An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2022-0160
Sector:	Banking
Product / Service:	Business Bank account
Conduct(s) complained of:	Handling of fraudulent transactions Delayed or inadequate communication Dissatisfaction with customer service
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint is made by a private company limited by shares, represented by its two directors.

The Complainant Company's Case

In **April 2020**, the Complainant Company intended to perform a transfer of money to a third-party supplier in the Netherlands. The Complainant's director accessed the Provider's online platform to set up the third-party supplier as a new payee. The Complainant's director submits that they set up *"this new supplier with the exact company name and address on each invoice and that is registered* [with the Dutch authorities]*"*. The Complainant proceeded to make three payments to the third-party supplier, totaling **€25,584.00**.

In a submission to this Office, the Complainant's director outlines that these payments were as follows:

> *"20th April 4784.00 euros*
> *22nd April 4784.00 euros*
> *24th April 16016 euros"*

The Complainant's director submits that, on Friday **1 May 2020**, she phoned the Provider's branch to express her concern as to the status of the transfers made in **April 2020**, as the third-party supplier had ceased responding to communications, and no goods had been received by the Complainant in exchange for the money transferred. The Complainant's director asserts that the Provider's staff member informed her that she *"would have to speak to the* [online business team]" and that this team would not be contactable until Tuesday **5 May 2020** due to its opening hours.

The Complainant's director submits that from **5 May 2020** onwards she was in near daily communication with the Provider, noting *"it was I who called each time as* [the Provider], *its* [business team] *or* [the Provider's] *branch, never bother* (sic) *once to call me"*.

The Complainant's director discussed her concerns in relation to the transfers, with the Provider's online business team on **5 May 2020**, and the Provider then issued a recall message to the beneficiary bank in relation to the transfers. Thereafter the Provider received a response from the beneficiary bank confirming *"no funds remained to be returned"*.

A customer complaint was made to the Provider on or around **27 May 2020** when the Complainant stated that the Provider *"completely ignored the name of the company and took our money and transferred it to a different company name. This is completely* [the Provider's] *fault to take our money and give it to somebody who we did not ask you to give it to".*

The Complainant furnished further submissions on **14 May 2021** when it stated that the Provider did not provide *"the most important phone calls"* when submitting evidence, namely the calls which took place between the Complainant's director and the Provider's managers, by mobile phone.

The Complainant made further submissions on **2 September 2021** stating that by not providing the calls with the branch managers, the Provider *"basically suit themselves…of course the ones that are recorded are the ones they need only to help them"*. The Complainant states that it does *"minimum 95%"* of its calls through mobile with the Provider.

The Complainant wants to be *"reimbursed for the money that was not given to the correct company that we asked to pay"*.

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The Provider's Case

The Provider responded to the Complainant's complaint in a Final Response Letter dated **12 June 2020**. In its response, the Provider says that the Complainant Company authorised the third-party supplier as a payee on the Complainant's online banking profile. The Provider states that the Complainant's director authorised each payment to the payee through the online payment process on Monday **20 April 2020**, Wednesday **22 April 2020** and Friday **24 April 2020**.

The Provider states that these payments were SEPA payments and the IBAN and SWIFT/BIC address were needed to make these payments. The Provider states that under the SEPA Credit Transfer Scheme Rulebook the beneficiary bank receives the SEPA Credit Transfer from the Originator Bank and credits the account of the beneficiary identified by the IBAN in the credit transfer instruction, as the unique identifier, provided that applicable regulations in relation to money laundering and terrorist financing have been complied with.

The Provider states that *"it is the IBAN and Swift address used to identify the payee bank account. The* [Provider] *is not required to check the associated beneficiary name"*.

The Provider relies on page 1 of its **Business Online Conditions of Use** in this regard. The Provider states that it is *"required to process a transaction as authorised by the customer. The* [Provider] *is not obliged to verify or confirm any of the account details as recorded by the Payer. The* [Provider] *does not cross reference persons' information provided with bank account detail"*.

The Provider says that it also relies upon page 6 of the **Business Online Conditions of Use** which states that the Provider *"shall have no liability for the non-execution or defective execution of the payment order to the Account"* as well as page 8 of the **Business Online Conditions of Use** which states that the Provider will rely upon BIC & IBAN or Sort Code & Account Number and *"it is not obliged to verify or confirm any of these details"*.

The Provider submits that it processed these payments in accordance with the Complainant's Director's instructions and it states that *"the funds were sent to the payee bank with the instruction to apply the payments to IBAN ending* [redacted]*"*.

The Provider offers its sympathies to the Complainant Company, that it had been a victim of fraud, and highlights that the Provider had *"warning notices in place on Business Online to alert our customers of the importance of contacting a known contact to validate any payee details"*.

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The Provider states that when the Complainant's director rang the Business Online Helpdesk on **5 May 2020** to report that it believed that the three transactions were fraudulent, the Provider's representative obtained some details from the Complainant before the call dropped. The Provider states that it rang the Complainant's director back *"straight away"* and obtained further details which led the representative to place the phone call on hold and initiate a formal request for a recall of the three payments made via the SEPA Payment Scheme.

The Provider stated that for each of the payments made, the Provider *"received a response from the beneficiary bank advising no funds remained to be returned"*. The Provider states that the *"required internal bank processes were followed in relation to raising the recall via the SEPA payment scheme"*.

The Provider also states that it advised the Complainant to delete the third party supplier as a payee, and to contact the Gardaí in relation to the matter. On **5 May 2020**, the Provider also sent an email to the Complainant which included *"information regarding fraud prevention and actions that can be undertaken by an organization to reduce the possibility of fraud"*.

The Provider made further submissions to this Office on **9 April 2021**. Much of this submission repeats the content of the Final Response Letter as outlined above. The Provider also states that it does *"not hold any evidence"* of a conversation with the Complainant's director on **1 May 2020** at 4.55pm when the Complainant's director enquired as to where the money, the subject of this complaint, had been transferred to. The Provider does state that one of its team spoke with the Complainant's director on **1 May 2020** but in relation to a potential fraud in respect of an application for imported letters of credit to Bulgaria.

The Provider has provided a statement in its submissions from the member of its team who spoke to the Complainant. This member of the team states that *"the fraudulent payment was not mentioned in any of the phone calls or emails that evening"* and he states that the Complainant sent him an email on the evening of **1 May 2020** thanking him *"very much"* for his help in dealing with the issue relating to the imported letters of credit to Bulgaria.

The Provider reiterates in its submissions dated **9 April 2021** that the account to which the monies were transferred, was the account, details of which were supplied by the Complainant *"through the setup of the beneficiary on 20 April 2020"*. The Provider states that it was a matter *"solely for the Complainant to ensure that the IBAN and BIC were correct for the relevant beneficiary to whom the Complainant wished to transfer funds"*.

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The Provider states that it *"highly recommends contacting the intended beneficiary on a secure phone line that the customer knows to be verified as belonging to the beneficiary"* and to that end *"the Provider includes a caution statement during the process of a customer adding a beneficiary to its Business-On-line profile"* which cautions to verify any new payees through calling of a known contact directly. The Provider also states that it requires *"the customer to actively indicate yes or no to the question 'Have you verified the changed payee details with a known contact'?"*.

Furthermore, the Provider points to its security hub on its website which gives descriptions of various frauds/scams that the Provider is aware of at any given time, and gives tips on how to prevent customers from falling victim to such scams.
The Provider states that it is not aware of the details of the actual company that the Complainant intended to transfer funds to. However, the Provider states that it is a *"logical conclusion"* that the Complainant had been provided with an incorrect IBAN and BIC for the purposes of fraud, by someone who held themselves out to be a representative of the entity that the Complainant wished to transfer funds to.

The Provider states that it *"is satisfied that it provided information to the Complainant, through its Director, in as timely a manner as possible"*. The Provider states that it advised the Complainant's director on **5 May 2020** (and again on **7 May 2020**) that it would update the director when the outcome of the beneficiary bank's investigation had concluded. The Provider states that it also advised the Complainant's director that this could take some time. The Provider states that it was contacted by the beneficiary bank on **19 May 2020** with the results of the investigation and that these results were communicated with the Complainant's director *"very shortly"* after this.

The Provider states that despite having been clearly advised of the investigative process, the Complainant's director *"contacted the branch on a nearly daily basis"*. The Provider submits that *"it is not reasonable, having been advised that an update may take some time to be forthcoming, to take issue with there not being an update on a daily basis from the* [Provider's] *staff"*. The Provider states that it is *"not obliged to communicate the results of an investigation…via any particular medium"*. It states that it *"is satisfied that the one recorded request for written communication from the Complainant on **25 May 2020** was acceded to by way of the logging of a complaint, and subsequent issuance of a Final Response Letter in compliance with the Provider's obligations"*.

The Provider states that it is satisfied that it has complied with the provisions contained within the European Union (Payment Services) Regulations 2018, in relation to the transfers giving rise to the complaint and in relation to the Provider's decision to decline the Complainant Company's request for a refund of the value of the transfers.

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The Provider made further submissions dated **1 September 2021** when it stated that *"mobile telephone calls between customers and* [Provider's] *staff are not recorded. As such the Provider is unable to provide to the FSPO calls"* between the Complainant's director and the Provider's managers between **April** and **July 2020**.

The Complaint for Adjudication

The complaint is that the Provider failed to correctly process money transfer instructions in **April 2020** and provided poor communication and customer service to the Complainant's directors thereafter.

The Complainant Company seeks a refund of the funds transferred, totalling **€25,584.00**.

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 **12 April 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.

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The account held by the Complainant Company is a business current account. I note that the parties are in agreement that transfers occurred on **20 April 2020** (€4,784.00), **22 April 2020** (€4,784.00) and **24 April 2020** (€16,016.00).

I note that to facilitate the transfer of funds, the Complainant entered the IBAN ending *1965 and the BIC ending *NL2A when requesting the Provider to make the transfers. It also appears very clear from the evidence that the entity the Complainant believed to be linked to this IBAN and BIC was not in fact the entity that is attached to that IBAN and BIC.

I therefore accept that the suggestion by the Provider, is very likely to be a true reflection of how this issue came about, in that it sems that the Complainant had been supplied with an incorrect IBAN and BIC for the purposes of fraud, by someone who held themselves out to be a representative of the third party supplier that the Complainant wished to transfer funds to.

The Provider's **Business Online Conditions of Use** are relevant when considering the steps the Provider should take to identify the intended recipient of a bank transfer. At page 1 of its Business Online Conditions of Use it is stated that:

> *"The use of the IBAN and the payee bank's SWIFT address/BIC code ensures the correct identification of the payee's bank account"*.

Page 2 of the Business Online Conditions of Use, at paragraph 19 states that the customer:

> *"irrevocably authorizes the* [Provider] *to act upon all instructions received through the services which have been or appear to the* [Provider] *to have been transmitted using the security instrument without taking any further steps to authenticate such instructions. The* [Provider] *shall not be required to verify or check the instructions given to the* [Provider] *through use of the services have been given and remain in force in respect of any debits or other instructions to be carried out."*

Page 3 of the Business Online Conditions of Use (incorrectly noted as page 6 by the Provider in its Final Response Letter) at paragraph 21 states that the:

> *"Customer shall be responsible for ensuring the correctness and accuracy of all payment instructions and the* [Provider] *will have no obligation to check whether the name of the beneficiary or other information provided with the payment instruction is correct. Where an account number, sort code, IBAN or BIC is incorrectly stated on a payment instruction, the* [Provider] *shall have no liability for the non-execution or defective execution of the payment order to the Account".*

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Page 3 at paragraph 22(f) states that:

> *"where any transaction is effected by the* [Provider] *in accordance with any unique identifier (e.g. Sort Code, Account Number, BIC or IBAN) as supplied by the Customer but where the unique identifier supplied is incorrect the* [Provider] *shall have no liability to the Customer in respect of such transaction. The* [Provider] *will however make all reasonable efforts to recover the funds involved in such a transaction."*
>
> [my underlining for emphasis]

The Provider also seeks to rely on a provision entitled *"Liability for Authorised Transactions"* at page 8 of its **Business Online Conditions of Use** but this is not contained within the version of the **Business Online Conditions of Use** that have been supplied in evidence to this Office, which only extends to a 5 page document.

The Provider's Business Customers Terms and Conditions are also relevant to this complaint. I note that Provision 9.1 states that the customer:

> *"shall be responsible for ensuring that instructions from you or from a cardholder to pay money into and out of the account are correct and accurate. We will not check whether any of this information is correct. For example, we do not check the name of a payee or account given to us with payment instruction"*.
>
> [my underlining for emphasis]

Taking these conditions into account, I accept that the Complainant was on clear notice that the Provider would rely upon an IBAN and BIC when transferring money, and it would not verify the payee transaction any further than those identifying features.

The Payment Services Regulations 2018 are also relevant in this regard. Regulation 88(1) states that a

> *"payment transaction is authorised by a payer only where the payer has given consent to execute the payment transaction"*. Regulation 96(1) states that *"where a payment service user denies having authorised an executed payment transaction or claims that the payment transaction was not correctly executed, the burden shall be on the payment service provider concerned to prove that the payment transaction was authenticated, accurately recorded, entered in the accounts and not affected by a technical breakdown or some other deficiency of the service provided by the payment service provider."*

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It is clear from the submissions of both parties that the Complainant authorised/authenticated the three payments in by adding the recipient as a payee, entering a secure password for its bank account and entering the IBAN and BIC for the payee. It is also clear from the Provider's evidence that the payment transaction was accurately recorded both in the value and in the beneficiary details as supplied by the Complainant to the Provider.

I accept the Provider's evidence that there was no technical breakdown/deficiency of service experienced by the Provider during the course of **20-24 April 2020**. Therefore, I accept that Regulations 88(1) and 96(1) have been complied with by the Provider.

Also of relevance is Regulation 111 which deals with incorrect unique identifiers and states:

> *"(1) Where a payment order is executed in accordance with a unique identifier, the payment order shall be deemed to have been executed correctly where payment is made to the payee specified by the unique identifier*
>
> *(2) Where the unique identifier provided by a payment service user is not the unique identifier of the person to whom payment was intended to be made, the payment service provider concerned shall not be liable under Regulation 112 for non-execution or defective execution of the payment transaction concerned.*
>
> *(3) Where the unique identifier provided by a payment service user is not the unique identifier of the person to whom payment was intended to be made— (a) the payer's payment service provider shall make reasonable efforts to recover the funds involved in the payment transaction, and (b) the payee's payment service provider shall cooperate in those efforts by communicating to the payer's payment service provider all relevant information for the collection of funds."*
>
> [my underlining for emphasis]

In this circumstance, I note that the Provider complied with Regulation 111(1) as the payment order was executed in accordance with the IBAN and BIC supplied to it by the Complainant Company and therefore, further to regulation 111(2) the Provider is not liable for non-execution/defective execution.

I also note that the Provider raised the issue with the beneficiary bank which conducted an investigation and that the Provider also attempted to recall the payment, in line with Regulation 111(3).

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In terms of the customer service provided by the Provider, having considered the evidence of the Complainant and also the statement of the Provider's representative as to the conversation which took place on **1 May 2020**, I accept that the issue discussed on **1 May 2020** between the parties was in respect of a different potential fraud, unrelated to the transfers which have given rise to this complaint.

I also note that the Provider attempted to recall the payment, as soon as it became aware of the potential fraud on **5 May 2020** and it advised the Complainant's director on **5 May 2020** (and again on **7 May 2020**) that it would update the Complainant's director when the outcome of the investigation by the beneficiary bank, when it had concluded.

I note that the Provider was contacted by the beneficiary bank on **19 May 2020** with the results of the investigation and that these results were communicated with the Complainant's director *"very shortly"* after this. Understandably, this was a very anxious and stressful 12 days of waiting for the Complainant and its directors, however, based on the evidence before me I do not accept that the Provider acted in breach of the ***Consumer Protection Code 2012*** *(as amended)* or that it provided poor customer service in the way in which it communicated with the Complainant. In respect of the missing phone calls between the Provider's branch managers and the Complainant's director, while these may have assisted in addressing the customer service issue, I note that there is no obligation on the Provider to record telephone conversations of this nature.

It is unfortunate for the Complainant Company that it proceeded to transfer funds without firstly verifying the IBAN details to be used to facilitate the transfer. Given that the IBAN is the "*unique identifier*" for the purpose of making a SEPA transfer, regrettably, once it authorised the transfer of those funds to the account owner which was not in fact the intended recipient, the Provider could merely seek to assist the Complainant Company by seeking to recall the funds on a "*best efforts*" basis and I note that it moved quickly to do that. Unfortunately however, in this instance, at that stage the monies were no longer available and the subsequent investigation by the recipient bank did not prove to be of benefit to the Complainant Company.

Accordingly, whilst I have every sympathy for the Complainant Company in circumstances where such a significant loss has been incurred, I am satisfied that there is no wrongdoing by the Provider in this instance and, accordingly, there is no basis upon which it would be appropriate to uphold this complaint.

Therefore, on the basis of the foregoing, this complaint is not upheld.

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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)

9 May 2022

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.