



<u>Decision Ref:</u>	2022-0185
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Cheques
<u>Conduct(s) complained of:</u>	Maladministration
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns a payment instruction on a current account.

The Complainant's Case

The Complainant contends that on the **21 January 2019** she transferred €32,000 into her current account as she was buying a new car costing €30,570. The Complainant asserts that she purchased the car from a Garage by writing a cheque that was to be paid by the Provider from her current account.

The Complainant submits that on the **24 January 2019**, while attending a course in Dublin, she received a text from the Provider stating that her account had *“reached [the] specified limit”*. The Complainant states that she was *“surprised”* by this information as she *“knew it could not be right and that there was more in [the] Account than [the] text indicated”*. The Complainant contends that she was unable to pay for her lunch as her card was rejected twice and that a colleague offered to pay for her lunch. The Complainant asserts that this was *“embarrassing”* as she *“did not know this person”* and that she had *“just met her on the course”*.

The Complainant states that upon completion of her course, she walked into the Provider's office and enquired about the text she had received earlier that day. The Complainant contends that she was directed to Customer Services who advised her that a cheque for €39,570 had been debited from her account and that *“there were no funds left in the account”*. The Complainant states that she was *“shocked beyond belief at this”* and that the Customer Services representative informed her that they *“could not do anything”* and advised her to contact the Provider's Online Customer Service via the dedicated telephone in the Provider's office.

The Complainant asserts that, as advised, she used the dedicated telephone in the Provider's office to contact the Provider's Online Customer Service team where she spoke to R., a representative of the Provider, who told her that she *"had lodged a cheque for 39,570 and there were no more funds in the account"*. The Complainant states that she *"explained that [she] did not write any cheque for 39,570 but had written a cheque for 30,570"*. The Complainant further states that the Provider's representative was *"not willing to understand or believe"* her and advised her that it was her *"signature on the cheque"* and that she *"was therefore liable"*. The Complainant contends that the Provider's representative advised her that he *"could not stop the cheque"* and that he would arrange for a copy of the cheque to be sent to her in the post.

The Complainant asserts that subsequent to this telephone conversation held in the Provider's office, an official of the Provider approached her to advise that he had overheard her conversation and that he could arrange for a *"'stop' request on the cheque"*. The Complainant further asserts that *"this was all that could be done by [the Provider]"*.

The Complainant states that following her visit to the Provider's office she:

"...had to ring a friend...and stay in Dublin the night as I had no money and could not use my card as there were no funds in the account. The inconvenience caused to me was staggering."

The Complainant also states that she had to ring the Garage to discuss the payment issues and to ask it if *"the cheque had been altered"*. The Complainant asserts that the Garage was *"not too pleased that [she] may have been suggesting any wrongdoing on their part"*.

The Complainant asserts that the Provider's representative R. telephoned her *"the following Friday"* and informed her that he *"had the cheque in front of him and it was clearly made out for 39,570"*. The Complainant contends that the Provider's representative was *"unwilling to accept that the amount written in words was not 39,570"* and that he was also *"unwilling to accept"* that the cheque had been stopped and had advised the Complainant that *"...there are not enough funds in your account so it will be returned unpaid for the amount of 39,570 and it will be returned unpaid for that reason only"*. The Complainant states that the Provider's representative was *"most unhelpful and unwilling to listen to [her] side of the story"* and that she *"felt frustrated and angry following this telephone call"*.

The Complainant contends that she received a copy of the cheque from the Provider approximately a week later and noted that *"the cheque...reads 30,570 Euro in writing and words"*.

The Provider's Case

The Provider states that the cheque written by the Complainant for €30,570 was lodged by the Garage to its bank and that this provider's clearing department *"proceeded to encode the cheque as €39,570.00"*. This information was then transmitted to the Provider and the Complainant's account was debited €39,570.00 on **24 January 2019**.

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The Provider goes on to state that in this instance *“the payment instruction was inaccurate when [the Provider] received it”* and it refers the Complainant to *“page 16 of [its] ‘Terms & Conditions and Personal & Business Banking Charges’”* which states that:

“You...are responsible for the accuracy of each payment instruction received by us. We are not responsible for any delay or error which arises from incomplete, unclear, inconsistent or mistaken instructions...”

The Provider says that certain items constitute *“essential elements”* of a cheque being; the date (not out of date or post-dated); the bank and branch on which the cheque is drawn; the payee; the amount in figures and words (these must agree); the name of payer and payer’s signature; the sorting code and account number; Government Stamp Duty medallion; and any alterations on the cheque must be authorised by the payer and evidence by the payer’s initials or signature. The Provider says in this regard that the written amount on the face of the cheque is relevant and will continue to be of relevance because it is an essential element of any cheque.

The Provider says that if the amount in words had not been apparent on the face of the cheque, the cheque would have been returned to the beneficiary bank within the time allotted per the inter-bank cheque clearing rules with the reason *“cheque incomplete”*. The Provider says that if the amount written in words differed from the amount written in figures, the cheque would have been returned for the reason *“words and figures differ”*.

The Provider says that, in the event, the cheque in question was returned with the notation *“payment countermanded”* on 24 January 2019 because the Complainant had placed a stop on the cheque. If she had not placed a stop on the cheque, it would have fallen due to be returned with the notation *“refer to drawer”* by close of business on 24 January 2019.

The Provider also says that if the cheque had been paid, rather than returned and, for example, if it had not come to the Complainant’s attention until the following week, the Provider would then have sought to claim the overpayment from the collecting bank and make good the difference to the Complainant.

The Provider asserts that, from its investigation of the complaint, it understands that the *“issue”* left the Complainant *“embarrassed and angry as [she] was without funds on the 24th January”* The Provider contends that it has reviewed the related calls and found that *“the service [the Complainant] received was not to a standard [it] commit[s] to [its] customers”*. The Provider offered *“a gesture of €50 in addition to our apologies”*. In its response to the formal investigation of this Office, the Provider increased this offer to the amount of **€1,500.00** to resolve the complaint.

The Complaint for Adjudication

The complaint is that the Provider maladministered the Complainant's account by:

1. wrongfully placing her in a position where she found herself "*without access to cash to get home*";
2. overcharging her,
3. proffering poor communication and customer service throughout.

The Complainant wants the Provider to help restore her "*confidence in Banks*" and specifically the Provider and compensate her by making a "*generous*" financial offer.

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 **10 May 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

I have been supplied with a copy of the cheque in question and, whereas the figure described in handwritten words is quite clearly "*thirty thousand five hundred & 70 Euro only*", the figure described in digits in the box above the signature is notably less clear. The '0' of the '30' has a distinct tail or stem on the lower right-hand side, such that one could easily be forgiven for reading this number as a '9', particularly as the final digit (the zero after the seven) looks completely different insofar as it is round and has no such tail.

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The Provider has postulated that this is the result of the close proximity of a comma following the first two digits (at the end of the second digit). This indeed seems a highly plausible explanation. Regardless of how it occurred however, it seems to me that an interpretation of the digit as a '9' is in fact a more reasonable interpretation than as '0'. Consequently, solely by reference to the figures described in digits, one could be forgiven for taking the figure to be debited as €39,570.00.

In stating the foregoing, I do not come to any conclusion as to whether the Complainant herself drew the digit (and/or comma) in the manner that appears on the cheque, or whether it was subsequently altered in some fashion. My observations are based only on my review of the document as presented. The observations are relevant however, because they support the Provider's statement that the payee's bank's clearing department encoded the cheque as €39,570.00.

This is significant in circumstances where the Complainant complains, in large part, about the immediate ramifications for her on 24 January 2019, when she was unable to pay for her lunch and was forced to remain in Dublin. Separate from any consideration of the manner in which the Provider subsequently dealt with the matter, I do not accept that the Provider can be responsible for the doubtless embarrassing events of 24 January 2019. This was simply the result of the payee's bank interpreting the cheque as directing payment in the amount of €39,570.00, an interpretation that was reasonable by reference to the digits, though not by reference to the handwritten words. If there was a failure to ensure a correlation between the digits interpreted as €39,570.00 and the number inserted in words on the cheque, such a failing, at this point in time, can only have been by the payee's bank rather than by the Provider. The Provider did not in fact at that point, hold a copy of the cheque in question. Logistically, by the time the cheque itself (or indeed a copy of it) came into the physical possession of the Provider, the money had already been returned to the Complainant's account.

I am conscious in this regard that the Provider's process in ensuring that the Complainant received a text regarding the balance on her account, was of benefit to the Complainant insofar as she was alerted at that time to the issue which had arisen and she was in a position to attend the branch that day and ultimately this gave rise to the countermanding of the payment. I am conscious that the **Bills of Exchange Act 1882** prescribes at **Section 9(2)** that:

"Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable."

In those circumstances, it is possible that the Provider's attention would have been drawn to this particular issue and discrepancy when the cheque came into its possession. Until such time as the Provider received the cheque however, I am satisfied to accept that it was required to rely on the encoding of the cheque payment for which the payee bank was responsible, and which does not appear to have adverted to the apparent discrepancy between the digits and the words on the face of the cheque. For that reason, I do not accept that the provider was in any way responsible for the issue which arose with the Complainant's pending account balance, on 24 January 2019.

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The next matter is the way in which the Provider dealt with the issue upon the Complainant being notified of the problem (by text) and attending in branch.

The Complainant was directed to a phone in the branch and proceeded to have a phone call with an identified member of the Provider's online customer support team. The Complainant asserts that the individual with whom she spoke would not accept that the cheque was made out for the lower figure, and that he advised her that he could not stop the cheque. The Complainant describes this individual as being:

"most unhelpful to the point of being arrogant and was not willing to listen to any of my argument"

I have listened to a recording of this call and I disagree with the Complainant's characterisation of the manner of the Provider's employee when interacting with the Complainant. In my opinion, the Provider's employee maintained a professional comportsment throughout in response to a clearly agitated customer. He explained that the cheque had been presented that very day, and he said (incorrectly) that because it was already presenting on the account, it could not be stopped.

The Complainant was understandably concerned about the loss of significant funds from her account (given the Provider incorrectly stated that cheque couldn't be stopped). Although the tone of the conversation departed from what one might normally expect in a banking enquiry, I take the view that this was largely because the Complainant repeatedly spoke over the Provider's staff member, and some of her comments were less than ideal (eg: *"so I'd be better off then, getting a tin box and putting my money out in the garden"* and *"nothing surprises me darling"*).

I note that when the Provider's staff member offered to see if he could procure a copy of the cheque by email, more quickly than the seven working days that it would normally take, he explained that at that point, he would telephone the Complainant with an update, to which she advised: *"Oh, I'll be back on, don't worry"* and *"I'll be calling higher authorities ..."*

I note that the Complainant had a second call with the same individual on the following day when the individual contacted her having secured (within a short period in the circumstances) a copy of the cheque. The Complainant has stated in respect of this call that the Provider's employee *"was unwilling to accept that the amount written in words was not 39,570 and reiterated that the cheque was indeed made out for 39,570 Euro"*. She says that *"he said he can only see 39 on the cheque and was unwilling to refer to the written amount which all cheques have saying it was irrelevant"*.

The Complainant states that the Provider's employee said that he had *"the cheque here in front of me and it is a 39"*. The Complainant maintains that the Provider's employee was again, in the course of this call *"most unhelpful to the point of arrogance"* and in respect of the individual generally, she states that *"frankly I was aghast at his condescending attitude"*.

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I have also listened to a recording of this call and, once again, I must disagree with the Complainant's characterisation of the call. The Provider's employee initially stated that the cheque was written for €39,570. Upon being challenged by the Complainant, and entirely contrary to the Complainant's account set out above, I note that the Provider's employee immediately conceded that the number in words was written as €30,570 but that the digits reflected €39,570:

"So, it looks like it's written as thirty thousand, but it looks the figure is down as thirty nine on the cheque"

The Complainant's reaction to this information was *"No, couldn't be, that's misinterpretation"*. The Provider's staff member went on to explain that *"that cheque will bounce on the account if the writing and the numbers are different"*. At this point the Complainant advised him that he was lacking in empathy for her position, and he sought to explain to her that now that he had a copy of the cheque, he had to tell her what was on it and what would happen. He confirmed that a copy of the cheque was already on its way to the Complainant.

In terms of the Provider's manner in the course of this call, I disagree that he displayed an arrogant or *'condescending attitude'*. Rather, in my opinion, it was the Complainant who departed from a courteous manner, no doubt because she was so upset.

With regard to the Provider's employee advising that he could not do anything to stop the cheque, the Provider has acknowledged that this was incorrect advice. The Provider explains that *"the staff member involved in this call, due to inexperience, was not aware the Bank could correct the transaction that day though the Bank's Clearing Department intervention, nor did he think to escalate the call to a Supervisor"*.

The Provider comments that *"the Bank regrets the Customer's experience in this regard"*. With regard to the overall nature of the call, the Provider states that *"the service [the Complainant] received was not to a standard [it] commit[s] to [its] customers"*.

Ultimately, I note that a different employee of the Provider intervened directly after the first phone call of 24 January 2019, such that the cheque was indeed successfully stopped, and the funds were returned to the Complainant's account that same day (24 January 2019). A recording of a phone call at 18:59 on 24 January 2019 discloses that the money had been returned to the Complainant's account by this point and the Complainant was advised of this.

Having considered the evidence, I take the view that the Complainant suffered no damage which can be reasonably be attributed to the Provider, other than any distress that might have been caused during the phone calls of 24 and 25 January 2019. I have, however, already set out my views regarding those phone calls above and I don't accept that the Provider's employee acted inappropriately, discourteously, arrogantly or in a condescending manner.

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I note that in the course of the parties' observations to this Office, some other transactions which arose at different times on the Complainant's account have been raised by her. Insofar as this complaint investigation concerns only the events of January 2019 however, no finding is made by this Office regarding those issues which can be pursued by the Complainant separately, should she wish.

In its response to this Office, the Provider acknowledged its failings regarding the advice initially given to the Complainant on 24 January 2019, in respect of stopping the cheque. In that context, it advanced an improved offer of compensation in the amount of **€1,500**.

In my view, this figure constitutes ample compensation for the Provider's limited failings in this instance. In those circumstances, noting that the Provider made a very reasonable compensatory offer available to the Complainant, at the time when it sent its formal response to this complaint investigation, and on the basis that this offer remains open to the Complainant, I do not consider it necessary to make any direction to the Provider or to uphold the complaint.

Instead, it will be a matter for the Complainant to make direct contact with the Provider if she wishes to accept the more than reasonable compensatory figure of **€1,500**, which the Provider has offered to her. I note that since the preliminary decision of this Office was issued to the parties, the Complainant has indicated that she will consider this option, and if she wishes to progress that option, she should make contact with the Provider expeditiously, as the Provider cannot be expected to hold that offer open to her indefinitely.

Accordingly, on the basis of the evidence outlined above, 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)

3 June 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.