



<u>Decision Ref:</u>	2022-0236
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Cheques
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner Delayed or inadequate communication
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a mortgage account.

The Complainants' Case

The Complainants say that on **17 June 2020** they had to send an insurance claim cheque in the amount of €15,644.95 to the Provider for clearance, because the previous loan owner's name was detailed as a payee on the cheque. The Complainants state that they requested the Provider to transfer the funds, once cleared, to the Second Complainant's third party bank account so that they could pay for work that was required to their kitchen.

The Complainants maintain that on talking to an employee of the Provider, they were assured that the funds would be transferred in a matter of days. The Complainants say however that they had to contact the Provider on several occasions because the funds had not been transferred. The Complainants submit that they informed the Provider that they had secured tradesmen to carry out work to their kitchen, which was unusable at that time.

The Complainants state that during a follow-up phonecall on 17 July 2020, approximately a month later, an employee of the Provider sought the Bank Identifier Code ("BIC") and International Bank Account Number ("IBAN") of the Second Complainant's third party bank account, so that the funds could be transferred. The Complainants state that when this transfer did not happen, they again rang the Provider on **19 June 2020** and spoke with the Provider's employee who advised that *"she didn't know where the cheque had gone and that she actually put the cheque against our existing mortgage"*.

The Complainants say that they requested to speak to the person in charge. They maintain that they could not contact the complaint handler directly, and that they were advised that

the Provider's general office would make contact by email. The Complainants assert that the complaint handler did contact them after "*a lot of phone calls*" however the complaint handler "*wasn't even sure where or what account our money went into*".

The Complainants say that they had to provide "*document after document*" to get the funds paid into their account. The Complainants state that having lost the original tradesmen they had to halt their attempt to look for new tradesmen because they had no money to pay for the work. The Complainants state that their funds were eventually transferred into the Second Complainant's third-party bank account on **27 August 2020**, but without any verbal contact from the complaint handler.

The Provider's Case

The Provider submits that on **14 July 2020**, a Home and Building Insurance cheque ("HBI") was received by the Provider with a request that same be transferred to the Second Complainant's third-party bank account.

The Provider states that the cheque was allocated to the Complainants' mortgage account subject to a 14-day clearance period. The Provider maintains that due to an administrative oversight the funds were allocated to the Complainants' mortgage account as a partial payment and consequently, the monies were deducted from the capital balance. The Provider states that the funds were correctly allocated on **31 July 2020**, and transferred to the Complainants' third party account on **26 August 2020**.

In its Final Response Letter to the Complainants dated **6 August 2020** the Provider accepted a shortfall in the level of service provided and offered the Complainants a goodwill payment of €96.78 in "*daily compensatory interest*" and a further €100.00 "*by way of apology*".

In its responses to this Office dated **22 July 2021** the Provider states that its records indicate that it received the cheque on **14 July 2019**, and it acknowledged a number of customer service failings on its part:

- Lodging the cheque as a "partial repayment" rather than as a "HBI cheque" on **14 July 2020**;
- Although it attempted to rectify this error on **23 July 2020**, it was not fully rectified until **31 July 2019**;
- Failing on **30 July 2020** to properly advise the Complainants regarding the timeframe it would take for the cheque proceeds to be credited to their nominated account;
- Failing to return a phone call to the Complainants as promised on **21 September 2020**;
- Manually inputting the incorrect account details on **29 July 2020** which resulted in the proceeds of the cheque being credited to the incorrect account on **18 August 2020**, which was not rectified until **26 August 2020**.

The Provider has acknowledged these errors and submits that these mistakes were dealt with in accordance with General Principle 2.8 of the Consumer Protection Code which requires it to correct errors and handle complaints speedily, efficiently, and fairly.

When responding to the formal investigation of this complaint, by this Office, in addition to the payment of €196.78 already made, the Provider offered the Complainants an additional **€1,000.00** by way of apology and in recognition of its customer service failures.

The Complaint for Adjudication

The complaint is that the Provider wrongfully delayed in transferring the proceeds of the Complainants' insurance cheque, to the Second Complainant's third party bank account, thereby causing them loss.

The Complainants say that because of the delay of two months, they were not able to proceed with the required repairs to their kitchen.

The Complainants are seeking compensation for the level of service given to them by the Provider, for the resulting delay in having works carried out on their kitchen, and for the *"defamation in both my husband and my own reputation that cannot be undone"*.

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 Complainants were 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 **28 June 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.

/Cont'd...

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 the Complainants made an insurance claim and on **17 June 2020** a cheque issued from the insurance company for **€15,664.95** in settlement of the claim. The cheque was made payable jointly to the Complainants and to the previous loan owner. Accordingly, the Complainants could not lodge the cheque directly to their current account (held with a third-party bank) but instead they were required to lodge it to their account with the Provider, so that the Provider could then transfer the credit to their nominated third-party current account, so that they could then pay the contractors they had engaged to carry out the remedial works.

I note that on **13 July 2020**, the Complainants contacted the Provider in relation to this cheque, to enquire about how it should be processed. During the phone calls on that date, the Complainants were advised that they needed to send the cheque to the Provider, along with an assessor's report confirming the works that were required, and the Provider would in turn release the funds back to the Complainants. The Complainants furnished the Provider with the relevant IBAN details for the account into which they wished the funds to be lodged.

On **14 July 2020** the Provider received the cheque, an assessor's report, and confirmation of the IBAN with details of the Complainants' inability to lodge the cheque directly to their current account.

Although there was some dispute surrounding when the Provider received the cheque, I am satisfied that it was received by it, on **14 July 2020**, per the date stamp on the copy supplied to this Office.

I am satisfied that as of **14 July 2020**, the Provider had been furnished with all of the information and documentation it required, to carry out the Complainants' instruction. Unfortunately, the Provider made a number of errors from this point onwards.

Firstly, instead of applying the cheque as a "*HBI cheque*", it was applied as a repayment to the mortgage account. The Provider's agent informed the Complainants of this error during a telephone call on **20 July 2020**. Remarkably however, I note that it took the Provider 11 days, to rectify this error, which it finally did on **31 July 2020**.

Unfortunately, the Provider then made another error when its agent input the incorrect IBAN into its systems on **29 July 2020**, so the funds were then credited to the wrong account on **18 August 2020**.

The delay that flowed from this error meant that the funds were not credited to the Complainants' account until **26 August 2020** – six weeks after the instruction had been given and the Provider had been furnished with all the required information and documentation.

Although indicative timeframes can never be 100% accurate, and allowing for some latitude, the process for this transaction and reasonable timeframes are suggested as follows:

/Cont'd...

13 July 2020	<i>Instruction given and information sought</i>
14 July 2020	<i>Information and documentation (incl cheque) received</i>
28 July 2020	<i>Cheque clears</i>
29 July 2020 – 14 August 2020	<i>Provider's finance team process refund</i>
30 July 2020 – 15 August 2020	<i>Funds are available in the Complainants' third-party account</i>

Although the suggested timeline above allows for two weeks for the Provider's finance team to process the refund, in my opinion, the Provider ought to have been able to process this refund more quickly due to the urgency of the instruction, an urgency which had been relayed to them by the Complainants. In fact, the funds were not available in the Complainants' account until **26 August 2020**. This delay was unacceptable in my view and was caused entirely by errors on the part of the Provider.

Although the Provider was on notice that the proceeds of this cheque were required urgently to facilitate the carrying out of kitchen repair works, the Provider cannot, in my opinion, be found to be at fault for the difficulties in securing contractors in the construction industry. Accordingly, although in October 2020, the Complainants had still not been able to have the work carried out, I do not consider it appropriate to attach fault to the Provider for any delays in the necessary works being carried out, after **26 August 2020**.

I am also mindful that the timeline set forth by the Complainants in their Complaint Form. Even if the Provider had processed the Complainants' instruction within a reasonable time and without errors, the contractors that were apparently on standby in June 2020 are unlikely to have waited until late July 2020 to carry out the works, in particular given the Complainants' detail in the Complaint Form that "*at this point we lost*" the contractors, "this point" being **20 July 2020**, when the Complainants were told the cheque had been applied to the mortgage account.

I accept that in this matter, the Provider made available an unacceptably low level of customer service to the Complainants in failing to effect an instruction given to them on 14 July 2020. A reasonable timeframe for the instruction to have been carried out was 2 – 4 weeks, but in fact the instruction was not effected for 6 weeks, during a very difficult period for the Complainants.

I note that the Complainants say that they had to have numerous (roughly 25) telephone calls during July and August 2020 (and more later, with regard to their complaint) almost all of which appear to have been avoidable. I have no doubt that this caused tremendous frustration and inconvenience to the Complainants and in my opinion, the Provider's errors which have given rise to this complaint, constituted conduct, which was unreasonable, within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

/Cont'd...

Behind this customer service issue was a family living with what they describe as an unusable kitchen, and they were prevented from proceeding with the necessary remedial works because of a delay by the Provider in processing this cheque efficiently, owing to its errors. The Provider's immediate financial response to its acknowledgment of its mistakes, was disappointing, given that there was more at issue for the Complainants than simply the daily interest which might have been earned on the monies which they were waiting to have credited to their account.


Whilst the figure ultimately offered by the Provider when responding to this complaint was significantly higher, I take the view that it remains inadequate to redress the frustration and inconvenience caused to the Complainants in respect of which ought to have been a straight-forward transaction in receiving a cheque and clearing the funds for immediate payment out.

In those circumstances, I consider it appropriate to uphold the complaint to direct the Provider to make a compensatory payment to the Complainants, as specified below.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld, on the grounds prescribed in **Section 60(2)(b)**.
- Pursuant to **Section 60(4) 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 Complainants in the amount of **€2,000 (two thousand Euros)** to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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)**

20 July 2022

/Cont'd...

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.