



<b><u>Decision Ref:</u></b>	2022-0166
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Money Transfer (between accounts/between banks/3rd
<b><u>Conduct(s) complained of:</u></b>	Failure to process instructions in a timely manner Delayed or inadequate communication Dissatisfaction with customer service
<b><u>Outcome:</u></b>	Partially upheld

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

This complaint concerns the Complainant's bank account held with the Provider.

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

The Complainant submits that on **29 May 2020**, he transferred €9,100 to a foreign bank account and that on **8 June 2020** he requested the Provider to recall the funds.

The Complainant submits that he has been in contact with the Provider on several occasions to have the funds recalled and placed back into his account and he submits that the Provider made many errors in its attempts to recall the funds.

The Complainant asserts that he requested the Provider to supply him with proof of transfer pertaining to the funds in question, and that the Provider responded by supplying him with only one line of the bank transfer as proof of payment which he contends is not sufficient information. The Complainant states that this one line is not proof that the transfer took place and that the Provider should be able to send him details of the bank transfer within a full A4 document and not one line. The Complainant contends that the Provider's lack of proof pertaining to the bank transfer, is evidence that the transfer of funds never occurred

and that regardless the funds have been taken from the bank account in question and cannot be traced.

The Complainant submits that the Provider has failed to assist him to resolve this matter and to have the funds returned to his bank account. The Complainant states that when he first brought the matter to the attention of the Provider, including during the first recall request process, the Provider failed to inform him that it is unable to guarantee that the funds would be returned to his bank account. The Complainant states that this information was only supplied to him by the Provider upon the second recall request and he asserts that the Provider acted very unprofessionally in that regard.

The Complainant has rejected the Provider's goodwill offer of €250.00 (two hundred and fifty euro) as a full and final settlement to this complaint. The Complainant states that he was being pushed by the Provider to sign this goodwill gesture offer. The Complainant submits that since early **June 2020** he has suffered from loss of sleep, stress and that his health has been negatively affected as a result of this matter.

The Complainant wants the Provider to return €9,100.00 (nine thousand one hundred euro) to his bank account and he is seeking monetary compensation in the sum of €2,000,000.00 (two million Euro) from the Provider for the inconvenience and loss that this matter has caused him.

### **The Provider's Case**

The Provider issued a Final Response Letter to the Complainant on **7 August 2020** and within this correspondence it submitted that it processed three recalls of payment and that no response had been received to date by the Provider, from the beneficiary bank.

The Provider acknowledges that the Complainant first requested the recall on **8 June 2020** over the phone ,but its representative made a "*clerical error*" and "*requested incorrectly the recall*". The Provider states that the recall was then requested by the Complainant on **23 June 2020** and it acknowledges that this recall was not actioned until **8 July 2020**, due to incorrect information processed by the Provider's representative when making the recall request. The Provider states that it processed a further recall request on **9 July 2020** as requested by the Complainant on **6 July 2020** and that it processed a third recall request on **20 July 2020**, as requested by the Complainant on **15 July 2020**.

The Provider states that it requested a recall of the payment in question on behalf of the Complainant and that this action was done on a "*best effort*" basis. The Provider asserts that regardless of its best efforts it is unable to guarantee the return of the funds. The Provider asserts that it is the discretion of the beneficiary bank (to which the funds were

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initially sent) as to whether it will apply the payment in accordance with the details originally provided or whether it will return the recalled funds to the Provider.

The Provider included with its Final Response Letter, a further letter dated **22 July 2020**, which it sent to the Complainant in response to his request to trace the payment of €9,100.00 and which contained *“the transaction file showing the payment sent from the [Provider] on your behalf to the beneficiary bank on 01/06/20”*. The Provider submits that this *“is evidence that the transfer was processed by [the Provider]”* through the Complainant’s online banking account and that if it is the case that the funds have not been returned to the Complainant as requested, then the funds still remain with the beneficiary bank.

The Provider submits that it is unable to comment or investigate further the reason for the non-receipt of funds by the payee, and the reasons why the funds have not yet been returned. The Provider also refers to paragraphs 4, 6 and 13 of its phone and digital banking terms and conditions in support of its position.

The Provider submitted in its Final Response Letter, that it made a last attempt to contact the beneficiary bank through an intermediary bank on **28 July 2020** and that, in the event that no response was received after 7 business days following this request, then it would deem the matter unsuccessful in all attempts to retrieve the funds and that it would close the matter. The Provider also recommended that the Complainant contact the beneficiary bank directly to resolve the matter and supply the beneficiary bank with proof of the payment.

The Provider stated in its Final Response Letter that it was upholding the Complainant’s complaint with regard to the delay in having two recalls processed, and the delay in receiving a response to his complaint, however, it was not upholding the element of the complaint regarding the non-return of funds as the Provider was *“satisfied that it acted appropriately in accordance with our terms and conditions and that we made our best efforts to retrieve the funds on your behalf”*. The Provider offered the Complainant €250 as a gesture of goodwill and in full and final settlement of this complaint and in recognition of its delay in responding to the Complainant’s complaint and in processing the two recall requests.

The Provider wrote to the Complainant on **13 August 2020** and informed him that the funds were successfully sent by it and that it had not received any queries from the foreign bank regarding the receipt of payment.

The Provider made submissions to this Office on **26 March 2021**. The Provider further explained the mistake made by its representative on **8 June 2020** when the recall request was first made. The Provider states that SEPA fund recalls are processed via a central unit with the Provider but that when the Provider’s agent requested the relevant recall, the

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request was sent to the Complainant's branch rather than to this central unit, resulting in the recall not being properly processed.

The Provider states that while it is not its policy to process any more than one SEPA recall request in relation to any particular transaction, due to the particular circumstances of this case, a policy exception was made and two further SEPA recalls were made. Furthermore, the Provider states that it *"broke with protocol"* and issued a recall request to the beneficiary bank via the SWIFT system on **28 July 2020** in a last-ditch attempt to recall the relevant funds. The Provider states that this did not garner any response.

The Provider states that the intended beneficiary of the transfer provided incorrect bank details to the Complainant and *"rather than the funds being transferred to the intended beneficiary, they were in fact transferred to a third party...linked with the incorrect IBAN, which said IBAN was incorrectly input by the Complainant"*. The Provider submits that the *"sole reason for the Complainant's loss was his error in inputting incorrect bank details and despite the errors on the Provider's part in processing his recall requests, these errors represent customer service failings and are in no way linked to the relevant loss"*.

In these **26 May 2021** submissions, the Provider refers to clauses 6.1,6.4, 6.10, 12.3 12.8 and 12.9 of its current account terms and conditions and clauses 4.3, 4.9, 6.1, 6.2, 6.4 and 13.5 of its online banking terms and conditions as evidence that it is not liable for the loss of the money transferred. The Provider states that its records demonstrate that the fund transfer was *"processed and executed in exact accordance with the Complainant's instruction"*. The Provider also states that *"contrary to what has been asserted by the Complainant"*, information concerning the inability of the Provider to guarantee that funds would be returned to the Complainant's bank account was expressly provided to the Complainant during the course of the first **8 June 2020** phone call. The Provider states that the complaint was lodged on **29 June 2020**, and it issued a letter to the Complainant on **20 July 2020**, 15 business days after the lodgment of the complaint, informing the Complainant that it needed further time to investigate the complaint. Thereafter the Provider states that it issued a Final Response Letter on **7 August 2020**, 33 business days after the lodgment of the complaint.

The Provider acknowledges that it made customer service errors in its *"failure to properly process the Complainant's recall request on 8 June 2020"*, in its *"delay in processing his second recall request on 23 June 2020"* and in that its agents at certain points advised the Complainant that *"the general timeframe for the receipt of a response to a SEPA recall request is 10 business days"* as opposed to 15 business days. In addressing this, when the Provider sent its formal response to the investigation of this Office, it increased its goodwill offer to **€1,000.00** with a view to resolving the complaint, but this was not accepted by the Complainant.

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### The Complaint for Adjudication

The first complaint is that the Provider mal-administered the Complainant's payment recall request insofar as it delayed in processing the recall requests.

The second complaint is that the Provider wrongfully failed to return the €9,100.00 transferred from the Complainant's bank 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 **20 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.

I note that this complaint concerns a SEPA transfer instructed by the Complainant via the Provider's online banking system. The transfer in the sum of **€9,100.00**, was instructed on Friday **29 May 2020** and was executed on Monday **1 June 2020**. I accept the payment record submitted by the Provider as evidence that this payment was executed and, in this regard, I note clause 12.3 of the current account terms and conditions which states that "*in the absence of obvious error*", records of transactions kept on paper "*are evidence of dealings*" in relation to a customer account.

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In respect of the first complaint, I accept and indeed the Provider itself accepts, that it failed to properly process the Complainant's first recall request on **8 June 2020** and that it delayed in processing the second recall request on **23 June 2020**. In my opinion, the Provider breached provision 2.2 of the **Consumer Protection Code 2012 (as amended)** ('CPC') in this regard by failing to *"act with due skill, care and diligence in the best interests of its customers"*.

In respect of the second complaint, in my opinion, the terms and conditions of the Complainant's current account and the terms and conditions of the Complainant's online banking are relevant.

In respect of the terms and conditions of the current account, clause 6.1 states that the Complainant is *"responsible for ensuring that any instruction to pay money in and of your account is correct and accurate"*. Clause 6.2 states that the Complainant agrees that when the Provider processes any payment, it will rely upon the BIC & IBAN or the Sort code & Account number of the recipient and *"if these details are not stated correctly"* by the Complainant, then *"the payment will be processed in accordance with these incorrect details and we are not liable to you or anyone else if that results in any loss or expense"*.

Clause 6.10 states that the Provider is not responsible for payment into a recipient account, which is a matter for the financial institution where the account is held. Clause 12.8 states that the Provider *"will not be responsible for any losses caused if we make a payment which was initiated on your behalf...that contained an incorrect Account Number and Sort Code (or IBAN and BIC) supplied by you...We will make every reasonable effort to get back any money involved in the transaction for you"*. Clause 12.9 states that the Provider will not be responsible *"for any loss caused if we can show that payment was made by us and received by the payer's bank within the time set out in these terms and conditions"*.

In respect of the terms and conditions of the online banking, clause 6.1 states that the Complainant permits the Provider to *"act on any instruction you give us"*. Clause 6.2 states that *"once an instruction is received with the correct security credentials, you agree that we can act on it"*. Clause 6.4 states that the Complainant can ask the Provider *"to cancel or amend any instruction but we may not be able to do so. We will have no liability to you in respect of any such request to cancel or amend a previously issued instruction where we are unable to do so"*. Clause 13.5 states that the Provider *"will not be responsible for any losses caused if we make a payment in accordance with an instruction and that instruction contained an incorrect IBAN or BIC"*.

I note that 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.”*

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.”*

Having considered the audio evidence submitted by the Provider, I also note that the Provider’s representative stated to the Complainant that the recall operated on a *“best effort basis”* and explicitly stated that it could not guarantee that the money would be returned. This was indeed correct information.

I note in that regard that during the telephone call of 8 June 2020, at the time when the Complainant first requested a recall of the funds, he advised *“I think I filled in this incorrectly, so can I-can you-process a refund?”*

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I note that when the Provider's staff member asked if he had checked with the person he sent it to, he replied that "*Eh, no, they haven't, because they gave me wrong information so I filled in [indistinguishable] wrong information...I think the IBAN was incorrect...*".

Bearing in mind all of the foregoing clauses in both sets of terms and conditions, the Payment Services Regulations and the submissions of the parties, I accept that the Complainant authorised/authenticated the payment of €9,100.00 by requesting a transfer to the beneficiary identified by him entering an IBAN and BIC. It is also clear from the Provider's proof of payment 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. Therefore, I accept that the regulations and the terms & conditions have been complied with by the Provider and the Provider is not liable to return the money to the Complainant.

I have accepted that the Provider failed to correctly address the Complainant's first payment recall request which gave rise to a delay in that recall request being promptly processed. Insofar as the second complaint is concerned however, I do not accept that there was any obligation on the Provider to return the sum of €9,100 to the Complainant's bank account. I am satisfied that the Provider implemented the Complainant's instructions to transfer the funds to the IBAN identified and thereafter, once that instruction had been implemented, the only obligation on the Provider was to request a recall on a "best efforts" basis. In those circumstances, I do not accept that the second complaint should be upheld.

In addressing this issue, I note that the first recall request did not proceed expeditiously when the Complainant raised the issue on **8 June 2020**, a week after the funds had been transferred. As a result, it was another 2 weeks before the Complainant sought another recall request. Whilst I accept that it is entirely possible that the first recall request would have been unsuccessful if it had proceeded expeditiously on 8 June 2020, given that the funds had been transferred a full week earlier, nevertheless in my opinion, it certainly reduced the prospect of recovering funds, when the recall request was not progressed by the Provider in the correct manner, as he had requested. In my opinion, the provider's failure to act expeditiously at that time, on 8 June 2020, was unreasonable conduct, within the meaning of **Section 60(2)(b) of the Financial Services and Pensions Ombudsman Act 2017**.

I also note that the Provider raised three separate recall requests with the beneficiary bank and indeed a recall request via the SWIFT system. I accept in that regard that it made every reasonable effort to recover the money on behalf of the Complainant, following its initial error in failing to act expeditiously to arrange a recall.

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It is, however, important to bear in mind that at the time when the funds were transferred the Provider acted in accordance with its obligations and implemented the funds' transfer which the Complainant had authorised. In those circumstances, I take the view that the Complainant's loss was caused primarily by the error in the original IBAN, for which the Provider was not responsible.

Accordingly, taking account of the disappointing response of the Provider at the time when the first recall of funds was requested by the Complainant, and the delay which arose, I consider it appropriate to partially uphold this complaint and to direct the Provider to make the compensatory payment to the Complainant directed below.

### **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld on the grounds prescribed in **Section 60(2)(b)**.
- Pursuant to **Section 60(4)(d) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of **€1,500**, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

**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 May 2022

**PUBLICATION**

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### **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.