



<u>Decision Ref:</u>	2022-0279
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Disputed transactions Delayed or inadequate communication
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint arises from the suggested incorrect processing of a transaction on the Complainants' account.

The Complainants' Case

The Complainants say that on **8 November 2018** the second Complainant went to a local branch of the Provider, where they hold a bank account, and she deposited €2,050.00 (two thousand and fifty Euro) and obtained a receipt for this transaction.

The first Complainant then noted a discrepancy in the account balance in the sum of €4,100 (four thousand, one hundred Euro) and by reviewing previous bank statements, they noticed that the above deposit had been "*corrected*" by the Provider by way of two debit transactions of €2,050.00. They complained to the Provider and they assert that the Provider wrongly suggested that the deposit on **8 November 2018**, was in fact a withdrawal, which they deny.

The Complainants assert that the Provider's representatives became "*hostile and dismissive*" towards them "*in the branch foyer and in front of other customers*" and that their written complaint was not responded to and they ultimately needed to engage the services of a solicitor.

The Provider's Case

The Provider states that the second Complainant attended a local branch on **8 November 2018** and requested a cash withdrawal of €2,050.00 and that this amount in cash, was provided to her.

The Provider explains that the cashier incorrectly recorded the transaction as a lodgment, instead of a debit, as she had provided the second Complainant with a lodgment confirmation slip, instead of a withdrawal receipt. The Provider states that the cashier corrected this mistake, by:

- debiting the Complainants' account by €2,050.00 to counter the incorrect credit wrongly applied to the account, and
- she then entered a further debit of €2,050.00 to reflect the actual cash withdrawal made by the second Complainant

The Provider states that as part of its terms and condition, it can correct an error caused by an incorrect debit or credit, without the Complainants' approval.

The Provider acknowledges that the Complainants were not at the time informed of the error or how the Provider would correct the error and it has apologised for this.

The Provider states that the Complainants attended the local branch on **7 February 2019**, to dispute the transaction and log a complaint and that, subsequent to this, the Provider viewed the CCTV footage. The Provider states that the CCTV footage confirmed that it was a withdrawal (not a lodgement) and that a verbal apology was given. The Provider denies that its staff member was *"hostile and dismissive"*.

The Provider accepts that it did not facilitate the viewing of the CCTV footage by the Complainants, and it states that GDPR restrictions were the reason for this as the footage included other customers. The Provider states that it informed the Complainants that if they wished to view the footage, the request could be made through the Superintendent of An Garda Siochana.

The Provider accepts that there were delays during its complaint process because due to *"an administrative error"* the complaint received on **15 February 2019** was not responded to within an appropriate timeframe. The Provider states that the complaint was not reactivated until **3 May 2019**, when the Provider's 'Customer Care' team received a letter from the Complainants' solicitor, which the Provider received on **16 February 2019**. The Provider apologises for this and it has made an offer of €1,000 (one thousand Euro) which has not been accepted by the Complainants.

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The Complaint for Adjudication

The complaint is that the Provider incorrectly processed a deposit by the second Complainant of €2,050.00 (two thousand and fifty Euro) as a withdrawal, and failed to communicate properly with the Complainants as and when requested, and furnished poor customer service to them.

The Complainants seek to be reimbursed in the sum of €4,100.00 (four thousand one hundred Euro).

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 July 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 am satisfied that the parties' banking arrangements are governed by the terms and conditions in place, and the following extract from those terms and conditions of the account, is relevant to this complaint:

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“12 Non-execution of Transactions and incorrectly executed Transactions

12.6 If We debit or credit an incorrect amount to your Account We may correct this error without obtaining your approval. We will notify You of any such error.”

I note that CCTV footage of the transaction has been supplied in evidence by the Provider. This footage shows a person (who must be assumed to be the second Complainant) approach the counter with some form of notebook which is placed on the counter.

I note from the video evidence that at no point is any cash visible during the time when the second Complainant approaches the counter, nor is anything handed to the cashier, other than the notebook, which remains on the counter. I note that the cashier turns a page and looks at the notebook but does not remove anything from it.

I note that A piece of paper is then passed by the cashier to the second Complainant who signs and returns it, and a similarly shaped piece of paper is printed and then placed within the notebook by the cashier. The notebook is taken by the second Complainant, who appears to read the piece of paper and then places the notebook into her bag. Finally, I note that what appears to be an envelope, is produced by the cashier from somewhere off screen, and this is then passed to the second Complainant, who appears to check the envelope handed to her, and then she puts it away and leaves the counter.

I note that this envelope was produced by the cashier and was not visible until handed to the second Complainant. The video shows that at no point did the second Complainant pass anything to the cashier, which was not returned, and there is no evidence whatsoever of the second Complainant passing cash to the cashier.

On viewing this CCTV footage, I am satisfied on balance, that the transaction of **8 November 2019** was a withdrawal of funds, and was not a lodgment of funds. Consequently, I accept the Provider’s position that because the transaction was originally incorrectly processed as a lodgment, it fell to be corrected, in accordance with Clause 12.6 of the Terms and Conditions of the parties’ contractual arrangement, which is quoted above.

It is clear to me from the video evidence that the second Complainant’s consistent position that she made a lodgment of cash to the cashier on the date in question, is entirely incorrect and is not borne out by the evidence available. It is not clear to me why the second Complainant’s recollection in that regard, is so misplaced.

Within the Complainants’ bank statements provided, I note the entry on the **8 November 2018** which reads as follows:

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Date	Details	Withdrawn	Paid In	Balance
8 Nov	Credit	CASH	2,050.00	
	Debit	CASH	2,050.00	
	Debit	CORRECTING ENTRY	2,050.00	58,922.58

The Complainants, upon noticing the above transactions attended the local branch on **7 February 2019** and having raised the issue, as outlined above, they received a letter in response from the Provider dated **11 February 2019** which states

"I now wish to confirm that the transaction on your account on 8th November 2018 at approx. ... 10.28am was a withdrawal of cash from your account for €2,050"

The Provider accepts in its response form, that it failed to inform the Complainants of the error, at the time when it happened, as required under the terms and conditions quoted above; it has apologised for this failing, which indeed is disappointing.

The Complainants also complain of a *"hostile and dismissive"* attitude from the Provider's representatives during their attendance at the local branch on **7 February 2019**. This is denied by the Provider. I have not been provided with sufficient detail as to what occurred at this meeting, nor what is suggested to have been said and by whom, but one can well understand that with more than €2,000 at issue, both parties may have been somewhat disconcerted. In the absence of any definitive evidence however, I am not satisfied to accept that the Provider delivered poor customer service to the Complainants on **7 February 2019**.

The Complainants ultimately sent a letter to the Provider through a solicitor, dated **16 April 2019**, which received a response from the Provider dated **8 May 2019** which included the following relevant extract:

"I understand from your letter, that [Complainants] are unhappy with the explanation given by our [Local Branch] in relation to three transactions on account ending 6254 on the 8th of November 2018.

I have reviewed the investigation carried out by [local branch] and found no error with their findings; they have CCTV evidence to support their findings.

From their investigation, our [local branch] has concluded that at 10.28am on the morning of Thursday, 8th November 2018, [second named Complainant] can be seen to approach the teller position. [second named Complainant] does not provide any cash to the teller. She signs a docket and waits while cash is counted by the teller.

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This cash is then placed in a white envelope and handed to [second named Complainant] with a receipt....

When the teller is filing docket away, they notice that the transaction has been keyed incorrectly as a lodgement, this would have created a cash deficit at the end of the day and so it was reversed and keyed correctly as a withdrawal. This resulted in one credit and two debits to appear on the account statement.

...

We cannot hand out CCTV recordings to the public, so a request for this would need to be raised with An Garda Siochana”

The Provider has accepted in its response that it failed to deal with this complaint in a timely manner and has apologised for this. I accept that once the response to the complaint was provided, it set out clearly at that stage, what the Provider believed had occurred, the basis for its findings, and the reasons for the bank statement entry of **8 November 2018**.

I am satisfied that the Provider appropriately dealt with the complaint at that stage following its previous disappointing delay. For this failing and for the failure to initially inform the Complainants of the error discovered on the day, the Provider has apologised and offered the sum of **€1,000** (one thousand Euro) as redress in its response to this investigation.

In my opinion, it is particularly disappointing that the Provider failed to make contact with the Complainants once the error was discovered, on the day of the transaction at the branch. Had the Provider done so, this might have ensured that the matter was explained and concluded and clear to all parties, whilst recollections were fresh and more reliable.

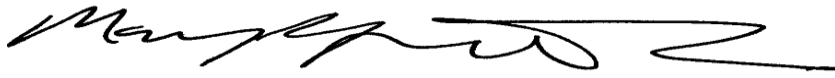
I note the suitable apology made by the Provider, and on the basis that the compensatory offer remains open to the Complainants for acceptance, I do not consider it necessary or appropriate to make any further direction and rather, it will be a matter for the Complainants to engage directly with the Provider, if they wish to accept that compensatory figure available to them, in order to conclude.

Accordingly, I do not consider it appropriate to uphold the Complainants' 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 August 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.