



<b><u>Decision Ref:</u></b>	2022-0070
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Money Transfer
<b><u>Conduct(s) complained of:</u></b>	Disputed transactions Dissatisfaction with customer service Failure to provide product/service information Failure to process instructions
<b><u>Outcome:</u></b>	Rejected

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

The Complainant's complaint relates to unauthorised transaction(s), which occurred on **9 January 2020**.

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

The Complainant states that on **9 January 2020**, he transferred €10,000 from his account with the Provider (which is a Credit Union) to a third party which turned out to be a "*fraudulent criminal company*". The Complainant states that the fraudulent company "*took advantage of [the Complainant's] inexperience/innocence and coerced [him] to sign up*" with the company. The Complainant submits that the Provider's "*misadministration*" and refusal to "*file a recall*" has meant that he has lost the €10,000 transferred.

The Complainant also states that the funds were transferred "*without his consent*". The Complainant included screenshots of warnings about the fraudulent company from Belgian and New Zealand financial authorities.

The Complainant states that he was dissatisfied with the Provider's response, dated **9 March 2020**, and that he disputes the Provider's outcome/decision in respect of his complaint.

The Complainant states that the Provider is required by law to check acquired “merchants” through proper know-your-customer and anti-money laundering procedures and that *“it is apparent that the merchant has never been examined”* by the Provider.

The Complainant stated that he was dissatisfied with the Provider’s response dated **14 May 2020**.

Ultimately, the Complainant wants the Provider to *“perform a recall for the full amount of these payments, in the total amount of €10,000”*. The Complainant states that the actions of the Provider have caused him *“severe depression and anxiety”*.

### **The Provider’s Case**

By way of letter dated **9 March 2020**, the Provider stated that the Single European Payments Area (SEPA) Credit Transfer scheme does not require or enable the Provider to validate the status of participants or their customers. The participant in the SEPA Credit Transfer scheme is responsible for opening customer accounts in line with their respective customer due diligence/know your customer rules.

The Provider states that customers sending payment through the SEPA Credit Transfer scheme should take the necessary steps to be certain that the recipient will honour the payment. It states that while there is a recall process in place, ultimately the SEPA Credit Transfer payments are irrevocable. It states that the payment at issue in this complaint was initiated, authorised and signed by the Complainant.

By way of letter dated **14 May 2020**, the Provider stated that it had exhausted all available avenues in an attempt to assist the Complainant in recalling the transfer authorised by him on **9 January 2020**. It stated that a payment can only be recalled with the authority of the beneficiary, to return the funds and in this case, unfortunately the beneficiary had not agreed to process and return the funds. It stated that it appreciated the Complainant’s frustration but once a payment order is executed, it is completely outside the control of the Provider. It stated that it is not possible for the Provider to perform a due diligence on the beneficiary of each transfer.

The Provider furnished submissions to this Office dated **22 March 2021**. The Provider sets out its view in these submissions that it was compliant with the European Union (Payment Services) Regulations 2018 and it references the Framework Contract in this respect. The Provider states that it has advised the Complainant that if he feels that he has been the subject of fraud, he should raise the matter with the Gardaí.

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The Provider states that it had no reason to believe that there was *“anything suspicious with the requested payment”*. It states that the Complainant did not show signs of undue influence or stress when requesting the payment to be made and in addition he mentioned *“that he had made a payment to the account with the relevant IBAN previously”*.

### **The Complaint for Adjudication**

The complaint is that the Provider wrongfully and/or unreasonably failed to reimburse the Complainant for an amount of €10,000 he transferred in January 2020, in circumstances where he states that an unauthorised transaction was made on his account.

### **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 **2 February 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 submissions from the parties, within the period permitted, the final determination of this office is set out below.

By way of background, I note that it is accepted by the parties that the Complainant attended at the Provider’s branch, and transferred funds to the fraudulent third party.

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I note that in order to transfer these funds, the Complainant had to provide his membership number to a member of the Provider's staff, and he had to complete and sign a direct credit authorisation form, a copy of which has been supplied in evidence. The Complainant does not deny that when transferring these funds, he commented that he had successfully transferred funds to the same account, in the past.

Part 1 of the Framework Contract, which reflects regulation 88 of ***The European Communities (Payment Services) Regulations 2018*** states that once the order for payment from the account is verified and consent to the execution of the transfer has taken place, the customer "*cannot withdraw consent*". Regulation 96 of ***The European Communities (Payment Services) Regulations 2018*** governs the provision of evidence on authentication and execution payment transactions in respect of disputed transaction and I note that the Provider has supplied a signed authorisation form dated **9 January 2020** in this regard.

Section 10 of the Framework Contract addresses points (iv) and (v) of Regulation 76 of ***The European Communities (Payment Services) Regulations 2018*** which states that if a customer becomes aware of a transaction on their account that is "*unauthorised or incorrectly executed*" then the customer will be entitled to a refund from the Provider, if the transaction was in fact unauthorised or incorrectly executed. Section 13 of the Framework Contract addresses points (vi) and (vii) of Regulation 76 of ***The European Communities (Payment Services) Regulations 2018*** to the effect that if an order is given to make a payment from the customer's account, the Provider is liable to correctly execute that order.

In my opinion, on the basis of the foregoing, there is no evidence to support the Complainant's contention that the funds were transferred without his consent and similarly, there is no basis for the Complainant to withdraw his consent after the transfer of the funds. The payment was initiated by the Complainant with all the details of the beneficiary account provided by the Complainant to the Provider. The payment was initiated and authorised by the Complainant who stated that he had made a previous transaction to the recipient of the payment.

I am satisfied that there was no obligation on the Provider to conduct "Know Your Customer" (KYC)/fraud checks on the intended recipient of the payment and the Complainant is misguided in that regard; the onus to conduct KYC/fraud checks is only in respect of customers of the Provider, and in this instance, it was the Complainant who was the Provider's customer, not the recipient of the payment. Once the payment was initiated and authorised by the Complainant, the Provider was obliged to execute the payment.

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Bearing the foregoing in mind, I am satisfied that the Complainant made the informed decision to transfer money to a third party company, apparently on the mistaken belief that the money would be used for investment purposes. Regrettably, this does not appear to have happened and I note and accept the evidence of the Complainant that the recipient of the money now appears to be a fraudulent company which simply “pocketed” the money and provided no investment services to the Complainant.

While accepting the frustration and financial loss this transfer resulted in, for the Complainant, the evidence shows that the Complainant consented to and authorised the transfer and therefore the Provider was obliged to carry it out. Any remedies which the Complainant is seeking, in order to recover the €10,000 transferred, should be sought against the alleged fraudulent company directly, and not through the Provider as the payment facilitating intermediary.

Therefore, based on the foregoing, I cannot accept the Complainant’s contention that the Provider is obliged to perform a recall for the payment of €10,000. In the absence of any evidence of wrongdoing by the Provider, 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

**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)**

24 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.**