



<u>Decision Ref:</u>	2022-0293
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Handling of fraudulent transactions Disputed transactions Fees & charges applied Failure to provide adequate security measures Unauthorised withdrawals
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the level of co-operation and assistance made available by the Provider in the Complainant's attempts to retrieve funds from a fraudulent third-party.

The Complainant's Case

The Complainant holds a bank account with the Provider. On **30 January 2019**, the Complainant made two transactions, totalling €549 (five hundred and forty-nine Euro) to a third-party. The Complainant notes that the third-party's recipient account was also held with the Provider.

The Complainant made these transactions for the purpose of obtaining a financial service from the third-party. He submits that he later realised that the third-party was acting fraudulently, and that he would not receive the financial service. The Complainant sought to retrieve these funds from the third-party, and states that the Provider is aware of the third-party account holder but refused to co-operate with the Complainant.

In response to the Provider's submissions to this Office, the Complainant states that the Provider's references to its unsuccessful attempts to retrieve his funds were "*very brief and Glib (sic)*". The Complainant requested that the Provider elaborate on the form of its attempts to retrieve the funds, the steps taken, and why the attempts were unsuccessful. The Provider did not make further submissions in response to this request.

The Complainant submits that the Provider has “*unilaterally decided*” that he is not entitled to a refund, as he was fully to blame for the loss.

He states that some culpability lies with the Provider for his loss, given that its online platform was “*used to perpetrate the Scam (sic)*”.

The Provider’s Case

The Provider states that it is satisfied that it has complied with its internal procedures and processes in relation to the disputed payments authorised by the Complainant.

The Provider references a timeline of key events and correspondence that it provided to this Office, and states that this timeline sets out “*the activity generated and carried out by the Bank following notification of the alleged fraud*”.

The Provider’s timeline states the following for **30 January 2019**:

“In line with internal procedure concerning the nature of the alleged fraud as outlined by the Complainant, the Bank initiated appropriate investigation into the nominated Beneficiary account;”

The Provider notes that it complied with its internal procedure, which involves:

- *“set up a Fraud Investigation Case;*
- *verified recall/retrieval of the disputed funds was not possible;*
- *advised the Complainant of the unlikelihood of retrieval of funds;*
- *advised the Complainant he may be a loss (sic) for the funds as he willingly authorised the payments;*
- *received back completed Declaration Forms confirming a criminal investigation would be investigated by An Garda Siochana;”*

The Provider notes that the disputed payments were Bill Payment Instructions that were authorised by the Complainant on **30 January 2019**. The mandate for Bill Payment was created by the Complainant via the Provider’s online banking system, on the same date. The Provider also notes that, as the transactions were authorised, the Provider cannot amend or revoke the instructions.

The Provider was asked by this Office to outline the steps it took regarding its investigation. The Provider notes the calls with the Complainant to confirm and seek certain information. It noted on **30 January 2019**: “*Fraud attempts to retrieve disputed payments*”.

The Provider submits that it decided not to refund the disputed transactions, as the Complainant had entered into an agreement with the third-party and had willingly authorised the transactions. The Provider reiterated that it was satisfied that it had abided by its internal procedures ruing the process, and that:

/Cont’d...

“The activity carried out by the Bank as part of this process included attempts by the Bank to retrieve the disputed funds on behalf of the Complainant. Unfortunately, these attempts were unsuccessful.”

The Provider submits that it has complied with its regulatory obligations in relation to this matter.

The Complaint for Adjudication

The complaint is that the Provider failed to co-operate with the Complainant in his attempts to retrieve funds in the amount of €549 (five hundred and forty-nine Euro) transferred to a fraudulent third-party.

The Complainant wants the Provider to reimburse him the value of the disputed transactions.

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 **5 August 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.

/Cont’d...

It is not in dispute that on **30 January 2019**, the Complainant authorised the transactions made to the third-party. This complaint concerns the level of co-operation made available by the Provider, following the Complainant's request for assistance, when he sought to retrieve those funds.

It seems that the Provider informed the Complainant that he was unlikely to retrieve his funds but did not explain to him the process by which it would attempt to retrieve the money. The Provider noted on multiple occasions in its submissions that it abided by its internal procedure.

I note that in response to the investigation of this complaint, the Provider has pointed to the relevant sections of the Terms and Conditions of the account. In particular, under the heading at Clause 12 "**PAYMENT INSTRUCTIONS**", I note that the following is set out:-

"(a) You and any PSP appointed on your behalf are responsible for the accuracy of each payment instruction received by us. We are not responsible for any delays or error which arises from incomplete, unclear, inconsistent or mistaken instructions, or instructions in a form (accepted at our discretion) other than our standing form for payment instructions, which are given to or accepted by us.

...

(e) Once received by us for execution, payment instructions are irrevocable. However, if you wish to amend or cancel an instruction that you have given us, we will use our reasonable endeavours to make such amendment or cancellation if it is possible for us to do so, subject to the following:

(i) Payment instructions for transfers between accounts within the bank (whether in your name or in the name of another customer(s) cannot be amended or revoked after receipt by us.

..."

[my underlining for emphasis]

I am satisfied in those circumstances that it was clear from the Terms and Conditions of the account operated by the Complainant, that once the transactions were authorised by him, they could not be cancelled or undone.

In my opinion, it would have been useful for the Provider to have quoted the relevant portion of these Terms and Conditions, at the time when it addressed the Complainant's complaint, in the Final Response Letter issued to him dated **4 September 2019**. In my opinion, this might have made the situation more clear to the Complainant, and might well have avoided the necessity for him to pursue his complaint further.

I note the Complainant's additional submission that the Provider bears responsibility for the fraudulent transaction, because it took place through its financial service platform. I do not accept this, in circumstances where the Provider appears to have appropriate procedures in place for monitoring potentially fraudulent activity and given, in particular, that the Complainant authorised the disputed transactions.

/Cont'd...

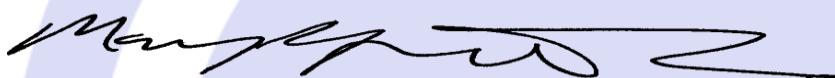
Accordingly, in circumstances where there is no evidence of any wrongdoing by the Provider, I do not consider it appropriate to uphold this complaint.

I would, however, urge the Provider, when addressing complaints of this nature, to make clear the particular provisions of the terms and conditions which are relied upon by the Provider in adopting a position, so as to ensure that its customers can be clear as to why the Provider is not in a position to help any further.

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)

29 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.

