



<b><u>Decision Ref:</u></b>	2021-0026
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Current Account
<b><u>Conduct(s) complained of:</u></b>	Dissatisfaction with customer service Disputed transactions Failure to process instructions
<b><u>Outcome:</u></b>	Rejected

**LEGALLY BINDING DECISION  
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

This complaint relates to a bank account held with the Provider and the transfer of funds from that account to the account of the Complainant's son.

**The Complainant's Case**

The Complainant contends that on 13 July 2017, she sought to transfer €130,000 from her bank account to her son's bank account. The Complainant understood that this transfer was processed successfully and she asserts that when the Provider contacted her two weeks later by telephone to discuss the transfer, she confirmed that all was in order with the Complainant's accounts and that all of her money was where it was supposed to be.

The Provider asserts that it contacted the Complainant by telephone on 8 August 2017, and that it was agreed that they would meet at her home the following day in order to discuss the transfer. The Complainant states that the Provider insisted on calling out to her notwithstanding the fact that she had declined the offer of that visit.

The Provider states that two of its employees visited the Complainant at her home on 9 August 2017 as arranged and that the Complainant was alone in the property at the time of the visit. The Complainant explains that she is an extremely private person and would not ordinarily invite people into her house. The Complainant states that following the visit to her home by the Provider's representatives she was extremely upset and was crying and left feeling helpless and alone. The Complainant also states that it was a terrible experience and she felt intimidated in her own home.

The Complainant submits that during the visit the Provider insisted that she sign her name on two documents and that the Provider pressured her into signing unknown paperwork without a full and proper explanation. The Complainant also asserts that during this visit the Provider's representatives "badgered" her into considering alternative options for her money such as "to buy something" or "to lock it away for 6 or 12 months".

In addition, the Complainant asserts that when her son returned home he visited the Provider's premises to clarify the situation regarding the visits to his mother. It is asserted that the Provider would not discuss the signed paperwork with the Complainant's son and that her solicitor subsequently requested copies of these documents which took a very long time to provide. The Complainant submits that the unwanted visits and phone calls have destroyed her confidence and she feels that her health has suffered and she has sought her doctor's advice on a number of occasions.

The complaint is that the Provider wrongfully and/or unreasonably and/or unnecessarily visited the Complainant at her home and has demonstrated a blatant disregard for the Complainant's wishes and instructions and has offered poor customer service through its actions.

The Complainant wants the Provider to apologise to her for the stress that has been caused to her in connection with the Provider's handling of this matter and to compensate her with an amount which is meaningful and acknowledges how the Provider treated the Complainant. The Complainant also wants the Provider to demonstrate that it has put appropriate measures in place to ensure that no other customer, elderly or not, will have to endure the same experience.

### **The Provider's Case**

The Provider rejects any wrong doing other than a delay in closing the Complainant's account. In relation to the visit, the Provider asserts that its records show that the meeting ended amicably and that the Provider's duty of care and concern for the Complainant was justified. The Provider also asserts that a discussion was held with the Complainant's son in relation to the business and documents held by the Provider were inspected. The Provider also states that the outcome of this meeting was that the Provider requested the Complainant's son to obtain a letter from the Complainant's solicitor confirming the solicitor's knowledge and advice in this regard.

The Provider states that it acted out of a duty of care to the Complainant and on foot of uncertainties and concerns over the manner and process in relation to how the transfer had been effected.

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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 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 8 January 2021, outlining my preliminary determination 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, I set out below my final determination.

Arising from submissions and documentation furnished in evidence, it is apparent that the facts and surrounding circumstances of this case are as follows.

The Complainant held a bank account with the Provider. The Complainant's husband died early in 2017 following which the Complainant opened an account with the Provider, jointly with her son.

On 13 July 2017, a withdrawal docket was completed which requested the withdrawal of the sum of €130,000 from the Complainant's bank account. There is one signature on the withdrawal docket, which is that of the Complainant. A copy of the withdrawal docket has been furnished in evidence.

On the same date, 13 July 2017, an Express Lodgement/Credit Transfer docket was completed and specified that the amount of €130,000 was to be paid into a designated account number.

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There is one signature on this lodgement docket and that is the Complainant's son, the beneficiary of the transfer. A copy of this document has been furnished in evidence.

The transfer was undertaken and was effected on 13 July 2017 into an account in the name of the Complainant's son. The money was not transferred into the joint account opened, four months prior in March 2017, in the name of the Complainant and her son.

The Complainant's daughter-in-law, the wife of the beneficiary, worked in the Provider's branch at this time and it was she who processed the transfer of €130,000 into her husband's account on which she was a signatory.

The Provider had issued staff with express procedures for dealing with "connected accounts". This was called a "Must Read Memo" and it was published by the Provider's Business Governance and Control Department on 24 November 2016. Amongst other things, the most relevant points of the Memo were as follows:

- Staff must not process payments/account transfer instructions for customers to whom they are related or connected.
- Staff must direct such requests to another unconnected authorised staff member for signoff and processing.
- If an authorised staff member is requesting a transaction on a connected account, the transaction must be signed off and processed on a one up basis.
- Staff must only process these transactions on an exceptional basis, e.g. due to unforeseen circumstances the customer is unable to complete the transaction either online or in branch, and you must note the reason on the docket.

In addition, the Provider's Group Code of Conduct specifies that staff must not approve transactions with connected people or amend or process transactions on a connected person's account.

According to the Provider, at this time the Provider's branch manager was on annual leave and the transfer was approved on a one up basis in her absence.

The Provider explains that when the branch manager (now retired) returned from annual leave on 19 July 2017, she became aware of the transfer that had occurred on 13 July 2017. Having looked into the transfer she noticed that there were discrepancies that had arisen in the sense that the two staff members who had processed and authorised the transfer on 13 July had done so contrary to the Provider's procedures and code of conduct and the Complainant had not in fact signed the Express Lodgement/Credit Transfer docket confirming the account to which she wished the funds to be transferred.

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The branch manager asserts that in light of the foregoing and the sensitive nature of the case, she sought advice from the relevant department of the Provider as to how to proceed and it was decided that owing to the Provider's duty of care to the Complainant that the branch manager would contact the Complainant by telephone. Contemporaneous notes from the Provider and the branch manager have been furnished. The first, dated 31 July 2019, completed by the Provider's branch manager, states as follows:

*"Rang Mrs. [Complainant], introduced myself and said I was following up on some transactions on her account. She said she knew all about them and [redacted] was looking after them.*

*When I asked her to explain what exactly was meant to happen with the funds she said that the monies were transferred to another one of her accounts with [redacted] name in it, she said that is was "her money but [redacted] name was in on it too". I didn't outline to her that the funds were no longer in her name and therefore she no longer had access to the funds".*

The Provider states that following this phone call the branch manager had additional concerns and it was agreed that the most prudent approach would be to confirm the Complainant's wishes at a face-to-face meeting. Accordingly, the Provider states that the former branch manager telephoned the Complainant and explained that she would like to arrange a meeting in order to clarify the Complainant's intentions and an offer was made to visit her home.

The Complainant asserts that the Provider insisted on calling to her home notwithstanding the fact that she told them that everything was in order with her accounts. The Provider rejects this and has provided the branch manager's contemporaneous notes of the record of the phone call with the Complainant on 8 August 2017. The contemporaneous notes state as follows:

*"8/8/17-[redacted] rang and asked that I make the call to [the Complainant] requesting that [redacted] & I visit [the Complainant] to get clarity on her intentions for the funds. I rang [the Complainant] and arrange the visits for 9/8/17 at 2 pm".*

The Provider states that at no stage did the Complainant seek to cancel or postpone the meeting.

The former branch manager, accompanied by a regional manager, then met up at the Complainant's home on 9 August 2017. The Complainant states that on that day she was "ambushed" with another staff member who she was not informed about. The Complainant states that she was asked about the money and was completely confused and baffled by the visitors who had led her to believe that a mistake had been made and that she had no money left as a result. The Complainant alleges that she was badgered and told she should buy something with her money and that they also wanted to "lock it away for 6 or 12 months". The Complainant says that her wishes were completely ignored and she felt confused, intimidated and pressured by the visitors.

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The Provider on the other hand has furnished contemporaneous notes taken by the former branch manager on 9 August 2017. In these notes it is stated that after a lengthy and in-depth discussion with the Complainant, the Complainant made it clear on a number of occasions that she wanted the funds to be transferred to a joint account. It was noted that the Complainant was adamant that the original instruction be carried out. The notes further record that having clarified the Complainant's intentions, she was advised that the monies had been transferred to a sole account.

It was then noted that the branch manager and the regional manager accompanying her were "100% happy" with the Complainant's original intention and that they asked her to sign an instruction outlining the original request as well as to clarify the signing arrangement on the joint account that was to receive the funds until further notice. It was then noted "we both are confident that [the Complainant] is very clear and fully understands the historic (13/7/17) and the planned transactions to reverse same to be completed ASAP."

The Provider has also supplied a statement from the regional manager who accompanied the former branch manager taken on 13 August 2018 subsequent to receipt of the Complainant's complaint letter to the Provider:

*"I called to visit [the Complainant] with [name redacted] on the 9th August at 2pm as prior arranged with [the Complainant] the previous day. [The Complainant] appeared to be in good form and was happy to take the meeting. She was very pleasant & welcoming on the day and even showed some plants and flowers to [name redacted] and I. [The Complainant] then welcomed us into her home and asked us both if we would like a cup of tea. [The Complainant] did not appear in anyway distressed and was happy to answer our queries. [The Complainant] made it clear a number of times that she wanted the funds to be transferred to a joint account held with her son [name redacted] under a repayable to either authority. She was adamant that the funds were hers. Having clarified the Customer's intentions we advised her of what exactly happened with the funds and that they had been transferred to [name redacted] sole name and that [name redacted] his wife had signing authority on it. She was very surprised to hear this and exclaimed "What"? and asked for clarity again so that she was clear in her head. Again [the Complainant] reiterated that it was her money and she wanted [name redacted] on it. I am 100% happy with her original intention and we asked her to sign an instruction outlining the original request as well as clarify the signing arrangement on the joint account that is to receive the funds until further notice. We called it back to her twice before she signed it so she was comfortable with it. She also instructed us to leave the remaining funds (now @ C15k) in her sole account until further notice as she wants to think about these funds."*

The Provider rejects the Complainant's allegations that she was intimidated and forced to sign unknown paperwork. The Provider reiterates that the purpose of the telephone calls and the meeting was to ensure that the transfer of €130,000 was processed in accordance with the Complainant's wishes and that it was never the Provider's intention to cause any upset or stress to the Complainant.

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The day after the meeting at the Complainant's home, the Complainant's son visited the branch to advise that the transfer had been correctly carried out as per advice received from the Complainant's solicitor. I note that the branch manager had asked the Complainant's son to request a letter from the Complainant's solicitor confirming the actions to be taken and the advice that had been given.

Ultimately, a letter from the Complainant's solicitor dated 14 August 2017 was procured. This confirmed that the Complainant wished to proceed with the transaction that she entered into with her son and that the original documentation which was signed by her could be relied on.

The Consumer Protection Code 2012 provides as follows:

#### GENERAL REQUIREMENTS

- 3.1 *Where a **regulated entity** has identified that a **personal consumer** is a **vulnerable consumer**, the **regulated entity** must ensure that the **vulnerable consumer** is provided with such reasonable arrangements and/or assistance that may be necessary to facilitate him or her in his or her dealings with the **regulated entity**.*
- 3.2 *A **regulated entity** must ensure that the name of a product or service is not misleading in terms of the benefits that the product or service can deliver to a **consumer**.*
- 3.3 *A **regulated entity** must ensure that all instructions from or on behalf of a **consumer** are processed properly and promptly.*

A 'vulnerable person' is defined in the 2012 Code as follows:

**"vulnerable consumer"** means a natural person who:

- a) *has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired persons); and/or*
- b) *has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties).*

#### PERSONAL VISITS AND CONTACT WITH CONSUMERS

##### Personal Visits

- 3.37 A regulated entity must not make an unsolicited personal visit, at any time, to a consumer who is an individual.
- 3.38 A regulated entity may only make a personal visit to a consumer who is an individual if that consumer has given informed consent to being contacted by the regulated

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entity by means of a personal visit. A regulated entity must obtain informed consent separately for each personal visit and must maintain a record of this consent.

3.9 In order to comply with Provision 3.38 above, a regulated entity must have obtained the informed consent of a consumer who is an individual in relation to:

- a) the purpose(s) for which a personal visit is to be made, including in the case of sales and marketing, the types of product to be discussed during the personal visit, and
- b) the time and date for the personal visit. Personal Visits and Telephone Contact

3.44 When making a personal visit or telephone contact in accordance with this Code, the representative of a regulated entity must immediately and in the following order:

- a) identify himself or herself by name, and the name of the regulated entity on whose behalf he or she is being contacted and the commercial purpose of the contact;
- b) inform the consumer that the telephone contact is being recorded, if this is the case;
- c) where relevant, disclose to the consumer, the source of the business lead or referral supporting the telephone contact; and
- d) establish if the consumer wishes the personal visit or telephone contact to proceed and, if not, end the contact immediately.

3.45 A regulated entity must abide by a request from a consumer not to make a personal visit or telephone contact to him or her again for sales and marketing purposes and this request must be recorded by the regulated entity.

In this case, there are not any material or stark conflicts of fact as to how events transpired. However, the dispute primarily relates to whether or not the actions taken by the Provider were necessary, reasonable and in compliance with the Provider's obligations to the Complainant.

Having had regard to all of the submissions and documentation furnished in evidence and having carefully considered the facts of the dispute in the context of the foregoing provisions of the Consumer Protection Code, 2012, I am satisfied that the conduct of the Provider was reasonable given the circumstances surrounding the transfer and the manner in which it was executed.

There were clear and obvious discrepancies and breaches of the Provider's internal procedures, codes and protocols. There is no suggestion that there was any ulterior motive in relation to the transfer or the manner in which it was effected.

However, in light of the fact that the Provider's internal memo and group code of conduct in relation to transfers to or from connected accounts and the amount of money involved, I believe it was reasonable and indeed necessary for the Provider to look into the transaction concerned to ensure that the transaction was being carried out in a proper fashion and in accordance with the wishes of the Complainant.

If a customer is considered vulnerable, the Provider "must" ensure that this customer is provided with reasonable assistance as may be necessary to facilitate him or her in their dealings with the Provider. In addition, the Provider is obliged to ensure that all instructions from or on behalf of a consumer are processed properly. The above outlined circumstances required, in my view, that the Provider had a duty to ensure that the instruction to transfer €130,000 was processed properly.

While there is no doubt that the Complainant had and has the capacity to make her own decisions and does not strictly fall within the definition of a "vulnerable person", given the circumstances of this case and the discrepancies in the process, the Provider was entitled to exercise its judgment to ensure that everything was being carried out in accordance with its customer's express instructions and that it was being done properly.

The contemporaneous notes constitute persuasive evidence and I have not been provided with any evidence that the Provider's motive and conduct in the process was anything other than bona fide and reasonable. All of the Provider's actions throughout the process were in order to assure itself that the manner in which the transfer of funds was carried out and effected was in compliance with the Complainant's express wishes and instructions and until such time as the meeting took place and the solicitor's letter was received, it was not clear precisely how the transfer was to be effected and whether it was to go into the sole account of her son or the joint account of herself and her son that had been opened some months before that.

I have not been furnished with any evidence to demonstrate that the visit to the Complainant's house was improper, in breach of the Consumer Protection Code or was contrary to the Complainant's wishes at the time.

Finally, I note that the Provider has acknowledged that there was a delay in administering the closure of the Complainant's account and has offered the Complainant a sum of €500 for its shortfall in customer service in this regard. I consider this to be a reasonable amount of compensation in relation to this aspect of the complaint.

In light of all of the foregoing and having carefully considered both parties' submissions, I do not uphold this complaint.

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**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.



**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

2 February 2021

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.**