



<u>Decision Ref:</u>	2022-0294
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Money Transfer (between accounts/between banks/3rd)
<u>Conduct(s) complained of:</u>	Disputed transactions Handling of fraudulent transactions
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to a payment made by the Complainants who intended to make a payment to a legitimate payee but, as the result of a scam, instead mistakenly transferred funds to a fraudulent third party.

The Complainants' Case

In **November 2017**, the Complainants were in the process of completing the purchase of their first house. They were required to pay the balance of the amount due to complete the purchase, into their solicitor's client account, to enable their solicitor to complete the purchase on their behalf.

In their complaint form and submissions, the Complainants explain that they received an email, which they understood to be from their solicitor, and which gave them instructions regarding the account into which they should transfer the amount due to be paid.

They explain that, on Thursday **17 November 2016**, the First Complainant went to a branch of the Respondent Bank ("the Provider") and manually completed a SEPA transfer form in favour of the account nominated in the email, that they understood had come from their solicitor.

The Complainants explain that the Provider duly processed the transfer of funds in line with the instructions in the SEPA transfer form. It is accepted by the Provider that the Complainants, at the time of the execution of the SEPA transfer form, did not know that the email account of their solicitor had been 'hacked' and that the email to the Complainants that purported to come from their solicitor with the instructions regarding the transfer of funds, had in fact been sent, by a fraudster. The account information contained in that email was not that of their solicitor; instead, the BIC and IBAN were for an account in another bank, and as a result, the fraudster received the funds which the Complainants transferred that day.

The funds, having been transferred, reached the fraudster's account on Tuesday **22 November 2016**. The following day, **23 November 2016**, a staff member of the receiving bank, noted what is described as, "*suspicious activity*" on the receiving account and consulted that bank's fraud prevention team. By that time, a substantial portion of the funds transferred by the First Complainant on **17 November 2016** had been debited from the receiving account, with a balance of €40, 549.99 (forty thousand, five hundred and forty-nine Euro and ninety-nine cent) remaining in that account.

The receiving bank placed a 'hold' on the account and the remaining **€40, 549.99** was subsequently returned to the Complainants' account with the Provider on **6 December 2016**. The amount in dispute, which the Complainants say ought to have been refunded to them, either wholly or in part by the Provider, is **€30,117.21** (Thirty thousand, one hundred and seventeen Euro and twenty-one cent).

In their complaint form and submissions, the Complainants set out their grounds for complaint. They assert that the SEPA transfer form, which the First Complainant completed in the branch of the Provider, was inadequate and misleading. They argue that it required the Beneficiary Name to be completed as a mandatory field, as well as the IBAN. They contend that this gave them the impression that, as both fields were mandatory, both would be cross-checked and validated by the Provider, before execution of the payment. They submit that:

"As the form stated that the Beneficiary name was mandatory it was reasonable for me to assume that the bank would rely on such information in equal regard to the IBAN as they are given equal prominence on the form."

The Complainants go on to say that there is no warning on the SEPA transfer form to bring to their attention the fact that the transfer would be made solely on the basis of the IBAN, and that the Beneficiary Name would not be cross-checked against the IBAN by the Provider, to verify that they correspond.

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The Complainants argue that, had they known that a cross-check would not be carried out, they would not have executed the payment using the SEPA form, in the manner in which they did. They submit that since they now understand that the Provider cannot cross check the IBAN against the named payee, it should make this clear, saying:

“This information should be front and centre on the Bank’s SEPA Transfer form.”

The Complainants argue also that the Provider did not have proper safeguards and controls in place to help mitigate this fraud. They submit that because the transaction at issue, was not in keeping with other activity on their account, the Provider should have taken steps to ensure that attention was drawn to the risks associated with executing such a payment based on the unique identifier only.

In support of this line of argument, the Complainants also assert that the process for completing a SEPA transfer form and executing the transfer was not followed by the Provider’s staff in this instance, in that certain indicators of internal approvals by the Provider are missing from the form. In their submission dated **31 July 2017**, the complainants explain these alleged shortcomings as:

“Admin process in [the Provider] - I would like to draw your attention to the PDF attached. This is the payment transfer form I completed in branch to make the payment and it has a handful of administration errors. In the for Completion by Branch Staff section there are a number of omissions

- *Activity on the account - This transaction was not in keeping with my usual activity, no bank staff member challenged me on this or completed notes on the form.*
- *The Mandate - It states on the payment transfer form that all transfers must be signed in accordance with the Mandate/Indemnity, this is not completed.*
- *No authorised signature - The bank official has not signed on the correct line on the form.”*

In addition to their complaint regarding the Provider’s SEPA transfer form and authorization process, the Complainants also complain about the standard of customer service they received from the Provider after they became aware of the fraud. They describe the level of customer service they received at this time as, *“extremely poor customer service”*.

In support of this line of argument the Complainants have furnished a copy of their email dated **2 December 2016** to the Provider, in which they set out their complaint in the first instance and, where specifically, they address what they contend are the Provider's customer service failings, in the following terms:

"I am a lifelong customer and I feel I am being neglected by [the Provider]. They have not called once to give me an update. They should be calling me twice daily with updates to ensure my cash get [sic] back to me. I needed to into Branch twice to speak to [named] directly. [Named] only seems to call the fraud team when we arrive in Branch.

...

I have been passed from team to team to ... team when I call [the Provider] customer service pass me to fraud and then fraud not help as its not credit/debit card.

...

I left voicemails for both [named] but no one calls back. They simply do not answer the phone, I must have called 200 times.

Neither [named] have picked up the phone once since this nightmare has started.

...

I am receiving more calls from [the receiving bank] than [the Provider] regarding this ..."

This same line of argument is to be found in the Complainants' submission to this Office dated **31 July 2017** as expressed in the following terms:

"... When I contacted the branch, they pushed me towards the complaints team who in turn pushed me to the card fraud team who in turn pushed me back to the branch, who would not speak to me or return my calls!

...

I was left with no option other than to take time off work and visit the branch in person to see if there were any updates with our case which [the Provider] [was] obviously not prioritising, judging by their lack of expertise and apparent lack of knowledge as to who should even be involved in handling this urgent issue.

...

I was so distressed I called the receiving bank [named] and they agreed to speak to me, informing me of the situation as they understood it."

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In addition, in their submission dated **21 February 2017** to this Office, which accompanied their complaint form, the Complainants again criticise the standard of customer service afforded to them after the fraud was detected and make the following additional point:

“Our case should have been a number one priority for [the Provider’s branch] however when this question was posed to [named] I was informed that she is on the floor during the day and that [the Provider] [is] understaffed to be dealing with such matters. Then I was informed that the complaints team would be dealing with me from now on.”

During the course of our investigation, the Complainants made the following further assertion concerning the standard of customer service provided to them by the Provider:

“I was told by a staff member in branch [named] that ‘they did not have the time answer [sic] my calls as they had to deal issues [sic] on the bank floor.’ They mentioned ‘they could not do everything’ and that ‘[the Provider] was understaffed.’ This was upsetting for my wife as I thought this issue would be a priority.

[The Provider] do[es] not have a banking team to help people in similar situations, when I couldn’t get through to our branch manager [branch named], I called the general line looking for an update of our situation and was passed from servicing to debit card fraud to complaints and then was told to contact our branch manager who was never available, who decided to pass us to the complaints team and wiped their hands of the situation”

In their complaint form, when asked how they would like their complaint to be resolved, the Complainants stated the following.

“We would be extremely grateful if between both banks they could each give €15,058.60 as goodwill. €30,117.21.”

The Provider’s Case

In its response to the Complainants and to this Office, the Provider has at all times asserted that the transfer of funds which gives rise to this complaint was properly authorized by the First Complainant using the correct form and having provided a valid IBAN.

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In its response dated **21 December 2017** to the questions raised by this Office, the Provider said:

“The Bank cannot accept any allegation that it facilitated the fraudulent payment. The Complainant provided the Bank with specific payment instructions to an account identified with a unique IBAN. The Bank was satisfied that the consent to the execution of the transaction was unambiguously authorised and proceeded to effect the payment in accordance with those instructions.”

In its Final Response Letter to the Complainants dated **14 December 2016** and its subsequent submissions during the course of the investigation, the Provider sought to rely on the Terms and Conditions of the First Complainant’s current account (the Account T & Cs), specifically **6.1** and **6.2** thereof, reproduced below:

6.0 Transactions on your Account

6.1 *You are responsible for ensuring that instructions to pay money into and out of your Account are correct and accurate. We do not check whether any of the information is correct, for example, we do not check the name of the account given to us with a payment instruction.*

6.2 *You agree that when we process any payment to or from your Account, made by yourself or by a third party, we will rely on the:*

- *BIC (the Bank Identifier Code)*
- *IBAN (the International Bank Account Number that includes the account number and codes to identify the country, bank and branch of an account); or*
- *The Sort code (the 6-digit code that identifies a particular bank and branch in the Republic of Ireland); and*
- *The Account Number (the number that identifies an account – usually 8 digits long), that is given with the payment. If these details are not correctly stated by you or by the third party, the payment will be processed in accordance with those incorrect details, and we are not liable to you or anyone else if that results in any loss or expense.”*

The Provider asserts that these provisions make clear to an account holder that an instruction to make a payment will be based solely on the unique identifier, whether that be the BIC/IBAN, or the account number supplied by the payer.

The Provider also sought to rely on the Terms and Conditions shown on the reverse of the transfer form (headed **SEPA Credit Transfers**) which was completed by the first Complainant and used to execute the transfer of funds concerned with this dispute, specifically, the following, under **No. 2 - Bank Responsibilities**:

“The Customer must advise the bank without undue delay, and no later than thirteen (13) months after the transaction date of any incorrectly executed transactions. In the event of any incorrectly executed transaction resulting from the acts or omissions of the Bank, the Bank will refund the amount of such incorrectly executed transaction. Where any transaction is effected by the Bank in accordance with any unique identifier (e.g. Sort code, Account Number, BIC or IBAN) as supplied by the Customer but where the unique identifier supplied is incorrect the Bank shall have no liability to the Customer in respect of such transaction ...”

The Provider also submits that when notified of the suspicious nature of the transaction by the receiving bank, it contacted the First Complainant to ask him to check the validity of the payee account with his solicitor. The Provider submits that the First Complainant initially emailed his solicitor using the email from which the instruction to pay had come, and that only when further prompted by the Provider, did the first Complainant contact his solicitor and establish that his solicitor’s email had been hacked and that the payee account was a fraudulent account.

The Provider submits that it placed a recall on the funds on the following day, **25 November 2016** and it confirms that the funds remaining in the fraudulent account, €40,549.99 (Forty thousand, five hundred and forty-nine euro and ninety nine cent) were returned to the First Complainant’s account on **6 December 2016**.

Later in its submissions, the Provider explains the reason for the discrepancy between the recall date given to the Complainants by the Provider in the first instance and the date given to them by the receiving bank, that being **25 November 2016** as opposed to **2 December 2016**. It explains that the initial recall request was made by way of a SEPA recall, whereas the receiving bank had expected the recall to come by way of SWIFT message.

The Provider has also sought to clarify the position in relation to the content of the SEPA transfer form completed by the First Complainant. It argues that the Payee Name is not a mandatory field on the relevant form but, in an alternative argument, it submits that even if it was a mandatory field, its function was confined to facilitating the identification of the payee to be detailed on the accountholder’s bank statement. The Provider submits that it did not, nor could it, cross check the payee’s name given by the first Complainant against the IBAN, because this information is held only by the receiving bank, where the account is held and this detail is not accessible to the Provider.

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The Provider has also responded to the Complainants' assertions regarding the Provider's internal approval of the SEPA transfer and has submitted that its process for the approval of the transfer is such that the payer's copy of the SEPA transfer form, will not show the various internal approvals by the Provider's staff, though these will all be present on the copy which it retains.

Insofar as the Complainants' complaint concerning the standard of customer service afforded to them is concerned, the Provider denies any such failures on its part, in the following terms:

"[The Bank's named branch] acted on the Complainants' case with immediate effect and urgency. The Branch is not understaffed, nor would the Bank confirm this to a customer if that were the case. The Bank can confirm at no stage did the branch manager or assistant branch manager 'wipe their hands of the situation'. The Complainant was making a complaint that their account was not being refunded in the full amount which was initially transferred. It is the Bank's policy to log a formal complaint through the Bank's internal complaint handling system in order for the matter to be fully investigated and responded to, in line with the obligations under the Consumer Protection Code.

The Bank refutes any allegations that we did not take the matter seriously or help the Complainants and the Bank feel this is evident from the timeline of events."

In its response to the questions raised by this Office, the Provider accepted that there had been a delay, albeit of just one day, in issuing the acknowledgement of the Complainants' complaint made on **2 December 2016** and, in recognition of the fact that this delay breached the requirements in **Provision 10.9** of the **Consumer Protection Code 2012 as amended**, it offered the Complainants the sum of **€250** (Two hundred and fifty euro) in full and final settlement of their complaint, which has not been accepted by the Complainants.

The Complaints for Adjudication

The first complaint is that the Provider wrongfully refused to refund the Complainants all or part the amount remaining in dispute, that being €30,117.21 (Thirty thousand, one hundred and seventeen Euro and twenty-one cent).

The second complaint is that the Provider wrongfully failed to respond to the Complainants in an appropriate manner, after they became aware of the loss they had sustained, and that it failed to provide the Complainants with an adequate and appropriate level of customer service.

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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 **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.

1. The first complaint

The Complainants have made assertions regarding the adequacy of the SEPA transfer form then in use by the Provider for the purpose of effecting such transfers of funds. The Complainants say that form and the Provider's process was misleading, such as to invalidate the First Complainant's authorisation of the transfer on **17 November 2017**.

At the outset, it is important to note that the Complainants do not dispute the fact that the SEPA transfer of funds was authorised, using the appropriate form, by the First Complainant. What is in dispute is the extent to which that authorisation can be considered to have been valid, for the reasons set out by the Complainants in their submissions.

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The first of the Complainants' arguments is that the SEPA form shows the beneficiary name as being mandatory, as well as the IBAN. The copies of the SEPA form submitted by the Provider confirm this to be the case, though the Provider explains that the only reason for it being a mandatory field is to enable the transaction to be identified in an account holder's bank statement.

In the Complainants' submissions, they say that in such circumstances the form is misleading, particularly because the form does not contain any warning to this effect, nor to the effect that a payment instruction will be processed solely on the basis of the IBAN.

This aspect of the complaint falls for consideration under the applicable terms and conditions and the requirements of the **Payment Services Regulations 2009** (the "**2009 Regulations**").

The Provider relies on the Terms and Conditions pertaining to the First Complainant's current account (the "Account T & Cs") in declining to refund the amount at issue. The relevant excerpt containing provisions **6.1** and **6.2** is set out above. These terms and conditions were initially furnished to this Office with the Provider's formal response to the complaint, sent on **21 December 2017**.

As part of its submissions, the Provider furnished a blank copy of the SEPA Credit transfer form with the Terms and Conditions pertaining to the SEPA transfer ("SEPA T & Cs") printed on the reverse, as per the above excerpt also.

A review of both sets of Terms and Conditions indicates a divergence in their content. The Account T & Cs, at provisions **6.1** and **6.2**, are very clear in the way they set out the Provider's total reliance on the unique identifier (the IBAN in this instance) when making a payment from an account. The SEPA T & Cs explain by reference to the BIC or IBAN **at No. 2 - Bank Responsibilities**, that:

"The Customer must advise the bank without undue delay, and no later than thirteen (13) months after the transaction date of any incorrectly executed transactions. In the event of any incorrectly executed transaction resulting from the acts or omissions of the Bank, the Bank will refund the amount of such incorrectly executed transaction. Where any transaction is effected by the Bank in accordance with any unique identifier (e.g. Sort code, Account Number, BIC or IBAN) as supplied by the Customer but where the unique identifier supplied is incorrect the Bank shall have no liability to the Customer in respect of such transaction ..."

[My underlining for emphasis]

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This divergence raised the question as to which set of Terms and Conditions were applicable to the transaction at issue and this was addressed during the investigation and the Provider was asked to indicate which set of Terms and Conditions formed the Framework Contract as defined in **Regulation 53** of the **2009 Regulations**.

The Provider indicated, in its submission dated **19 October 2018**, that it considers the SEPA T & Cs to be those which govern the transfer:

“The terms and conditions applicable to the disputed transaction are contained on the SEPA Credit Transfer Form. The terms and conditions on this form comprise the Framework Contract applicable to the disputed transaction as at the date of the disputed transaction.”

I also accept that the Terms and Conditions for the Personal Current Account are, *“relevant to the dispute”*, insofar as they place the accountholders, in this instance the First Complainant, on clear notice of the manner in which the Provider will rely upon the BIC, IBAN, account number or Sort Code, as appropriate.

While it may have been clearer, if the SEPA Ts & Cs had fully reflected the content detailed in the Account Ts & Cs, I am satisfied that the relevance of the Account Ts & Cs as well as the content of the SEPA Ts & Cs, when read together make the position unambiguously clear, that the Provider relies exclusively on the BIC/IBAN/Account number and therefore, I am satisfied that nothing turns on the divergence between the two wordings.

This divergence between the content of the Account Ts & Cs and the SEPA Ts & Cs gives rise to a second question. That is whether they meet the requirements set out in **Regulation 53** of **2009 Regulations**. Specifically, **Regulation 53(c)(2)** provides that:

“Information to be provided.

53. A payment service provider shall provide a payment service user with the following information:

...

(c) about using the payment service—

...

(ii) a specification of the information or unique identifier that must be provided by the user for a payment order to be properly executed,”

[My underlining for emphasis]

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I am satisfied that because both sets of Terms and Conditions are “relevant” to the dispute, the Provider has fully complied with the requirements set out in **Regulation 53(c)(2)** of the **2009 Regulations**.

During the course of the investigation, the Provider confirmed its acceptance that it has obligations pursuant to the **2009 Regulations**. I accept that the relationship between the parties is governed not only by the contractual agreement between them, but also by the statutory provisions of the **2009 Regulations**.

The **2009 Regulations** implement a set of rights and obligations where a consumer engages a Payment Service Provider, such as the Provider in this case, to carry out a Payment Service (i.e. “*Execution of payment transactions, including transfers of funds on a payment account with the user’s payment service provider or with another payment service provider*”) by means of a Payment Instrument (i.e. physical devices (such as cards) and/or a set of procedures).

The **2009 Regulations** set out how a transaction can be carried out with consent by the payer and also how such a transaction is classed as authorised or unauthorised. Specifically, **Regulation 68** of the **2009 Regulations** states that:

*“68. (1) A payment transaction is authorised only **if the payer concerned has consented to its execution**. A payer can authorise a payment transaction before or, if agreed between the payer and the payment service provider concerned, after the execution of the payment transaction.*

(2) Consent to execute a payment transaction or a series of payment transactions is valid only if given in a form agreed between the payer and payment service provider concerned.

(3) In the absence of consent, a payment transaction is unauthorised.

(4) A payer may withdraw his or her consent at any time before the time of irrevocability under Regulation 82. A payer may withdraw his or her consent to execute a series of payment transactions with the effect that any future payment transaction is unauthorised.

(5) The procedure for giving consent shall be as agreed between the payer and the payment service provider.”

Thus, under the **2009 Regulations**, a payment service provider can refuse a refund in respect of a payment only where:

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- it can prove the customer authorised the transaction, though a payment service provider cannot simply say that the use of, for example, a password, card and PIN or other payment instrument conclusively proves a customer authorised a payment.
- it can prove the customer is at fault because they acted fraudulently or, because they deliberately, or with 'gross negligence' failed to use the payment instrument in accordance with the terms and conditions governing its use, failed to notify the payment service provider on becoming aware of its loss, or failed to protect the details of their card, PIN, or password.
- the customer told their payment service provider about an unauthorised payment more than 13 months after the date it left their account.

The matter of consent is important in the context of the Complainant's complaint. The question that arises for consideration is whether the Complainants consented to the transaction, as executed. They intended to transfer the amount in question to their solicitor's account, for the purpose of closing the purchase of their house but used the IBAN details they had been given by the fraudster. Thus, they undoubtedly did authorise the transaction to that particular IBAN and consequently, the matter of whether they were grossly negligent, does not arise for consideration.

It is not in any doubt that the **2009 Regulations** apply to the transaction. It is also not in doubt that the Complainants authorised the payment, albeit using a unique identifier that they did not understand at the time, was fraudulent in nature. Therefore, on the basis of all the evidence before me, I am satisfied that the transfer was made from the First Complainant's account with the Provider, in respect of which the Terms and Conditions are clear and where those Terms and Conditions are relevant to the dispute. Therefore, I am satisfied that the complaint cannot reasonably be upheld because:

1. **Regulation 89(1)** of the **2009 Regulations** states clearly that SEPA transactions are executed using the unique identifier only, in the following terms:

"89. (1) If a payment order is executed in accordance with the correct unique identifier, the payment order is to be taken to have been executed correctly so far as the order required payment to the payee specified by the unique identifier."

2. The Account T & Cs clearly set out the specifications of the payment instrument, in line with the requirements of **Regulation 53(c)(2)**.

The Complainants also submit that the Provider's process for the approval of the transfer, were not properly followed, and that this should in some way invalidate the transfer. In this regard, I accept the explanation offered by the Provider in its submissions dated **1 August 2019**, as follows:

“When a customer completes this form the first mandatory check is completed by the staff member who is attending the customer on that day. When the check is complete, the staff member signs this form and keeps the first page ('FAX and Branch copy') and provides the customer with the second page ('Customer copy'). Therefore, the Complainant's copy of this form will only have one Bank staff signature.”

I accept this. I consider it reasonable for the Provider's copy of the form, to be different from that of the Complainants, given that once the transaction was authorised by the Complainants, certain processes followed thereafter to facilitate the implementation of those instructions.

While I am sympathetic to the Complainants, having regard to the financial loss they sustained, I do not believe that the Provider should be held responsible for that loss. There is no evidence of wrongdoing by the Provider, which simply executed the instructions which the Complainants had given for the transfer of funds to the identified IBAN, which they understood to be the account of their solicitor. The Provider processed that transfer in good faith and in line with its obligations, and accordingly, I do not consider it reasonable to uphold this aspect of the matter.

2. The second complaint

This element of the complaint concerns the manner in which the Provider responded to the Complainants, after they contacted it regarding the disputed transaction and the level of customer service they were afforded.

The Complainants argue that the Provider delayed in sending the recall to the receiving bank to secure the return of the amount held by that bank. There appears to be a conflict as between the dates given to the Complainants by the Provider, and those given by the receiving bank. The Provider initially said it placed the recall on **25 November 2016** whereas the Complainants say that the receiving bank informed them that it did not get the recall until **2 December 2016**.

During the exchange of submissions, the Provider furnished a full explanation of how this apparent anomaly arose. It explained that it sent a SEPA recall on **25 November 2016**. The receiving bank had been expecting the recall to come by way of SWIFT message.

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When this was brought to the Provider's attention, it sent the SWIFT message on **2 December 2016** and the funds were returned the following day. I accept this explanation of events.

Furthermore, I am satisfied that by the time the receiving bank raised the matter with the Provider on **24 November 2016**, all but €40,549.99 had been removed by then, from the frozen fraudulent account. Therefore, in terms of the amount recoverable by the Complainants, I am satisfied that nothing turns on whether the recall was placed on **25 November 2016** or **2 December 2016** other than, of course, that the Complainants remained without their funds.

The Complainants assert also that calls to the Provider's branch went unanswered, that the Provider did not at any stage voluntarily update the Complainants on the progress being made to obtain return of the funds held by the receiving bank, and as a result, the Complainants were, on two occasions, required to take time off work to attend in person at the Provider's branch.

The Provider denies any shortcomings in the service afforded to the Complainants. However, I note from the statement of recollection by the Provider's employee who dealt with the Complainants, that she has offered the following explanation for the unanswered calls:

"In relation to the unanswered calls, I can confirm that I did have voicemails from [the first Complainant] which I returned. I did miss several calls due to staffing issues in the branch here and explained that to the customer and always apologised for the delay in my response."

When responding to this Office in relation to the customer service issues raised by the Complainants, the Provider addressed the suggested issue of staff shortages. Disappointingly, the Provider appears have overlooked this statement by one of its employees, who was clearly doing her best to manage the situation, but owing to various commitments, was sometimes unavailable.

It would appear also from that employee's statement that the matter was transferred to the Provider's complaints team without this process having been adequately explained to the Complainants, even though they had sought to make a complaint on **2 December 2016**. In those circumstances, I am satisfied that the Provider's level of customer service to the Complainants fell below the standard they were entitled to expect, and that the Provider's failure to respond to the Complainants during this distressing time, caused very considerable inconvenience.

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I am satisfied that these failures by the Provider constitute conduct that was unreasonable within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**, and therefore, on that basis, I consider it appropriate to uphold this element of the complaint.

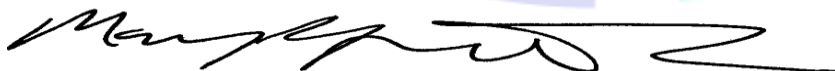
Although the Provider's offer to the Complainants in the amount of **€250** was adequate in the context of a one-day delay in issuing the complaint acknowledgement, I do not consider that offer to be adequate to reflect the frustration and inconvenience that the Complainants clearly experienced, arising from their engagement with the Provider during this very worrying time.

In those circumstances, I take the view that a more significant compensatory measure is appropriate, as I have 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 Complainants in the sum of **€1,000** (one thousand Euro) 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)**

29 August 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.