

Misdirected payment

Topic: **Payment transactions** Case number: **2018/06**

The customer entered a payment instruction via online banking based on an orange payment slip. In doing so, she entered the wrong reference number by mistake. The sum in question was therefore not credited to the intended account, but to an account held by an unknown recipient with a third-party bank. In spite of being asked to do so, the recipient bank refused to return the sum to the sending bank. The customer contacted the Ombudsman and asked for advice on how to proceed. The Ombudsman gave her the necessary information about the case.

There was no dispute in this case that the payment had been misdirected due to an incorrect entry by the customer. It ended up with a third-party bank with whom the customer did not have an account relationship and was credited to an unknown recipient there to whom the reference number on the orange payment slip was assigned. The sending bank informed the recipient bank about the customer's mistake and asked it to refund the amount. The recipient bank then attempted to obtain a reverse debit consent from the customer to whom the funds had been credited. The customer refused to consent without providing any reason.

The Ombudsman sees cases like this from time to time. It is to be expected that most such cases can be settled without any problems because the recipients of the misdirected payments grant their consent to the chargeback and the money can be credited back to the relevant sender who can then proceed to order the payment again using the correct details. From experience however, a few recipients clearly feel that they are entitled to keep sums of money credited to them due to incorrect details and sometimes even use these funds. They do not respond to the chargeback requests or they oppose the same, sometimes with some quite fanciful excuses.

The customer is then faced with some difficulties. In the Ombudsman's experience, such payments are processed nowadays on the sole basis of the reference number entered and this is also agreed upon in standard payment transaction terms and conditions. No check is performed to ensure that the reference number and recipient name match and this could also not be done by the sending bank since the latter usually does not know the recipient. The sending bank therefore executes such an instruction correctly in accordance with the information provided by the customer, and the recipient bank also deals with the credit correctly based on the reference number provided by the bank, in this case unfortunately entered incorrectly by the customer. Once the sum has been credited to its customer's account, the recipient bank may not, in principle, cancel this credit without its customer's consent. Due to confidentiality requirements, the recipient bank is also not allowed to disclose the name of its customer to the sending bank or the party that ordered the payment.

The party that ordered the payment is not in a contractual relationship with the recipient bank. He or she can however ask the sending bank he or she commissioned to make the payment to claim the payment back from the recipient bank. The latter is obliged to accommodate the request and ask its customer if it can debit the amount from his or her account again so it can be returned. If this is unsuccessful, from experience it is useful to make the recipient of the funds aware of the consequences he or she may face if they withhold or use the money. The party that ordered the

payment then has no choice but to file a criminal complaint since he or she does not know the recipient of the payment and is therefore unable to contact him or her directly regarding the repayment. As a result of his or her refusal, the recipient may have committed a criminal offence and, at the very least, should expect to pay costs in connection with such proceedings. Since the confidentiality obligations incumbent upon the recipient bank could not be lifted during the course of the Ombudsman proceedings, such cases, where the payment recipient suspected of receiving unjust enrichment refuses to cooperate, cannot be resolved within these proceedings. In the present case therefore, the Ombudsman had to confine his actions to providing the customer with the foregoing explanations.