



<u>Decision Ref:</u>	2022-0140
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Money Transfer (between accounts/between banks/3rd
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner Delayed or inadequate communication Fees & charges applied Failure to provide correct information Failure to process instructions in a timely manner
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant is a Sole Trader, and this complaint arises from his transfer of a sum of monies through the Provider's ibusiness banking facility, to a recipient bank account, outside of the EU.

The Complainant's Case

The Complainant questions the exchange rates and costs applied when it became necessary to refund the monies back to the Complainant's business account. The Complainant says the Provider has failed to adequately explain how the transaction happened without usual safety verifications and how the sum was substantially reduced when returned to the Complainant's account. The Complainant says that the Provider, at the time, did not advise him of the exchange rates or the transfer fees applied.

The Complainant explains that in the course of his business, on Friday **20th March 2020** he intended to transfer **€2,000.00** to a client's account through the Provider's ibusiness banking (iBB) facility. Unfortunately, in error **€409,166.00** was transferred to the recipient's account.

The Complainant says the error was realised within minutes and a call was made to the Provider to stop the transfer and to recall the monies.

The Complainant says he was advised that this was not possible as the *“transaction had instantly completed and therefore the funds transfer could not be stopped”*. The Complainant was surprised because the transaction had occurred in the afternoon at approximately 3:45pm and the Provider’s business terms state that *“transfers to an international bank will not take place until the next business day”*.

He also says that previously, if large funds were transferred internationally the Provider would ring the Complainant to verify the transaction before it was completed *“but this did not happen”* on this occasion.

The Complainant says he contacted the recipient client, who accepted the error and agreed to return the monies, as soon as they arrived to her bank account. It took many phone calls and emails to the Provider over several days to establish when the funds would be returned to the Complainant’s business account. It appears that his client’s receiving bank, outside of the EU was slow to process the return of the monies. When the Provider confirmed that the funds were being returned, it stated that *“there may be some fees in relation to the exchange rates and transfer of funds”*. The Complainant says he expected there may be some differentiation between the amount transferred and the sum returned due to exchange rates *“possibly €200-€300”*. He goes on to say that the Provider did not give any indication of what exchange rates or fees would be applied to the refund amount.

The funds were received back to the Complainant’s business account on **16th April 2020**.

The Complainant says he was shocked to see €370,564.99 lodged, which was **€38,601.01** *“less than was sent out”*. He wrote to the Provider on **17th April 2020**, seeking information on the exchange rates used and the fees applied. The Complainant states that the Provider’s response letter of **12th May 2020** shows little change in the exchange rates between the receiving currency and the Euro at the time of the transactions. He also says that the Provider claims that it was *“not aware and had never been made aware of the exchange rates being applied”*.

The Complainant noted a notification change to the Provider’s website in **May 2020**, in how foreign exchange payments, going forward, will be made using different authorisation requirements. *“It appears that [the Provider] is aware of the duty to provide further security for foreign exchange payments”*.

The Complainant says that the Provider failed in its duty to provide details of the likely costs before the transfer took place. He also says that the Provider *“is aware of the duty to provide further security for foreign exchange payments”*. The Complainant says it is hard to comprehend that the deduction of €38,601.01 is *“just a difference in the exchange rate and fees”*. This is a significant sum of monies which the Complainant’s business is now at a loss of.

The Provider’s Case

The Provider’s position is that within a minute of the Complainant’s instruction to transfer the funds on **20 March 2020**, the payment completed and the funds left the Provider.

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The Provider says that on **1 April 2020**, it received a response from a named bank situated outside the EU confirming that it would return the payment, once it had received confirmation that the Complainant was aware that there would be a foreign exchange loss.

The Provider says that on **16 April 2020**, €370,564.99 was returned to the Complainant's business account, leaving him at a loss of €38,601.01.

The Provider says that on 17 April 2020, it arranged for its International Payments Team to contact the beneficiary bank for a full breakdown of fees and any foreign exchange rates applied to the transaction. The Provider says that it those details on **April 23rd 2020** and these were then forwarded to the Complainant. The Provider says it was not made aware of these margins before April 23rd, 2020.

The recipient bank confirmed in that regard as follows:-

“€409,153.5 had been converted to United Arab Emirates Dirham at a rate of 3.797863 and when the recipient bank returned the payment it converted AED 1,553,882.69 to Euro, using a rate of 4.192748.”

When the Provider wrote to the Complainant on 12 May 2020, it noted that this explanation accounted for a difference of €38,541.51 and it was still awaiting a breakdown of the remaining €60.50 which had not been accounted for. It explained that in its opinion, this was likely to have been made up of other charges applied by either the beneficiary bank or the intermediary bank. The Provider also confirmed at that time that no additional charges had been applied by the Provider to the transaction, apart from a fee of €15 charged at the outset.

The Provider also states that *“recall requests are executed on a best effort basis”* and there is never a guarantee that funds can be recovered, once they have left the account held with the Provider.

In its response to this office, the Provider acknowledged that *“inconsistent information was given to the Complainant's staff member during phone calls ... in relation to the expected timeframe for receipt of funds should a recall be successful”* and it offered a gesture of goodwill in the amount of €1,000 *“in full and final settlement of the dispute”*.

The Complaint for Adjudication

The complaint is that the Provider:

1. Failed to implement usual security verifications, before it transferred the sum of €409,166 to an international bank account on 20th March 2020;

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2. Failed to adequately advise the Complainant what exchange rates or fees would be applied to the transferred funds during the refund process, or clarify the €38,601.01 decrease in the sum returned.

The Complainant wants the Provider to pay him compensation of **€38,601.01**.

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 **29 March 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.

I note that this complaint arises from an inadvertent international transfer by the Complainant of a much larger amount of money than he had intended to transfer. Owing to the Complainant's error, when inputting the details into the Provider's online platform on 20 March 2020, the amount of €409,166 was transferred rather than €2,000. Although there is suggestion in the documentation that the amount intended to be transferred was €4,091.66, the initial explanation provided on the day in question by the Complainant, referred to €2,000.

The first aspect of the Complainant's complaint is that this transfer should not have been allowed to process, and that the Provider should have had some sort of security measures in place, to ensure that the transaction was queried. In response, the Provider points out that the transaction would have been queried if it had been to a new beneficiary, but the beneficiary in question was an individual to whom the Complainant had twice previously made transfers.

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The Provider highlights (it has provided screenshots supporting this) that its platform provides an initial page for the transfer sum to be keyed, followed by a second page for review and confirmation (characterised as a safety feature) which the Complainant in this instance will have navigated.

The Provider also points out that it expressly invited the Complainant, prior to the incident in question, to adopt 'Dual User Authorisation' which would have required a second individual within the Complainant's business to sanction any transfer, but the Complainant declined this invitation.

I do not accept that the Provider can be held responsible for what was clearly an unfortunate error on the part of the Complainant himself. An incorrect figure was keyed by the Complainant, and that incorrect figure was subsequently sanctioned by the Complainant on the review and confirm page, before the transfer could proceed. The error made clearly lies with the Complainant, and I can identify no grounds on which it would be reasonable to come to a decision that the provider acted wrongfully in this aspect of the complaint.

In terms of transaction itself, it is important to note that the transfer was executed in Euro currency (from a Euro account) to an account held in a non-EU country. Consequently, the outgoing transfer did not incorporate any application of international exchange rates. Once the error was apprehended (13 minutes after the transaction had been authorised but 12 minutes after the "*the payment completed and left [the Provider]*") the Complainant contacted the Provider seeking to stop the transfer, only to be told that it had already been executed. Thereafter, the Complainant was advised that the Provider could seek to 'recall' the transfer, or alternatively he could contact the receiver with a view to requesting the voluntary return of the funds. The latter option was encouraged, if viable, in circumstances where the 'recall' option operates on a 'best efforts' only basis, and in circumstances where the recall option can take some time.

The Complainant duly made enquiries with the receiver, who I am pleased to note was satisfied to return the payment however, owing to her daily online transfer limit, the return of the funds would require 16 separate transfers over multiple days, and this was the only option for transferring the funds because the receiver's bank was not physically open due to COVID-19 restrictions. Accordingly, the recall process was then preferred, but this process took several days.

I note that during a phone call on 1 April 2020, the possibility of a reduced figure being returned owing to currency fluctuation, was flagged by the Provider to the Complainant:

Provider: *"from what I can read on this side it's saying that the beneficiary bank have come back to us to say they've gotten debit authority from the beneficiary and they are just wanting to confirm about if they're transferring it back in Euros or in that the currency in their accounts and obviously if they are transferring it back in Euros that there will be an exchange rate loss, so..."*

Complainant: *"yeah, no we're fine. We're fine to..."*

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Provider: *“you're aware of that?”*

Complainant: *“yeah”*

...

Provider: *“yeah, they're basically they're just going to confirm back to the beneficiary bank that you are aware that there will be an exchange rate loss, then they're going to debit that person and then the money is going to come back into your account as soon as possible, so hopefully it should be over the next day or two by the time everything comes back.”*

Complainant: *“perfect”*

The Complainant, in its complaint form, explains that, though he was aware of the risk of some loss due to currency fluctuation, he thought the sum might be *“possibly €200-€300”*. The essence of the Complainant's complaint relates to the fact that the real figure ultimately proved to be much more significant, however the evidence indicates, and it appears to be accepted, that the Complainant never queried the matter further or sought more precise details. In fact, the money 'lost' due to currency fluctuation and/or fees applied by the receiving bank amounted to **€38,601.01**. The Complainant complains that the Provider failed to advise it on the exchange rates or fees that would be applied to the transferred funds, during the refund process.

The difficulty which arises for the Complainant, is that this information was not within the knowledge of the Provider. The Complainant transferred the funds in Euro into the receiver's account where they were exchanged into the local currency. The Provider could have had no knowledge of the exchange rate applied at that time, by the foreign bank. When the recall came to be effected almost a month later, exchange rates had changed, and unfortunately the value of local currency that had been credited to the receiver's account arising from the Complainant's transfer, was no longer capable of buying a similar amount of Euro. The exchange rate that was applied (both on receipt of the funds and on return of the funds) was applied by the receiving bank. It is not the case, as suggested in the Complainant's letter to this office of 25 May 2020, that the Provider was aware *“of the exchange rates ... applying”*; the exchange rate was not applied by the Provider. This was instead applied by the foreign bank. The Provider points out that it had no advance notice of the precise figure to be returned, until the recall had already taken place. This is unsurprising given that the return transaction was a transaction entirely within the control of the receiver and the receiver's bank.

I have every sympathy for the Complainant given the dramatic extent of the loss and indeed it was not at all surprising that he pursued the matter with the Provider by way of letter of complaint of 17 April 2020. In its Final Response Letter of 12 May 2020, the Provider set out a calculation based on the exchange rates employed by the receiving bank (as belatedly

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notified to the Provider by the receiving bank on 23 April 2020 following a request made by the Provider) and this accounted for the vast majority of the loss (€38,541.51). In the same letter, the Provider confirmed that it had charged a fee of €15 only, in respect of the entire transaction, and that related to the initial transfer request.

Ultimately this is a matter where a foreign bank applied a significant exchange rate in giving effect to the Complainant's request for a transfer recall through the Provider. The Complainant has undoubtedly suffered a significant loss, but I do not accept that the Provider can be held responsible for this loss. It would appear that the same or similar loss would have been suffered by the Complainant, regardless of any action the Provider might have taken. In light of the entirety of the foregoing, and in the absence of evidence of wrongdoing by the Provider, or conduct coming 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 this complaint.

Finally, I might comment upon the "*gesture of goodwill*" in the amount of €1,000 offered by the Provider in its response to this Office in recognition of the fact that "*inconsistent information was given to the Complainant's staff member during phone calls ... in relation to the expected timeframe for receipt of funds should a recall be successful*". This relates to the fact that the Complainant was on one occasion advised that the process would take 10 working days, only later to be advised that 15 working days would be required. This did not form part of the Complainant's complaint to this Office as he was, understandably, more concerned with his exchange rate loss, but this offer is one which the Complainant may wish to consider accepting and, in that event, he should make direct contact with the Provider with a view to making arrangements for the transfer of funds.

On the basis of the evidence before me however, 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)

22 April 2022

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PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.