

The complaint

Ms P complained about unauthorised debits on her account with Bank of Ireland (UK) Pic, and about poor customer service when she tried to sort it out.

What happened

Ms P had a Post Office Money account, administered by Bank of Ireland, which she'd opened in June 2018.

On 1 May 2019, Ms P transferred her balance out, leaving a zero balance.

Bank of Ireland sent Ms P an email on 2 June 2020. This said that the account had had a zero balance for a while and wasn't earning any interest. So Bank of Ireland would close the account on or shortly after 15 August. It says Ms P read this email, though it hasn't provided evidence of that. But Bank of Ireland's computer system didn't close it after all.

On 15, 16 and 18 February 2021, Ms P credited the account with three £2 direct debits, bringing the balance to £6. But there were then two debits, marked as "*account transfer*" within a few days, bringing the balance to zero again.

Ms P sent another direct debit £2 credit on 24 November, and that too was debited on 30 November, labelled "*account transfer*" bringing the balance to zero.

The same thing happened in December, with a £2 credit on 24th, and an "*account transfer*" debit on 5 January 2022.

Ms P hadn't authorised any of these debits, so she rang Bank of Ireland on 10 January and many other occasions. She kept being told to ring back. She kept trying, and on 14 February, in a 40 minute phone call, she was promised "*swift resolution*" and told to ring again the next day, 15 February. When she did so, she was told it was too soon for Bank of Ireland's back office even to have looked at it, and to ring again at the end of the next day.

Ms P rang at the end of the next day, 16 February – and was again told it was too soon for the back office even to have looked at it, and to ring again in three or four days. Ms P felt the situation was getting ridiculous and that she was being fobbed off. She asked Bank of Ireland's representative whether she needed to complain to this service, and he replied that she could if she wanted to. Ms P contacted this service, and she also sent a formal complaint to Bank of Ireland on 28 February.

In the meantime, there had been four further transactions on Ms P's account, which she hadn't authorised. These consisted of three £2 credits labelled "*Return*" and then the £6 balance was debited, with the wording "*Account transfer*", again returning the balance to zero.

Ms P chased Bank of Ireland on 25 March, because she hadn't had a reply to her complaint of 28 February. Bank of Ireland told her that it hadn't received her letter, and asked her to

send it again by email, which she did. By 12 April, Ms P still hadn't had an acknowledgement.

Bank of Ireland issued a final response letter on 21 April. It said that it had transferred three debited £2 transactions to Ms P's nominated account on 13 January 2022 "*due to our low balance policy*." Bank of Ireland said it had sent Ms P a letter about this on 27 January. This service later asked Bank of Ireland for a copy, and the letter had asked Ms P to ring but hadn't given any other information. The final response letter continued by saying that when Ms P had phoned on 14 February, its agent had told Ms P about the low balance policy and the transfer, and she'd then asked why Bank of Ireland had transferred the £6 balance on 14 January. Bank of Ireland said it had investigated but didn't know why the money had been transferred.

Bank of Ireland apologised for transferring the money to Ms P's nominated account on 14 January without notifying her, and for not having given clearer information about the low balance policy. It recognised the costs of phone calls and offered Ms P £75 compensation for trouble and upset.

Ms P wasn't satisfied with Bank of Ireland's reply. She told us that with regret she couldn't accept Bank of Ireland's final response, because it hadn't addressed the original issues. She said the funds listed as "*Account transfer*" hadn't been sent to her nominated account, as the final response had alleged. She also pointed out that she'd clearly told Bank of Ireland that she needed to know why the money had been transferred, and where it was transferred to, because the money hadn't reached her nominated account.

Ms P sent us a copy of her Bank of Ireland statement and also her nominated account, to prove that she hadn't received the money which Bank of Ireland claimed it had sent to her.

Ms P told us she wanted to close the account, but couldn't do so until all her money was accounted for. She asked for our help in finding out where the money had actually gone, and asked if what Bank of Ireland did with the £6 would be classed as theft, and what the legal implications would be.

Our investigator said he could see why Ms P was concerned about the transactions leaving her account, especially as she didn't know where the money had gone. He explained that he couldn't comment on any legal aspects of the complaint, but had looked at it from a customer service point of view.

The investigator found out from Bank of Ireland that what it had said in the final response letter wasn't correct. Bank of Ireland told him that what had actually happened was that it had closed Ms P's account as part of its "*small balance closure process*" and that instead of sending the money to Ms P, it had sent it to a Community Giving Fund, held by a charitable foundation. The investigator thought that Bank of Ireland should refund Ms P with the £6, in addition to the £75 compensation which Bank of Ireland had offered in the final response letter.

Ms P didn't agree, and asked for an ombudsman's decision.

My provisional findings

I issued a provisional decision on this complaint. This was because I'd come to a different conclusion to the investigator. Issuing a provisional decision gave both sides the opportunity to comment on it, by the date set, before I issued a final decision

Before issuing the provisional decision, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint.

Regulations

I explained that there are regulations which govern disputed transactions. The disputed transactions on Ms P's account took place between February 2021 and January 2022, and the relevant regulations for disputed transactions taking place on those dates are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them.

Here, both sides agreed that Ms P didn't authorise the £2 debits from her account on 22 February, 30 November or 5 January 2022. Nor did she authorise the "*account transfer*" of £6 on 14 January 2022, which Bank of Ireland said it had sent to Ms P's nominated account, but later admitted it had sent elsewhere. As Ms P never authorised these debits, I found that under the Payment Services Regulations, Bank of Ireland was liable for the payments and must refund her, together with interest at 8%.

Bank of Ireland's justification for debiting Ms P's account.

I looked at what Bank of Ireland said about its reasons for debiting Ms P's account. In its final response letter, it said it had transferred the disputed money to Ms P's bank account. That was what it apologised for doing, without Ms P's authority. But it hadn't in fact refunded her at all. It had sent the money to a charity instead. So the final response letter was incorrect, and it didn't provide Ms P with any answers because she knew she hadn't had the money back.

I asked Bank of Ireland for more information about its "*low balance policy*" which it had used to justify the debits. I also asked for the terms and conditions which applied when Ms P opened her account. Bank of Ireland sent the terms and conditions, but not a copy of the policy. I looked at the terms and conditions. Section 50, headed "*Closing your account*" provided that:

"We may close your account by giving you at least 30 days' notice if:

...

b) your account has the minimum allowable balance as per your product specific terms and conditions and / or has not been used in the last 12 months."

As I've set out above, Bank of Ireland says it sent Ms P an email on 2 June 2020, saying that the account had had a zero balance for a while and wasn't earning any interest, and that the account would be closed on or shortly after 15 August. That would have been in line with the terms and conditions, because Ms P hadn't used the account since 1 May 2019, and it provided proper notice. But Bank of Ireland's computer system didn't close it after all.

By the time Bank of Ireland started debiting Ms P's account in February 2021, it was no longer true that the account hadn't been used for 12 months. I've also seen no evidence that Ms P was told, either when she opened the account or later, that there was a minimum balance and/or how much that was. It isn't in the terms and conditions Bank of Ireland sent us. Nor is it in the email saying Bank of Ireland would be closing Ms P's account on 15 August 2020. That just said the account had had a zero balance for a while and "*Given that fraudulent activity is more likely to go undetected on inactive accounts, for your own peace of mind and protection we're giving you notice that your account is going to be closed.*"

Bank of Ireland compounded the unauthorised debiting of Ms P's account by not transferring the money back to her, but by transferring it to a charity of its choice. I saw nothing in the terms and conditions which Bank of Ireland sent us, which sets out powers for it to do this. I considered there should have been specific provision for this in the terms and conditions, so customers would know this was part of what they were signing up to. I also consider that Bank of Ireland should have written to Ms P at the time when it transferred the money to its charity, to notify her of what had happened and why, and giving her an option to have the money back if she wished. It didn't do so.

Customer service

Banks have eight weeks to reply to complaints, and Bank of Ireland did do that, replying to the 28 February complaint on 21 April, a few days under the time limit – though the information in that final response wasn't accurate, as I've set out above.

But customer service is wider than whether a complaint has been answered within eight weeks. By the time Ms P complained, she'd been asking for answers since early 2022 and the customer service she'd received during that time had been very poor. She'd had to chase Bank of Ireland many times in January and February. Bank of Ireland repeatedly told her to ring again the next day, only to say it was too early and she should ring again. She never did get a satisfactory answer to her questions about what had happened. I agreed with Ms P that she did indeed keep being "*fobbed off*", as she said. Bank of Ireland kept telling her to ring back the next day, and when she did, said its team couldn't possibly have started to look at it yet.

It doesn't make any difference that the amounts were small. Money had disappeared from Ms P's account which she hadn't authorised and which Bank of Ireland didn't appear to take seriously. I could understand why she was upset and frustrated at not getting an answer.

When Bank of Ireland did eventually get in touch on 27 January, it just asked her to make yet another phone call, instead of answering Ms P's questions about what had happened.

Compensation

When we award compensation, there are two elements: financial loss, and compensation for distress and inconvenience.

In terms of financial loss, the amount which Bank of Ireland debited from Ms P without authorisation was £6, so I said this was the sum which it must refund to her, plus interest at 8% from the date it debited the amounts, to the date of payment.

In terms of compensation for distress and inconvenience, it was clear that Ms P suffered a great deal of frustration, upset and inconvenience from Bank of Ireland's repeated poor customer service where it failed to provide prompt accurate answers about why it had debited her account – even including final response stage. Bank of Ireland also made multiple errors in debiting Ms P's account when the terms and conditions didn't provide for such debits, and in transferring her money to a charity without this being provided for in the terms and conditions, and without telling her. The scope of this service doesn't include punishing a bank for that sort of error, because that's the role of the regulator, the Financial Conduct Authority. But I have the power to consider the impact these errors had on Ms P, and award compensation for distress and inconvenience. I find that £75 compensation which Bank of Ireland offered at the stage when it believed it had transferred Ms P's money back to her, is insufficient, both for that upset and for what subsequently came to light about what had actually happened. I considered that a more reasonable figure would be £150.

Responses to my provisional decision

Bank of Ireland accepted my provisional decision.

Ms P didn't reply by the date set for responses.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I consider that my provisional decision was fair and reasonable in all the circumstances of this complaint.

My final decision

My final decision is that I uphold this complaint.

I order Bank of Ireland (UK) Pic to pay Ms P:

- £6 which was the balance on her account, which it sent to a charity instead of to Ms P, without her consent;
- Interest on this amount from 14 January 2022 when it debited the money from her account, to the date of payment, at the standard county court rate of 8% pa simple;
- £150 compensation for the poor service it provided;
- The current position of the account is still unclear, as Bank of Ireland didn't answer this question in its response to the provisional decision. Ms P wanted the account to be closed. So, if the account has not been closed, I order Bank of Ireland to close the account and confirm in writing to Ms P that it has done this, sending her a closing statement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 19 January 2023.

Belinda Knight
Ombudsman