresentation (at point of sale or after) Refusals (banking)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns a credit card account.

The Complainant's Case

The Complainant submits that from **16 April 2016** he “fell victim to a Forex/ Binary options/ CFDs scam company [for a] total amount of GBP 33,461.00”. The Complainant further submits that the “scam company” did not invest his money, but “stole it” and that it prevented him from withdrawing his funds.

The Complainant advises that on **10 October 2018** he submitted a “chargeback dispute” to the Provider and he contends that the Provider “is jointly and severally liable for any breach of contract or misrepresentation by the merchant, or a fraud for a period of 6 years”.

The Complainant submits that he asked the Provider “to take responsibility and ask for a chargeback because no services or investments were supplied to [him] by the scam merchant” and that the merchant is “an illegal scam operator”.

The Complaint asserts that he:

“... found out that there were numerous warnings issued by scam broker investigators, as well as by the FCA and a few other regulators, during the relevant

time period, warning the banking community against allowing the instruction of payments to this particular merchant”.

The Complainant contends that:

“Under VISA and MasterCard Core Rules No. 0004630 5.2.1.2., before allowing a merchant to accept payments, there must be a physical inspection of the listed premises of the business. As I now know there is nothing at the listed premises (purportedly in the UK) of these companies that means the condition was not met”.

The Complainant further contends that:

“Additionally, under the Consumer Credit Act 1974 39 Part VI Section 75 the credit card company is jointly and severally liable for any breach of contract or misrepresentation by the merchant, or a fraud, for a period of 6 years”.

The Complainant wants the Provider to refund him through a *“chargeback, or otherwise credit his account, for the full amount of these payments, in the total amount of 33,461 GBP”.*

The Provider’s Case

In its Final Response letter, the Provider states that it *“received confirmation from Visa/MasterCard that this type of transaction cannot be disputed under the chargeback scheme rules”.*

The Provider further states that the chargeback scheme is not the Provider’s scheme and that *“all rules and regulations in relation to disputing transactions are set down by Visa and Mastercard and [the Provider has] a responsibility to adhere to these rules in full”.*

In addition to this, the Provider states that the *“timeframe for disputes under Visa and MasterCard is 120 days and that the transactions [the Complainant] wish to dispute are outside this timeframe”.*

The Provider asserts that *“in relation to your request to claim under Section 75, this is UK legislation therefore does not cover a [Republic of Ireland] euro card”.*

The Provider further asserts that it is *“unable to dispute transactions relating to investments, traders and brokers”.*

The Provider contends that after giving *“careful consideration to the information provided by [the Complainant] and the chargeback department [it is] unable to uphold your complaint and refund your account”.*

In a response to a query raised by this Office, the Provider, having stood over the reasoning previously provided as regards the substantive aspect of the complaint, *“acknowledged that the Complainant’s customer service experience in the context of the chargebacks process fell*

/Cont’d...

short of the high standard to which the Provider holds itself". In light of this, and also to reflect a failure initially to provide all relevant documents to this office, the Provider offered the Complainant, as *"a gesture of goodwill"*, the amount of **€1,500**.

The Complaint for Adjudication

The complaint is that the Provider failed to refund the Complainant through a *"chargeback dispute"* when he *"fell victim"* to a *"scam company"*.

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 **27 October 2021**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

I note the chronology of certain relevant matters as outlined below:

2016	
06 April 2016	Complainant transfers €1,000 to the Merchant Payee from his credit card account [transaction credited to Bulgarian account as noted on the Complainant's credit card statement]
13 April 2016	Complainant transfers €1,000 to the Merchant Payee from his credit card account [transaction credited to Bulgarian account as noted on the Complainant's credit card statement]

/Cont'd...

15 April 2016	Complainant transfers €500 to the Merchant Payee from his debit card account
29 April 2016	Complainant transfers €500 to the Merchant Payee from his debit card account
08 November 2016	Complainant completed a 'Transaction Dispute Form' in respect of all four transactions noted above. This form was furnished together with a cover-letter stating that the Merchant Payee had <i>"dragged this out so long that its beyond the period of time 90 days that I was unaware that I could be this dispute to your attention."</i> The submission also included a copy of emails exchanged between the Complainant and the Provider in which the Complainant refers to the Merchant Payee's business as <i>"a fraud and a scam"</i> .
17 November 2016	Response from the Provider indicating that the Complainant was out of time to dispute the transaction given that more than 120 days had elapsed since the most recent of the transactions.
2017	
05 July 2017	Complainant transfers €500 to the Merchant Payee from his credit card account [transaction credited to Cypriot account as noted on the Complainant's credit card statement]
2018	
21 February 2018	Complainant transfers €5,000 to the Merchant Payee from his credit card account [transaction credited to Montenegrin account as noted on the Complainant's credit card statement]
13 April 2018	Complainant transfers €3,000 to the Merchant Payee from his credit card account [transaction credited to Montenegrin account as noted on the Complainant's credit card statement]
November 2018	Chargeback Request from the Complainant together with all enclosures
26 November 2018	Response from the Provider
04 December 2018	Undated letter received on this date by the Provider, from the Complainant
06 December 2018	Further response from the Provider
02 April 2019	Date of receipt by Provider of undated letter from the Complainant, raising formal complaint and requesting a Final Response Letter.
23 April 2019	Provider's Final Response Letter.

Analysis

The Complainant held a debit card account and a credit card account with the Provider.

The Complainant, on two separate occasions in **November 2016** and in **November 2018** has, in his sole capacity, lodged 'Transaction Dispute Forms' with the Provider. These related to transactions by way of which the Complainant says, he was defrauded of **UK £33,461GBP** by a third-party financial trading company (hereinafter, 'the Merchant Payee') which he says unlawfully stole his deposits. The Complainant does not specify in his complaint form to this Office, any specific account with the Provider, said to be involved.

I note that the 'Transaction Dispute Form' sent in **November 2016** refers to both his debit card account and his credit card account.

The 'Transaction Dispute Form' sent in **November 2018**, not only refers to both these accounts but also to several other accounts, either held in the sole names of third parties, or held jointly by the Complainant and a third party. None of these third parties are parties to the complaint before this office.

This is significant, because the full amount paid over to the Merchant Payee from the Complainant's solely held accounts (on seven separate dates between 06 April 2016 and 13 April 2018) totalled the lesser amount of **€11,500**, with €10,500 of that total figure paid out through the credit card account.

Consequently, the remaining transactions making up the total suggested loss of £33,461GBP do not fall to be considered by this Office, which will investigate transactions on accounts only where all account owners have joined in the complaint, in order to consent to the processes of this Office. The Complainant's assertion (contained in an email to this office of 03 August 2021) that these third parties are family members reliant on his income, and his consequent statement that "*all money paid to [the Merchant Payee] was directly or indirectly by myself with the consent of my [family members] for the use of their accounts*", is not relevant in this regard.

Neither does a (second) 'Transaction Dispute Form' completed in **November 2018** by the Complainant and his wife, fall to be considered as part of this investigation, in circumstances where the Complainant's wife is not a party to the complaint before this Office, and has not consented to the processes of this Office, in order to be bound by a decision of the FSPO.

If the joint owners of any account which is partly owned by the Complainant, wish together, to make a complaint to this Office, regarding any transactions made on that account, it will be a matter for those joint owners to pursue such a complaint separately from this investigation.

/Cont'd...

Having regard to the monies transferred from the Complainant's solely held accounts, I note that the transactions to the Merchant Payee, were authorised by the Complainant on the relevant dates. The Complainant states that it eventually became apparent to him, after his request to withdraw his funds had been refused by the merchant payee, that it had not in fact invested his money and he says that in fact, it had simply fraudulently stolen those monies.

I note that in 2016, the Complainant initially transferred a sum of **€3,000** to the Merchant Payee, before he says he apprehended that the 'business' was "*a fraud and a scam*" and he submitted a chargeback request. The evidence shows however, that 2 years later, in 2018, he then transferred a further €8,500 to what appears to have been that very same Merchant Payee.

The Complainant does not invoke any provision of his contract with the Provider. Rather, he invokes the following in support of his complaint (ref: letter dated 10 October 2018):

1. The rules and bylaws of the Prudential Regulation Authority (PRA) at the Bank of England
2. The rules and bylaws of the Financial Conduct Authority (FCA)
3. Section 75 of the Consumer Credit Act 1974
4. "*VISA and MasterCard Core Rules No. 0004630 5.2.1.2*".

The Provider is not however subject to the '*rules and bylaws*' of the PRA or of the FCA, which operate in another jurisdiction. Both of these institutions are regulators within the UK, with jurisdiction over financial providers authorised in the UK.

The conduct of the Provider in respect of which the Complainant complains, is conduct which occurred in Ireland, insofar as the Provider, an Irish regulated financial service provider, accepted the Complainant's instructions to transfer funds authorised by the Complainant, and subsequently refused to refund his account when he sought to reclaim those monies. The relevant regulator for the purpose of this complaint is therefore the Central Bank of Ireland. Similarly, the Consumer Credit Act 1974 is UK legislation, and has no bearing on the manner in which the Provider's operations are conducted in Ireland.

The Complainant also seeks to rely on "*VISA and MasterCard Core Rules No. 0004630 5.2.1.2*". It should be noted that VISA and MasterCard are separate businesses governed by separate rules. The Complainant's credit card is a MasterCard. The Rule cited, namely Section "*5.2.1.2*", is one of the 'Visa Core Rules' (otherwise the 'Visa Core Rules and Visa Product and Service Rules'), not applicable to MasterCard.

The rules that are relevant to the Complainant's position are to be found in the 'MasterCard Chargeback Guide'. The Provider points out that these rules do not form part of the terms and conditions of the Complainant's account. Whilst these rules are of course relevant, it is correct to say that they do not constitute the basis of the relationship between the Complainant and the Provider. Rather, the terms and conditions of the Complainant's account govern the relationship between the parties.

Nonetheless, it is clear that in any event, the Complainant has fallen outside the time limits stipulated in the MasterCard Chargeback Guide, which contains strict time limits as to the date on which a chargeback request can be made. In respect of each of the grounds potentially available to the Complainant on foot of which to request a chargeback, I note that the time frames are as follows:

Goods or Services Were Either Not as Described or Defective

- *120 calendar days from when the services ceased with a maximum of 540 calendar days from the transaction settlement date for issues of interruption of ongoing services*
- *Between 15 and 120 calendar days from the transaction settlement date*
- *Between 15 and 120-calendar days from the delivery/cancellation date of the goods or services.*

Goods or Services Not Provided

- *In cases involving delayed delivery of goods or services **and** the delivery or performance date was **not** specified by the merchant: the issuer must wait 30-calendar days from the transaction date before submitting a chargeback and not to exceed 120-calendar days from the transaction settlement date.*

However, the issuer may charge back the transaction immediately (and not wait the 30-calendar days) upon learning the merchant will not provide the goods or services because, for example, for the merchant is no longer in business.

- *In cases involving delayed delivery of goods or services **and** the delivery or performance date was specified by the merchant **and** the latest anticipated delivery or performance date was specified by the merchant has passed: within 120-calendar days of the latest anticipated delivery or performance date specified by the Merchant.*

However, the issuer may charge back the transaction immediately (and not wait until the latest anticipated delivery or performance date has passed) upon learning the merchant will not provide the goods or services because, for example, for the merchant is no longer in business.

...

- *In all other cases: within 120-calendar days from the transaction settlement date.*

In the circumstances, I am satisfied that the maximum time frame available to the Complainant (under either ground) in which to make a complaint was 120 days from the date of the disputed transaction. (It may be useful to note that similar timeframes apply in respect of the Visa Core Rules.)

In respect of the Complainant's two 'Transaction Dispute Forms', I note that both of these were submitted, more than 120 days after the most recent impugned transaction. I am therefore satisfied that the Complainant's request was made outside of the strictly mandated time limits, laid down in the MasterCard Chargeback Guide.

/Cont'd...

The Provider also relies on a separate provision of the MasterCard Chargeback Guide in support of its position (concerning the categorisation of the transactions) but in light of the reasoning set out above, no further reason is required, in my view.

Finally, the Complainant says that the Provider should have in some way vetted the entity to which the Complainant sent the money. He maintains that the Provider should have discovered that it was a fraudulent enterprise and thereafter warned the Complainant off the transactions.

I don't accept this. In my opinion it would be unfeasible for a financial service provider to vet every payee to whom/which its customers wished to voluntarily transfer funds. In the absence of the Provider being on actual notice of an issue with that particular payee, I believe it would be unreasonable and impractical for a duty to be imposed on a financial service provider, to carry out the sort of vetting envisaged by the Complainant.

Since the preliminary decision of this Office was issued in October 2021, the Complainant has submitted, amongst other details that:

“When determining what’s reasonable and fair, we should focus on the issue of liability; common queries include, but are not limited to, the following (i) whether [the Provider] did not take notice of any rule, law, or regulation, and/or possibly missed any material elements of the relevant bylaws or codes of conduct, that may have prevented them from protecting my financial safety; (ii) whether by virtue of [the Provider]’s custodianship over my funds or by its control over them, they owed a fiduciary duty to the me and if so, whether that duty was breached; (iii) whether [the Provider] promoted the transaction(s) in question despite being aware of the nature of the transaction(s) in question (iv) whether [the Provider] was in compliance with its own policies and procedures; (v) whether [the Provider] owed duties to myself, what the scope of those duties was, and whether [the Provider] did not uphold those duties; (vi) whether [the Provider]’s conduct was unfair; and (vii) whether [the Provider] has within its power the ability to, and should, compensate me for the harm that has befallen me.

Upon identification of such unusual or suspicious activity, it is crucial that the relevant staff member adequately describe the factors making an activity or transaction suspicious, thoroughly depict the extent and nature of this activity and properly communicate to the customer that such activity meets the relevant criteria of fraud.

In providing its services to a customer, a financial institution is required by law to exercise the care and skill of a diligent, prudent organization. In this case, this means that the payment service provider should not turn a ‘blind eye’ to known facts pointing to a real possibility that their customer is being scammed.”

Having considered all of the evidence made available to this Office, I do not accept that it demonstrates that the Provider acted in a manner which was unreasonable or unfair.

/Cont'd...

I do not accept that the Provider in any way “*promoted the transaction/s*” nor that it in any way turned a “*blind eye*” “*to known facts pointing to a real possibility that their customer is being scammed*”. There is simply no evidence available in that regard.

I am satisfied that the Provider exercised due care and skill in the provision of its services to the Complainant and there is no evidence that the Provider should have in some way foreseen that the transactions requested by the Complainant constituted payments to an entity which was seeking to defraud the Complainant.

I note that the Complainant says that he has been “*manipulated, socially-engineered and coerced to engage these fraudulent criminals*”. It is not the Provider however, which has manipulated the Complainant, or which has been guilty of social engineering in its communications with the Complainant. I do not accept the Complainant’s contention that the Provider “*given its size, influence and the resources at its disposal... clearly had a far greater capacity than an individual such as myself had,*” to determine that the transactions which the Complainant was undertaking were risky and that the Provider had a duty to intervene to prevent the Complainant from transferring the funds in question.

The Complainant has also, since the Preliminary Decision of this Office was issued in October 2021, sought to quote from the “*British Standards Institutions Code of Practice (BSI:pas2017 17271)*” and also seeks to rely upon the provisions of the Payment Services Directive (II)(EU)2015/2366. He has quoted from a number of the provisions regarding the blocking and unblocking of a payment instrument and he suggests that “*fraud by manipulation of the payor*” is the responsibility of the payment service provider in the context of transaction-risk analysis. It seems in that regard, that the Complainant’s comments concern the TRA exemption under Article 18 which permits a payment service provider not to apply “*strong customer authentication*”, in the case of certain low risk transactions. I am satisfied however, that in this instance the authentication of the customer was not at issue, as it has not been suggested in the course of this complaint investigation that it was not the Complainant who originally authorised the transactions which are the subject of this complaint.

In light of the foregoing, and in the absence of evidence of wrongdoing by the Provider or conduct within the terms of **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017** that could ground a finding in favour of the Complainant, I do not consider it appropriate to uphold the complaint.

I note that the Provider has, in response to this complaint, offered the Complainant a gesture of goodwill, in the amount of €1,500 in recognition of his less than optimal customer service experience during the period when he sought the chargeback of the monies in question. It will be a matter for the Complainant to make direct contact with the Provider if he wishes to accept the goodwill gesture in question. In that event, he should proceed expeditiously, as the Provider cannot be expected to hold that offer of a goodwill gesture, open indefinitely.

/Cont’d...

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

11 February 2022

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.