



<b><u>Decision Ref:</u></b>	2018-0002
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Credit Cards
<b><u>Conduct(s) complained of:</u></b>	Arrears handling Delayed or inadequate communication
<b><u>Outcome:</u></b>	Substantially upheld

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

#### **Background**

This complaint concerns the Complainant's credit card account held with the Provider.

The first complaint is that the Provider unreasonably blocked the Complainant's credit card account in October 2012 as a result of a small underpayment of the minimum payment due on the account, caused by an administrative error on the Complainant's part. The second complaint is that the Provider, after blocking the Complainant's credit card, unreasonably charged a very high interest rate without offering a term loan rate. The third complaint is that the Provider dealt with the Complainant in an unacceptable manner.

The credit card was originally taken out with another financial service provider (hereinafter referred to as 'the Company') in 1998. In 2012 the Company sold the Irish credit card business to the Provider.

#### **The Complainant's Case**

The Complainant submits that he received a credit card from a Company in 1998, and does not recall filling in any application form. The Complainant submits that he made all payments on the credit card each month, and through an administrative error in 2012, he underpaid the account by €19.00. The Complainant submits that he paid the €19.00 together with a late fee charge of €15.00 the following month.

The Complainant submits that he was subsequently shocked to discover that his card was declined when he presented it for a payment in a shop. The Complainant submits that he

telephoned the Company and was informed that the card had been withdrawn. The Complainant submits that at the time the balance outstanding on the credit card account was €14,166.00, and the Company refused to reinstate the card. The Complainant submits that since then he continued to make regular payments of capital and interest.

The Complainant submits that at some later stage the Company passed the business to the Provider. The Complainant states that *"I had no agreement with [the Provider] nor did I consent for [it] to take over the account"*. The Complainant submits that he telephoned the Provider, however it refused to reinstate the card.

The Complainant submits that the Company and the Provider, after blocking his credit card, continued to charge a very high interest rate without offering a term loan rate. The Complainant submits that since October 2012 he has paid interest of approximately €9,000.00, and reduced the outstanding balance on his credit card account by €6,250.00 making a total payment of €15,250.00, more than the balance due in October 2012.

In his submission to this Office dated 13 September 2017, the Complainant submits that since October 2012 he has honoured, without fail, all payments to the Provider.

The Complainant submits that he wrote to the Provider seeking a copy of his signature on the original agreement with the Company in 1998, however it has failed to provide this.

The Complainant states that he is seeking the following:

- 1. Have the balance of €7,940.77 removed*
- 2. A refund of all payments made since Oct 2012 in the amount of €15,250.00*
- 3. See a copy of (signed) application for credit card"*

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

The Provider submits that a restriction was placed on the Complainant's credit card account on 30 October 2012 due to outstanding arrears at the time. The Provider states that *"I note your dissatisfaction that the restriction is still on your account and that the interest charged is very high. Please note that in order for us to review your account to see if you would be eligible for the restriction to be removed our Credit team would need permission to view your credit file details. They would also need to know what your household income is, what you are paying for mortgage/rent and the amount you are paying to other creditors. When they have all this information a business decision would be made whether to remove the restriction or keep it on your account"*.

The Provider submits that if the restriction is removed from the Complainant's credit card account, its Loyalty Team would be in a position to lower the rates on the account.

The Provider submits that the Complainant's credit card account is up to date, and a spending restriction remains in place.

## **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 21 February 2018, 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, the final determination of this office is set out below.

Before turning to the issue at hand, I must firstly address the following:

The Complainant submits that he received a credit card from a Company in 1998, and does not recall filling in an application form for the card. Provision 51 of the Financial Services and Pensions Ombudsman Act 2017 sets out, among other things, the following:

*"51. (1) A complaint in relation to conduct referred to in section 44 (1)(a) that does not relate to a long-term financial service shall be made to the Ombudsman not later than 6 years from the date of the conduct giving rise to the complaint.*

*(2) A complaint in relation to—*

*(a) conduct referred to in section 44 (1)(a) that, subject to the requirements specified in subsection (3), relates to a long-term financial service, or*

*(b) conduct referred to in section 44 (1)(b), that is subject to the requirements specified in subsection (4), shall be made to the Ombudsman within whichever of the following periods is the last to expire:*

*(i) 6 years from the date of the conduct giving rise to the complaint;*

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*(ii) 3 years from the earlier of the date on which the person making the complaint became aware, or ought reasonably to have become aware, of the conduct giving rise to the complaint;*

*(iii) such longer period as the Ombudsman may allow where it appears to him or her that there are reasonable grounds for requiring a longer period and that it would be just and equitable, in all the circumstances, to so extend the period.*

*(3) The requirements referred to in subsection (2)(a) are that—*

*(a) the long-term financial service concerned has not expired or otherwise been terminated more than 6 years before the date of the complaint, and the conduct complained of occurred during or after 2002, or*

*(b) the Ombudsman has allowed a longer period under subsection (2)(iii).*

*(4) The requirements referred to in subsection (2)(b) are that—*

*(a) where the conduct occurred prior to the establishment day, that conduct occurred within the period between 13 April 1996 and the establishment day, or*

*(b) the Ombudsman has allowed a longer period under subsection (2)(iii).”*

Therefore, this Preliminary Finding will not address any complaint raised in relation to the sale of the credit card in 1998, which falls outside my jurisdiction.

**(1) The first issue to be determined is whether the Provider unreasonably blocked the Complainant’s credit card account in October 2012 as a result of a small underpayment of the minimum payment due on the account, caused by an administrative error on the Complainant’s part.**

The Complainant submits that he received a credit card from a Company in 1998. The Complainant submits that he made all payments on the credit card each month, and through an administrative error in 2012 he underpaid the account by €19.00. The Complainant submits that he paid the €19.00 together with a late fee charge of €15.00 the following month.

The Complainant submits that he was subsequently shocked to discover that his card was declined when he presented it for payment in a shop. The Complainant submits that he telephoned the Company and was informed that the card had been withdrawn. The Complainant submits that at the time the balance outstanding on the credit card account was €14,166.00, and the Company refused to reinstate the card. The Complainant submits that since then he continued to make regular payments of capital and interest. The Complainant submits that he telephoned the Provider, however it refused to reinstate the card.

The Provider submits that its records show that the Complainant’s September 2012 statement required a minimum payment of €359.97 due on his account by 9 October 2012. The Provider submits that a payment of €340.00 was credited to the Complainant’s account on 2 October 2012, however, it was not sufficient to cover the minimum payment, and as a result a late payment fee of €15.24 was charged and the account fell into arrears. The

Provider submits that a restriction was then placed on the Complainant's account on 30 October 2012 due to the missed payment.

The Provider has obligations pursuant to the Consumer Credit Act 1995. Section 54 of the Consumer Credit Act 1995 provides the following:

*"54.—(1) A creditor or an owner shall not enforce a provision of an agreement by—*  
*(a) demanding early payment of any sum,*  
*(b) recovering possession of any goods (save where the goods are in imminent danger of being damaged or stolen), or*  
*(c) treating any right conferred on the consumer by the agreement as determined, restricted or deferred, unless he has served on the consumer, at least 10 days before he proposes to take any action, a notice which shall specify the following:*  
*(i) details of the agreement sufficient to identify it;*  
*(ii) the name and address of the creditor or owner, as the case may be;*  
*(iii) the name and address of the consumer;*  
*(iv) the term of the agreement to be enforced; and*  
*(v) a statement of the action he intends to take to enforce the term of the agreement, the manner and circumstances in which he intends to take such action and the date on or after which he intends to take such action.*

*(2) A creditor or an owner shall not, by reason of any breach by a consumer of an agreement—*  
*(a) determine the agreement,*  
*(b) demand early payment of any sum,*  
*(c) recover possession of the goods,*  
*(d) treat any right conferred on the consumer by the agreement as determined, restricted or deferred, or*  
*(e) enforce any security, unless he has served on the consumer, not less than 10 days before he proposes to take any action, a notice which shall specify the following:*  
*(i) details of the agreement sufficient to identify it;*  
*(ii) the name and address of the creditor or owner, as the case may be;*  
*(iii) the name and address of the consumer;*  
*(iv) the nature of the alleged breach;*  
*(v) either—*  
*(I) if the breach is capable of remedy, what action is required to remedy it and the date before which that action is to be taken, which date shall be not less than 21 days after the date of service of the notice, or*  
*(II) if the breach is not capable of remedy, the sum, if any, required to be paid as compensation for the breach and the date before which it is to be paid, which date shall be not less than 21 days after the date of service of the notice; and*  
*(vi) information about the consequences of failure to comply with the notice.*  
*(3) If the consumer takes the action specified under subparagraphs (v) (I) or (v) (II) of subsection (2), before the date specified for that purpose in the notice, the breach shall be treated as not having occurred, in any records maintained for information on the consumer's credit record.*

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*(4) Notwithstanding this section, a creditor or an owner may apply to a court of competent jurisdiction in any particular case to have the provisions of this section dispensed with where the court is satisfied that it would be just and equitable to do so."*

The Provider submits that it sent a letter to the Complainant on 11 October 2012 to advise that the account was in arrears, and that a spending restriction would be placed on the account if a payment was not received to cover the overdue amount within ten days from the date on the letter. The Provider has submitted a generic undated copy letter, which I note, states, among other things, the following:

*"Notice of Arrears and Restriction of Credit Facility*

*Following a review of your account we note that a payment has not been received as detailed on your most recent statement. If you fail to make this payment within 10 days from the date of this letter, a restriction will be placed on this account in line with section 15b of your terms and conditions and no further transactions will be authorised.*

*The payment required to stop your account from being blocked is shown above.*

*What does failure to pay mean for my account?*

*Failure to pay means that a restriction will be placed on your credit facility and you will not be able to make new transactions on your account. If you have regular transactions such as annual or monthly subscriptions for magazines, satellite TV, insurances etc., charged to your account, please contact the providers as soon as possible to arrange an alternative means of payment, as these may not be paid in the future.*

*Please be aware that any contact or policy you have with the merchant may be cancelled as a result of the regular transaction being returned. If you wish to continue the subscription, you will need to contact the merchant directly and give them an alternative method of payment.*

*Please also be aware that you will remain liable for the €30 Irish Government Stamp Duty charge for the end of the financial year ending 31<sup>st</sup> March 2013.*

*If you have a balance on your account, you must continue to make at least your minimum payment each month and on time in line with your terms and conditions as interest and applicable account fees will still be charged on your account. Once your balance is repaid in full please contact us and we will arrange to close your account.*

*...*

*If you have any questions about this letter please call us on... We are here 9am to 6pm Monday to Friday and 9am to 1pm Saturdays."*

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The Complainant, in his submission to this Office dated 13 September 2017, states that he did not receive the letter regarding Notice of Arrears and Restriction of Credit Facility from the Provider.

The Provider states that it has *“shown that the letter in question was sent as per the account notes provided. We do not send such letters by registered post so we are unable to prove that the Complainant received it; however, the firm also attempted to call the Complainant to discuss the arrears so we would note that the letter was not his only opportunity to set things right”*.

Provision 11 of the Consumer Protection Code 2012 ('CPC 2012') sets out, among other things, the following:

*“11.5 A regulated entity must maintain up-to-date records containing at least the following:*

- a) a copy of all documents required for consumer identification and profile;*
- b) the consumer’s contact details;*
- c) all information and documents prepared in compliance with this Code;*
- d) details of products and services provided to the consumer;*
- e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;*
- f) all documents or applications completed or signed by the consumer;*
- g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and*
- h) all other relevant information and documentation concerning the consumer.*

*11.6 A regulated entity must retain details of individual transactions for six years after the date on which the particular transaction is discontinued or completed. A regulated entity must retain all other records for six years from the date on which the regulated entity ceased to provide any product or service to the consumer concerned.”*

It is disappointing that the Provider has failed to retain a copy of the letter it submits it issued to the Complainant on 11 October 2012 regarding arrears on his credit card account, in compliance with its obligations under Provision 11 of the CPC 2012.

The Provider has submitted a copy of its internal notes, which I note sets out the following entries on 11 October 2012:

...	11/10/2012	MCE	CONV MTCE ID MCE MTCE DATE 11/10/2012	MTCE DESC GENERATED MAINTENANCE	NEW ACCT ENTERED CTA – REASON 04
...	11/10/2012	SYS	ABCSYS	DELQ RM COLLB STAT (P) ST LET IX SM 0060 SC 428	

I am of the view that it is not clearly evident from the Provider's internal notes that it issued the arrears letter to the Complainant on 11 October 2012. Furthermore, I note that the generic letter submitted by the Provider did not set out, in compliance with Provision 54(2)(v)(I) of the Consumer Credit Act 1995, what action was required of the Complainant to remedy the breach and the date before which that action was to be taken "*which date shall be not less than 21 days after the date of service of the notice*".

The Provider submits that, as the Complainant's account was in arrears for 18 business days, a business decision was made to block the account to prevent further usage of the account. The Provider states that it "*has a right to decline a transaction where we have objectively justified reasons for doing so as per section 15b of the terms and conditions*". The Provider submits that Provision 15b of its terms and conditions provides the following:

*"15b If we have a valid reason (which we will tell you about unless prohibited by law or for security reasons from doing so), we may at any time stop, suspend or restrict the use of any card, card number, cheque or PIN. Any of the following will be a valid reason: (a) if we suspect that the card has been lost or stolen or have other objectively justified reasons for doing so relating to the security of the card, card number, cheque or PIN; if we suspect this, we may stop the card and refuse to authorise any transaction until you ring us to confirm whether or not it has been lost or stolen (b) if we suspect that the card, card number, cheque or PIN has been used in an unauthorised or fraudulent manner or (c) if we believe that there is an increased risk that you will not be able to pay the amounts due by you to us under this agreement"*.

The Complainant submits that the credit card account terms and conditions were never provided to him.

In response, the Provider states that "*The right to decline transactions and restrict the facility is nothing new and was provided for under 17(2) of the Terms and Conditions which applied from the account open date as far back as 1998*". The Provider has submitted a copy of these terms and conditions, and I note that Provision 17(2) provides the following:

*"We may at any time:*  
*(a) stop, suspend or restrict any Card, Card number, PIN, or any function of them;*  
*or*  
*(b) ..."*

The Provider has submitted a copy of the credit card agreement dated 9 September 1998. I note that the Complainant signed the agreement underneath the following heading:

*"10. PRINCIPAL CARDHOLDER'S REQUEST AND DECLARATION*

*...*

*I understand that, if I am approved, use of any Credit Card... will constitute acceptance of the... Credit Card Terms & Conditions which will be supplied with my Credit Card."*

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The Provider submits that on 30 October 2012 it contacted the Complainant to query why the full payment was not received by the due date, and to seek to agree an approach to resolve the arrears and assist with any financial difficulty the Complainant may be experiencing. The Provider states that *"The Complainant advised that he did not want to answer to a blocked number, and he ended the call. The Complainant was provided with a contact number for the [Provider's] Customer Assistance department on this call"*.

The Complainant, in his submission dated 13 September 2017, states that *"I received several telephone calls from a withheld number. I was asked to provide details of my name and other personal details. [T]hese details were to be given by me to an unknown person. Only a fool would give such details in this day and age of internet fraud the option was always available to [the Provider] to contact me from an identified number"*.

The Provider submits that on 30 October 2012 a spending restriction was placed on the Complainant's account due to the fact that the account was in arrears and remained unpaid. The Provider submits that on 1 November 2012 the Complainant telephoned its office and advised that he would make a payment at the Post Office and was unaware that the account was underpaid. The Provider states that *"The Complainant advised us that he was away on holidays and he gave the money to his daughter to pay the account while he was away"*.

The Provider submits that the Complainant's October 2012 statement required a minimum payment of €378.21 due on the Complainant's account immediately. The Complainant submits that a payment of €400.00 was credited to the Complainant's account on 7 November 2012, which brought the account out of arrears and up to date. The Provider states that the Complainant's account was in arrears by €19.97 from 2 October 2012 until 7 November 2012, which was when the payment of €400.00 was credited to the account.

The Provider submits that on 3 October 2014 the Complainant telephoned its office to query whether there was Payment Protection Insurance (PPI) on his account. The Provider submits that its associate undertook to look into the Complainant's request and send out whatever information it held for him in regard to PPI. The Provider submits that following its investigation it established that there was never any PPI on the account, and it responded to the Complainant to that effect. The Provider states that *"On that same call, the Complainant asked about the restriction on the account, and the associate explained clearly when and why it was applied"*.

The Provider submits that on 8 September 2016 the Complainant called the office and spoke with an associate in relation to getting the block removed from his credit card account. The Provider states that *"The associate advised the Complainant that we would need to view his credit file and some financial details. As the Complainant did not give permission for his credit file to be viewed the associate advised the Complainant that the restriction would remain on his account"*.

The Provider states that *"We appreciate that restricting the facility when the account had been underpaid by a relatively small amount may seem disproportionate to the Complainant; however, it's important to note that this was close to the height of the global financial crisis back in 2012, and at that time [the Company's] credit risk appetite was consistent with the*

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*prevailing market conditions". The Provider also states that "Our records show that the Complainant did not call the office to request that the spending restriction be removed until [8]<sup>th</sup> September 2016. The associate discussed the possibility of having the restriction removed, subject to an appropriate creditworthiness assessment including a credit file search. As the Complainant declined to consent for a credit file search, the restriction remained in place".*

The Provider submits that in its response dated 3 January 2017 it again advised the Complainant that it could look to get the block removed, provided it had the Complainant's permission to view his credit file details. The Provider submits that as the Complainant did not grant it this permission, the block remained on his account. The Provider submits that it also advised the Complainant that if the block is removed, it may be in a position to reduce the interest rates on his account. The Provider submits that the Complainant still would not give it permission for the credit file to be reviewed.

The Provider submits that in relation to its decision not to reactivate the credit facility without consent to complete a credit bureau search, there are a number of regulatory and fiduciary requirements, which it has taken into account. The Provider states the following:

*"As outlined in Part 2 11(2) of the Consumer Credit Agreements Regulations 2010 (CCAR), regulated entities are required to complete a creditworthiness assessment prior to agreeing to any significant change in the total amount of credit available. We note that certain provisions of the CCAR 2010 do not directly apply to this credit agreement, on the basis that it was concluded prior to the regulations coming into effect in June 2010; however, we consider Regulation 11 to be of persuasive value:*

*Obligation to assess creditworthiness of consumers*

*11.(2) If a creditor and a consumer agree to change the total amount of credit after a credit agreement is concluded, the creditor-*

*(a) shall update the financial information at the creditor's disposal concerning the consumer, and*

*(b) shall assess the consumer's creditworthiness before agreeing to any significant increase in the total amount of credit.*

*(3) A credit or credit intermediary that contravenes a provision of this Regulation commits an offence.*

*In this scenario reactivating the facility would, in our view, amount to a significant increase in the credit available, and therefore a creditworthiness assessment is appropriate and necessary. In reaching this determination we are mindful of the length of time which has elapsed since the facility was withdrawn. There has not been an active [Provider] credit facility in place for the Complainant in close to 5 years, and on that basis we need to satisfy ourselves on reasonable grounds that the Complainant is in a position to repay any further credit advanced. This is both in the context of the Consumer Credit Agreements Regulations... and in accordance with our fiduciary duty to act in the best interests of our consumer as outlined in the Central Bank's Consumer Protection Code 2012."*

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The Provider submits that Provision 2.1 of the Consumer Protection Code 2012 (the CPC 2012) provides that:

*“A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:*

*2.1 acts honestly, fairly and professionally in the best interest of its customers and the integrity of the market”*

The Provider submits that its actions are in line with the letter and spirit of the CPC 2012 and that reactivating a €20,000 credit limit without conducting an appropriate creditworthiness assessment would not be in keeping with its obligations to act in the best interests of the consumer.

The Provider states that *“we note the suitability provisions of Chapter 5 of CPC 2012, and while Chapter 5 did not apply to this agreement at the time it was concluded on 23 September 1998, we note that the spirit of CPC is relevant, and in this regard we reference provisions 5.3 and 5.4 which set an expectation that regulated entities must gather appropriate information prior to providing a subsequent service to the consumer. If this information is not provided the regulated entity is expected to inform the consumer that it cannot provide the product or service sought”*.

Provisions 5.3 and 5.4 of the CPC 2012 provide the following:

*“5.3 A **regulated entity** must gather and maintain a **record** of details of any material changes to a **consumer’s** circumstances prior to offering, recommending, arranging or providing a subsequent product or service to the **consumer**. Where there is no material change, this must be noted on a **consumer’s records**.*

*5.4 Where a **consumer** refuses to provide information sought in compliance with Provisions 5.1 and 5.3, the **regulated entity** must inform the **consumer** that, as it does not have the relevant information necessary to assess suitability, it cannot offer the **consumer** the product or service sought.”*

The Provider states that *“Notwithstanding the regulatory requirements..., it would simply not be prudent or responsible of [the Provider] to advance further credit to a consumer without a full understanding of their financial situation. Such a practice would expose the firm to unacceptable levels of credit risk, not to mention the increased potential for customer detriment. We are more than happy to have our credit team review the Complainant’s request to have the facility reactivated; however, as a responsible lender we are not prepared to reactivate the facility without permission to complete a credit bureau search”*.

I note that the Complainant was not seeking any *“significant increase in the total amount of credit”*, the Complainant had a credit limit of €20,000.00 on his credit card, and I can find no evidence to show that the Complainant was seeking an increase of this limit. Furthermore, as the Complainant was seeking to have his credit card reinstated and not seeking a

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subsequent product or service, I am of the view that Provisions 5.3 and 5.4 of the CPC 2012 did not apply.

The Provider has obligations pursuant to the European Communities (Payment Services) Regulations 2009 (the "2009 Regulations"). Regulation 69 of the 2009 Regulations sets out, among other things, the following:

*"Limits of the use of payment instruments.*

*69. (1) If a specific payment instrument is used for the purposes of giving consent, the payer and the payment service provider concerned may agree on a spending limit for payment transactions executed through that payment instrument.*

*(2) If agreed in the relevant framework contract, a payment service provider may reserve the right to block a payment instrument for objectively justified reasons related to the security of the payment instrument, any suspicion of unauthorised or fraudulent use of the payment instrument or, in the case of a payment instrument with a credit line, a significantly increased risk that the payer may be unable to fulfil his or her obligation to pay.*

*(3) In such cases the payment service provider shall inform the payer in an agreed manner of the blocking of the payment instrument and the reasons for it, if possible before the payment instrument is blocked and at the latest immediately after the blocking, unless giving such information would compromise the security of the payment service provider or is prohibited by another law.*

*(4) The payment service provider shall unblock the payment instrument or replace it with a new payment instrument once the reasons for blocking no longer exist."*

The Provider submits that Provision 69(2) of the 2009 Regulations assigns a right to payment service providers to block a payment instrument where there is a significantly increased risk that the payer may be unable to repay the credit advanced.

Having carefully considered all of the evidence before me, I must accept that the Provider was entitled, pursuant to the terms and conditions of the credit card account, to block the credit card in circumstances where there were arrears on the Complainant's credit card account. That said, I am of the view that it was disproportionate and unreasonable of the Provider to do so in circumstances where the Complainant underpaid his October 2012 minimum payment of €359.97 by a relatively small sum, that is, €19.97 and there is no evidence of any arrears on the account prior to this date.

I am also of the view that the Provider failed to comply with Provision 69(4) of the 2009 Regulations by not unblocking the Complainant's credit card once the reasons for blocking no longer existed, that is, once the underpayment/arrears of €19.97 together with the late payment fee of €15.24 was paid by the Complainant in November 2012. Provision 2.11 of Chapter 2 of the CPC 2012 provides the following:

*"GENERAL PRINCIPLES*

*A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:*

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*2.11 without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services;"*

Consequently, it is my Legally Binding Decision that this aspect of the complaint is substantially upheld.

**(2) The second issue to be determined is whether the Provider, after blocking the Complainant's credit card, unreasonably charged a very high interest rate without offering a term loan rate.**

The Complainant states, in his letter to this Office dated 7 December 2016, that *"The interest that you are applying to this account is that of an active account and not a blocked account which in my opinion should not attract any interest"*. In his submission dated 7 December 2016, the Complainant also states that *"since Oct 2012 (when the card was withdrawn) I have paid interest of €9,000.00 (approx.)"*.

The Provider submits that any account balance not paid off in full and on time every month accrues interest. The Provider submits that Section 2 of the terms and conditions of the Complainant's account sets out:

*"2 How we work out your interest*

*2a We will charge interest on all transactions, handling fees, and on interest you already owe, at the rate which applies to the relevant transaction. We will always charge interest on any card fee and default charges at the same rate as the standard variable interest rate which applies to card purchases as set out in paragraph 1e.*

*2b Save as set out in paragraph 2c, we will charge interest on all transactions, handling fees, card fees and default charges and interest starting on the date that they are posted or applied to your account and ending on the date that you pay the total account balance in full. We work out interest each day (both before and after any judgment) so the earlier you make the payment, the less interest you will have to pay.*

*2c We will not charge interest on the card purchases shown on your statement if you pay off the total balance shown on that statement by the payment due date shown on that statement, provided you have also paid off the total account balance shown on the previous month's statement (if any) by the payment due date shown on the statement. If you pay the total account balance in full one month, but don't pay the total account balance in full the following month, then for card purchases we will charge interest starting on the date of the statement on which the card purchase is first shown and ending on the date you pay the total account balance in full. Any new card purchases made will then be charged interest as set out in paragraph 2b.*

*2d All amounts that are debited to your account will incur interest unless otherwise set out in this agreement. If the applicable interest rate for any amount debited to your account is not otherwise specified in this agreement (for example, for returned payments debited to your account under paragraph 13b), then the standard*

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*variable interest rate that applies to card purchases as set out in paragraph 1e will apply to that amount.”*

The Provider states that *“An account which has presented a higher risk profile in terms of propensity to default would generally be subject to a higher rate of interest based on the increased credit risk for the provider. [the Provider] certainly has procedures in place to assist consumers in financial difficulty, and some of these measures include a suppression of interest; however, these arrangements are entered into where a consumer has engaged with us in order to agree an approach to resolve an arrears situation, and are conditional upon agreeing to a mutually acceptable reduced payment agreement, with the consumer having provided a full financial statement and given their consent to complete a credit file search. We do not suppress the interest simply because the facility has been withdrawn. Such an exception is in our view unreasonable, and is not consistent with the terms and conditions of the credit agreement”*.

The Provider submits that it is satisfied that the interest rates on the Complainant’s account are charged in accordance with the terms and conditions, and that by signing the original application on 9 September 1998 and subsequently using the card, the Complainant accepted the terms and conditions of the credit card.

While, as set out above, I am of the view that it was disproportionate and unreasonable of the Provider, in the circumstances, to have blocked the Complainant’s credit card and it should have unblocked the account once the Complainant paid the €19.97 arrears on the account, I must accept that the Provider was entitled, pursuant to the terms and conditions of the credit card account, to charge the same interest on the account when it was blocked as when it was active.

Consequently, it is my Legally Binding Decision that this aspect of the complaint is not upheld.

**(3) The third issue to be determined is whether the Provider dealt with the Complainant in an unacceptable manner.**

The Complainant states that the Provider has *“conducted [its] business with me in a despicable manner”*.

The Provider submits that the Complainant spoke with its representative on 8 September 2016 in relation to the restriction on his account and whether the Complainant would be eligible for the restriction to be removed. The Provider states that *“As part of the removal criteria [the Provider’s representative] advised you that we would need certain financial details and your permission to view your credit file. As you did not give your consent for us to view your credit file [the Provider’s representative] could not submit your details to our Credit team to see if you would be eligible for the restriction to be removed. During this conversation you advised [the Provider’s representative] that you were dissatisfied that you were being charged for Government Tax when your account was inactive. [The Provider’s representative] informed you that Government Tax has not been charged on your account since 2013 due to the account being inactive”*.

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The Provider submits that liability was determined as the Complainant's account was open for a period from 1 April 2012 to 30 September 2012, when the restriction was placed on the Complainant's account. The Provider submits that this is always charged in advance.

I note that the Provider's letter to the Complainant dated 20 September 2016 states that:

*"We can confirm that the above account was blocked in October 2012. The last Irish Government Tax that was charged on the account was in April 2013 for the previous tax year as the account was active during the year of 2012."*

The Complainant, in his letter dated 7 December 2016 to the Provider, states that *"I have again tried to contact you by phone today 7<sup>th</sup> Dec and stayed on the line for over 25 minutes without being put in contact with you"*.

In relation to the telephone call on 7 December 2016, the Provider submits that it has no record of this call. The Provider states, in its final response letter dated 3 January 2017, that *"If you would like us to look into this matter further for you can you provide us with details of the call and we will assist you where possible?"*. The Provider submits that it spoke with its technology team who advised that there were no issues with its call hold times on that date. The Provider states, in its final response letter dated 21 December 2015, that *"As you did not speak with anyone on that date I do not know what time you called the office, therefore, I am unable to look into the matter further for you. If you would like to provide me with this information I can investigate the matter further for you"*.

The Provider submits that call waiting times can fluctuate throughout the day, and it is possible that the Complainant telephoned during a period of exceptionally high call volumes into the contact centre. The Provider states that *"for the sake of completeness we have checked our average speed of answer for the day in question, and the average wait time was 43 seconds"*.

The Complainant, in his submission dated 13 September 2017 states, that *"Regardless of [its] average speed records of answering calls the fact is that on the 7<sup>th</sup> Dec 2016 I was left waiting 25 minutes"*.

The Complainant, in his Complaint Form dated 17 January 2017, submits that the Provider failed to provide him with a signed copy of his original application and agreement.

The Provider submits that the agreement was provided to the Complainant on 6 February 2017, which was approximately 2 months after his original request. The Provider submits that as it was not a formal data subject access request the timeframe of 40 calendar days did not apply. The Provider states that it accepts *"that it took a length of time to locate the original agreement; however, this was caused by what we feel is an understandable degree of difficulty locating a document which the Complainant entered into with [a Company] dating back to 1998. A copy of the agreement was provided to the Complainant as soon as was reasonably practicable"*.

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Having carefully considered all of the evidence before me, while I note that there was a delay on the part of the Provider in furnishing the Complainant with a copy of the credit card agreement, I can find no intentional wrongdoing on the Provider's part in this regard. In relation to the Complainant's submission that he was left on hold for over 25 minutes on 7 December 2016, while ideally a customer should not have to wait this long to speak to a call handler, I must accept that there are circumstances where the Provider can experience exceptionally high call volumes which can lead to lengthy call waiting times.

While I can find no evidence that the Provider dealt with the Complainant in an unacceptable manner, I am of the view that the Provider, during various telephone conversations with the Complainant, did not provide him with accurate information regarding the unblocking of his credit card.

To conclude, to mark the Provider's failure to firstly fully maintain its records in compliance with Provision 11 of the CPC 2012; secondly to highlight to the Complainant what action was required of him to remedy any breach of the terms and conditions of the credit card agreement and the date before which that action is to be taken "*which date shall be not less than 21 days after the date of service of the notice*" in compliance with Provision 54(2)(v)(l) of the Consumer Credit Act 1995; thirdly to comply with Provision 69(4) of the 2009 Regulations by not unblocking the Complainant's credit card once the reasons for blocking no longer existed; and fourthly to provide the Complainant with correct information regarding the unblocking of his credit card during various telephone conversations, I direct the Provider to make a compensatory payment of €10,000 to an account of the Complainant's choosing within 35 days. I also direct that the Provider remove any adverse reports on the Complainant's Irish Credit Bureau (ICB) records as a result of the restriction that was placed on his credit card within 35 days.



## **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct that the Respondent Provider make a compensatory payment of €10,000 to an account of the Complainant's choosing and remove any adverse reports on the Complainant's Irish Credit Bureau (ICB) records as a result of the restriction that was placed on his credit card within 35 days.
- Pursuant to **Section 60(6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I 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**, where the amount is not paid within 35 days as set out above.
- Pursuant to **Section 60(8)** of the **Financial Services and Pensions Ombudsman Act 2017**, the Respondent Provider is now required, not later than 14 days after the expiry of the 35 days as set out above to notify this office in writing of the action taken or proposed to be taken in consequence of the said directions outlined above.

**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**

23 March 2018

**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) in accordance with the Data Protection Acts 1988 and 2003.**