



<b><u>Decision Ref:</u></b>	2022-0065
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Credit Cards
<b><u>Conduct(s) complained of:</u></b>	Disputed transactions Dissatisfaction with customer service
<b><u>Outcome:</u></b>	Rejected

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

The Complainant holds a credit card account with the Provider.

#### **The Complainant's Case**

This complaint is in relation to a Charge Back Request. The Complainant submits that, on **22 May 2020**, he decided to invest a sum of €250.00 (two hundred and fifty euro) in 'Company A'. The Complainant submits 'Company B' somehow intercepted the transaction and he was then contacted directly by trading agent 'Mr X'. The Complainant submits that between the dates **22 May 2020** and **2 June 2020** he invested a total of €16,359.61 (sixteen thousand, three hundred and fifty nine euros and sixty one cent). However, the total amount invested through the Provider was €8,304.18 (eight thousand, three hundred and four euros and eighteen cent).

The Complainant submits that on **24 June 2020** his fund had grown to over €30,000.00 (thirty thousand euro) and he contacted Mr. X to request a withdrawal. The Complainant states he did not receive any response from Mr. X. The Complainant submits that one week after his email on **24 June 2020** he received a phone call from another trading agent 'Mr. Y'. The Complainant submits Mr Y informed him that his total fund had grown to nearly €60,000 but was diminishing rapidly. The Complainant maintains that the entire fund was gone within one hour. The Complainant submits that he contacted a third party company to assist him in getting his lost funds back.

The Complainant says that the Provider refused to refund any of his money. He says that:

*"On 22nd May 2020, I decided to invest €250 in [Company A]. Somehow, the transaction was intercepted by [Company B] and I was contacted by [Mr. X]. Between then and 2nd June, my wife and I invested a further €16,359.61 with [Company B]. €8,304.18 was invested through [Provider] and the balance through [Bank]. Our 'fund' grew to over €30,000 by 24th June and we emailed [Mr. X] requesting a withdrawal. We got no response. About two weeks later we got a phone call from a man named [name] to say that our fund of almost €60,000 was diminishing rapidly. Within an hour all monies were gone.*

*On 7th July I contacted a company called [Company C] to assist us in retrieving our cash. To date €3,685.43 has been re-imbursed by [Bank]. [Provider] have informed us that they are not in a position to set up a disputes case. The monies we transferred to [Company B] went via [Intermediary A] and [Intermediary B]."*

In relation to a payment of €1,576.22 (one thousand, five hundred and seventy six euros and twenty two cent) on **26 May 2020**, the Complainant submits that:

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- *According to MasterCard the service is only considered provided as described once the funds are loaded into a segregated brokerage/trading account.*
- *The merchant never placed my funds into a trading account as they do not have this ability.*
- *Because the funds were never loaded into a trading account the service was NOT provided as described (by MasterCard definition).*
- *Having not received - and therefore not used - the services, I cancelled them.*
- *According to the MasterCard Chargeback Guide (May 2020 edition, p. 67), chargebacks for investments are valid as long as the dispute is not regarding gains or losses. I am NOT disputing gains or losses; rather that trading/investment services were never provided. The chargeback is therefore valid.*

*I have tried on several occasions to resolve my dispute with the merchant directly, but they have refused to return my funds."*

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By email to the Provider, dated **25 August 2020**, the Complainant contended that:

*“Disappointment is not a true reflection of how we feel. It is more a feeling of having been let down by what we believed was a reputable banking organisation who are placing the responsibility on us as customers to recognise fake trading platforms. To be quite honest in our opinion, we think that you are using the fact that the one-time-code was used, as a means to deny your responsibility in this matter. We would have expected your company to be aware of this platform and of the avenues they use to lure unsuspecting customers. Your inability to resolve the matter on our behalf does not compare with another bank who were able to resolve our dispute and retrieve our cash for us. The credit cards used via yourselves and the other bank are MasterCard.”*

The Complainant invested **€8,304.18** (eight thousand, three hundred and four euros and eighteen cent) using the credit card account he holds with the Provider. The Complainant wants the Provider to provide *“full reimbursement of the monies (the Complainant] invested in what turns out to be a company trading illegally.”*

### **The Provider’s Case**

The Provider submits that it received a call from the Complainant on **12 August 2020** regarding a chargeback request for an online transaction. The Provider maintains that the Complainant was unhappy and that a complaint was logged with the customer advocacy office on the same date.

The Provider submits that the Complainant was unhappy that the Provider was not in a position to log a dispute case regarding a debit from his account, on **26 May 2020**, for €1,576.22 (one thousand five hundred and seventy six euro and twenty two cents). The Provider explains that that the transaction in question was processed using '3D secure' which required a one-time password to be entered for the transaction to be completed. The Provider submits that because the Complainant entered the one time password, the payment was cleared.

In its **Final Response Letter**, dated **25 August 2020** and addressed to the Complainant, the Provider submits as follows:

*“I refer to your comments during the above call where you express your dissatisfaction that we are unable to set up a Disputes case for the above transaction which was debited from your account on 26th May for €1,576.22.*

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*The associate explained that as 3D Secure was required where you entered the One Time Password the transaction processed successfully. Please note that this was not an unauthorised transaction as the One Time Password was cleared which meant that you agreed to the transaction. I know that this will come as a disappointment to you, unfortunately we have no chargeback rights in relation to this case and are unable to raise a Disputes case."*

The Provider submits that:

*"The Complainant made a purchase with [Intermediary A] on 26th May 2020 for €1,576.22 with his credit card. He provided his full credit card number, expiry date and the security code on the back of the card. He was sent a one-time passcode to his mobile phone before the transaction went through as an additional security measure. He then entered the one-time passcode to allow the transaction to go through which is evidence that he authorised the transaction. As the transaction was authorised there were no charge back rights. When we listened to the calls...it was clear that the Complainant confirmed that he authorised the transaction, it was only when he lost money in his separate investment fund that he wished to raise the dispute and claimed that the service was not as described. We have no avenue to pursue a dispute against [Company B] on behalf of the Complainant as there is no transaction with them. The transaction was with [Intermediary A]- a cryptocurrency exchange. [Intermediary A] send cryptocurrency to designated wallet addresses as instructed by the user. They have no control over what happens the cryptocurrency once they have sent the funds.*

*To illustrate this point, it's worth drawing a comparison with a more common scenario where this type of transaction could take place. It can be compared to a consumer taking cash out of an ATM machine with their credit card, by providing their PIN to authenticate the transaction, receiving the cash into their hand and then taking that cash into a betting shop and placing a bet on a sporting event. If the bet doesn't come in, the consumer can't raise a dispute against the ATM machine. The ATMs role in the transaction was to provide the correct amount of cash, which it did. A cryptocurrency exchange like [Intermediary A] is the ATM in this scenario. They send Bitcoin to the wallet address the consumer instructs them to. This could be a wallet the consumer owns themselves or another location, such as an investment account with [Company B] or another entity. If the consumer loses the bet with the investment firm, the cryptocurrency exchange cannot be held liable for those losses.*

*In addition to the above, we reviewed [www.\[IntermediaryA\].com](http://www.[IntermediaryA].com) and found that when a consumer selects that they want to purchase Bitcoin, there is a clear warning on page which says as follows:*

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*‘[Intermediary A] is only an exchange only and not affiliated with any 3rd party trading or wallet platforms. Once we have delivered your cryptocurrency to the wallet of your choice the transaction cannot be traced, reversed, altered, or refunded. Create a password at checkout to be able to view your transaction history.’”*

The Provider asserts that:

*“The Complainant may wish to pursue a claim against [Company B] directly in which case they will have an opportunity to put forward their perspective and any evidence they may have to defend any allegation made against them.”*

The Provider contends that the Complainant admits that he transacted with Intermediary A and authorised the payment and therefore the Provider maintains that the Complainant has *“no chargeback rights in relation to this case.”* The Provider says that *“while we would like to help the Complainant, we simply have no transaction with Company B.”*

### **The Complaint for Adjudication**

The complaint is that the Provider wrongfully or unfairly refused to refund or fulfil a chargeback request from the Complainant for an online transaction.

### **Decision**

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

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

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A Preliminary Decision was issued to the parties on **25 January 2022**, 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 substantive submissions from the parties, within the period permitted, the final determination of this office is set out below.

I note that the Provider's **Terms & Conditions** of the credit card account say at Section 7b, page 3, under 'Using your Account' that:

*"7b: If you wish to make a cash transaction or a card purchase, the use by you of your card (with or without your PIN) is your consent to that cash transaction or card purchase. If you wish to make a payment from your account, the giving by you to us of the details at paragraph 7a is your consent to the processing by us of that payment."*

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**"). The Provider relies on Regulations 88 which says as follows:

*"Consent and withdrawal of consent*

*88. (1) A payment transaction is authorised by a payer only where the payer has given consent to execute the payment transaction.*

*(2) A payment transaction may be authorised by a payer either—*

*(a) prior to, or*

*(b) where agreed between the payer and the payment service provider, after, the execution of the payment transaction.*

*(3) Consent to execute a payment transaction or a series of payment transactions shall be given in the form agreed between the payer and the payment service provider concerned.*

*(4) Consent to execute a payment transaction may be given via a payee or a payment initiation service provider.*

*(5) Consent may be withdrawn by a payer until such time as the payment order concerned is irrevocable under Regulation 104.*

*(6) Consent to execute a series of payment transactions may be withdrawn by a payer, in which case a payment transaction scheduled to be executed after the date the consent is withdrawn shall be unauthorised.*

*(7) The procedure for giving consent shall be agreed between the payer and the payment service provider concerned."*

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The Provider submits that 7b of the account's **Terms & Conditions** means that "if you consent to a card purchase i.e. [Intermediary A], using the card for the card purchase is your consent to that transaction."

In relation to Regulation 88, the Provider asserts that:

*"The Complainant consented to the payment transaction with [Intermediary A] by providing his card number, expiry date and security code on the back of the card and by entering the one time passcode sent to his mobile phone number which confirmed the amount of the transaction to be authorised and the name of the merchant to be paid. ... The transaction was authorised prior to the funds being taken from the credit card. ... The form agreed for consent is provided for under section 7 of the account terms and conditions which states that by providing the card details the consumer is consenting to the transaction. In this case, the Complainant also provided a one-time passcode to authorise the transaction....The Complainant consented to the transaction ... Regulation 104 does not allow consent to be withdrawn after it has been given for this type of transaction. It effectively provides a right to cancel a direct debit up to the day before the funds are due to be taken, or to withdraw consent where both parties agree to it, neither of which is applicable here."*

The Provider also submits that:

*"On 27th August 2019 the Complainant received a text message to his mobile phone advising him about changes to how to access and use our online service. It also stated that the customer would occasionally receive a one-time passcode via SMS as an additional security step before they can access their account or before they can complete certain actions online. They were then asked to check that their contact details were correct in order to receive the passcode.... Our website also details information about 3D Secure.... Our records show that the Complainant accessed his online account on 10th October 2019 and 27th February 2020 which was before the [Intermediary A] transaction was processed. The information about 3D Secure was there if he had any queries.... In addition to these, advertisements were placed in the [National Newspaper 1] and [National Newspaper 2] in June 2017 to advise customers about 3D Secure and the one-time passcode and the new changes that would be coming into effect in relation to this. The Complainant also received an SMS on 5th September 2017 to educate and update him about 3D Secure."*

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The Provider refers to the **MasterCard Chargeback Guidelines** which say that:

*“Chargebacks are available to the user for transactions in which any value is purchased for gambling, investments or similar purposes. However, issuers have no chargeback rights related to the use of these chips or value, unspent chips, or withdrawal of such value, or on any winnings, gains or losses resulting from the use of such chips or value.”*

In relation to the above, the Provider submits that:

*“This is not applicable to this case as the Complainant's dispute is with a third party which did not process a credit card transaction on his account and as such there is no transaction to chargeback. If the Complainant had transacted directly with [Company B] we may have been able to raise a dispute on his behalf, provided this dispute did not relate to gains or losses; however, the only transaction on the credit card was with [Intermediary A] and we have no grounds to charge this back. The Complainant authorised the transaction for [Intermediary A] by entering the one-time passcode that he received, and he is not disputing that he authorised the transaction.”*

I note that the Complainant has submitted evidence that Company B is not list listed or registered as a firm on the Central Bank website and he further asserts that Company B is not *“able to provide any type of financial service in Ireland, which is where they solicited me and where I live.”*

I am satisfied that the €8,304.18 (eight thousand, three hundred and four euros and eighteen cent) that was transferred by the Complainant using his account with the Provider, was sent to Intermediary A which is a cryptocurrency exchange company. I am satisfied that this transaction was fully authorised by the Complainant by 3D Secure, in other words the Complainant confirmed to the Provider a second time, by way of his one time password, that he wished to transfer this money from his account with the Provider. I note the Provider's submission that:

*“the form agreed for consent is provided for under section 7 of the account terms and conditions which states that by providing the card details the consumer is consenting to the transaction. In this case, the Complainant also provided a one-time passcode to authorise the transaction.”*

I am satisfied on the basis of the evidence submitted that the Complainant was on notice of 3D Secure and that such authorisation procedure is in line with the Provider's **Terms & Conditions** and the **Regulations**.

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Subsequently, Intermediary A sent the cryptocurrency to designated wallet addresses as instructed by the Complainant. The Complainant believes that the Provider, as a reputable banking organisation is placing *“the responsibility on us as customers to recognise fake trading platforms.”* However, I am satisfied that the Provider could not be expected to recognise or to in some way moderate transactions between an entity the Complainant sends authorised funds to, and that entity’s dealings with a separate third party company.

I note that the **MasterCard Chargeback Guidelines** say that *“chargebacks are available to the user for transactions in which any value is purchased for gambling, investments or similar purposes.”* I note the Complainant says that *“I am NOT disputing gains or losses; rather that trading/investment services were never provided.”* I note that the value purchased by the Complainant for investment bitcoin, was between the Intermediary A to which the Complainant had transferred funds, and Company B, and therefore I accept that the chargeback procedure did not arise. In those circumstances, I am not satisfied that the Provider was required to take any action to reimburse the Complainant the monies which in May 2020, he had instructed the Provider, to transfer from his account.

On the basis of the evidence available, I am satisfied that the Provider acted in accordance with its **Terms & Conditions** and the **Regulations** when it declined to refund the monies transferred by the Complainant from his credit card account and accordingly, I take the view that this complaint cannot be upheld.

### **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**  
**Financial Services and Pensions Ombudsman (Acting)**

16 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—**

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- (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.**

