



<u>Decision Ref:</u>	2018-0157
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Cards
<u>Conduct(s) complained of:</u>	Incorrect information sent to credit reference agency Delayed or inadequate communication Level of contact or communications re. Arrears Complaint handling (Consumer Protection Code) Dissatisfaction with customer service
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a credit card account and the Provider's reporting of the Complainant's arrears and cancellation of her credit card to the ICB and poor customer service or complaint handling.

The Complainant's Case

The Complainant held a credit card with the Provider which fell into arrears. She states that she contacted the Provider on 26 November 2015 in order to set up a direct debit arrangement to pay her credit card bill. She states that she asked Provider for details to set this up but that the Provider gave her the wrong details which prevented her from setting up the direct debit. She states that the Provider had given her details for UK customers and not Irish customers. She states that when she realised what happened, she phoned the Provider on the same day and got the correct details. During the call, she states that nothing was mentioned to her about the state of her account but that after she asked a number of questions she was passed to the payments team who advised the Complainant that she was in a debt recovery plan and her credit history would be affected as a result. The Complainant states that she was shocked to receive this news. The Complainant states that she advised the Provider that she did not want to be in debt recovery and wanted to pay what she owed

to the Provider but she was told that this was not possible. The Complainant states that she did not get any letters from the Provider in this regard.

The Complainant states that she had previously asked for direct debit details to keep on top of repayments but she was unable to set it up because she was given the wrong details.

The Complainant accepts that she missed payments but she states that the Provider made it difficult for her to set up a direct debit and this is the reason why she has ended up in this situation. The Complainant stated that she cleared the full balance on 2 December 2015 and asked for a formal complaint to be lodged. The Complainant wanted the information about the revocation of her credit card to be removed from her credit record. She states that the Provider told her that it could only do this if there was fault on the Provider's part. The Complainant states that she heard nothing from the Provider and that she wrote to the Provider on 31 December 2015 because her complaint had not been addressed. She stated that she did not receive a letter from the Provider until 11 January 2016 confirming her account was now closed and that the default on the account was noted for a period of five years. She states that she finally got a response to her complaint on 14 January 2016.

The Complainant is unhappy that her credit rating is negatively listed with the Irish Credit Bureau and she feels that the Provider made it difficult for her to set up a direct debit to keep on top of repayments.

The complaint is that the Provider has wrongfully and unreasonably allowed her credit rating to be adversely affected and had failed to deal adequately with her complaint. The Complainant is seeking to have any negative indications linked to her name removed from the Irish Credit Bureau's list and the status of her revoked credit card account to be removed.

The Provider's Case

The Provider denies any wrongdoing and states that the Complainant was aware that her card was revoked and that the terms and conditions of the credit card account provide that a credit rating may be affected when payments are missed. The Provider states that the Complainant missed payments on a number of occasions and it is entitled to provide the Irish Credit Bureau with an accurate record of the payment performance of the Complainant.

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 12 September 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.

Following the issuing of my Preliminary Decision, the Complainant submitted further observations in two e-mails to this Office dated 13 September 2018, a copy of which was furnished to the Provider for its consideration.

Having considered those submissions, my final determination is set out below.

I have been provided with a copy of the credit card agreement entered into between the Complainant and the Provider. This copy shows the signature of the Complainant and is dated 21 October 2009. Amongst other things, the agreement provides for the following Clause 5 (h):

"Where you borrow or may borrow from us, we may give details of your account and how you managed to credit reference agencies. If you borrow and do not repay in full and on time, we may tell credit reference agencies who will record the outstanding debt."

Clause 1 (d) of the agreement provides:

"If we consider it appropriate we may suspend, withdraw or restrict the use of your card and PIN at any time. We will tell you before we take action, or as soon as reasonably practicable afterwards".

Furthermore, Clause 8 (a) of the agreement provides:

"We may end the agreement at any time by giving you reasonable notice in writing. Before we end this agreement we will carry out any procedures required by law."

The Provider asserts that the Complainant's account entered into arrears in 2012 and was "in and out" of arrears from that time forward and letters were sent to the Complainant. The Provider asserts that the Complainant's account has been in continuous arrears from

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October 2014. The Provider has furnished copies of letters dated 16 August 2012, 23 August 2012, 27 August 2012 and 25 September 2012 which demonstrate that the Complainant's account was in arrears and/or over the agreed credit limit intermittently during 2012.

On 13 October 2014, the Provider wrote to the Complainant stating that her credit card fell into arrears on 12 September 2014 and that the outstanding arrears at that time stood at €58. Amongst other things, the letter explains that if there are difficulties making the required payments, the customer should call the Provider to discuss the options in order to assist in resolving the arrears. The letter goes on to set out that if no contact is made to discuss payment arrangements and the account remains in arrears, the Provider may have to take steps to terminate the agreement and recover the full balance.

The letter also sets out that the Provider will share data regarding the arrears with the Irish Credit Bureau and any other appropriate credit reference agency. The letter states that this may adversely affect the Complainant's credit rating. Two further letters regarding arrears were sent to the Complainant on 25 November 2014 and 26 December 2014.

On 12 January 2015, the Provider wrote to the Complainant stating that the account fell into arrears on 13 December 2014 and that the arrears outstanding currently stood at €43. The letter goes on to make the same reminders and warnings regarding the termination of the account and reference to credit reference agencies. A further letter was sent on 26 January 2015 stating that the account was now overdue by €53 and providing details on how to make payment. A further reminder letter regarding arrears was sent to the Complainant on 25 February 2015. And further letters were sent to the Complainant regarding missed payments and/or arrears on 27 February 2015 and 26 March 2015.

This office has been provided with audio of telephone calls on various dates between the Complainant and the Provider. These have been considered and can be summarised as follows:

7 March 2015: Call from the Provider to the Complainant stating that there is an overdue payment and asking for payment of the overdue amount of €49. The Complainant stated that she would make the payment online the same day. The Provider then advised the Complainant that because she had missed a payment it would be recorded on her credit file as a late payment which might have an effect on her ability to obtain credit and on her ability to renew the card. The Complainant confirmed her understanding of this.

28 April 2015: Call from the Complainant to the Provider and requesting how much was due on the account. She was told her balance was €2,009.14. The Complainant wanted to make a payment of €70. The Complainant was also told that she last made a payment on 30 March 2015 for €60 and the Complainant confirmed that she had the correct online details and would make the payment online.

23 May 2015: Call from Provider to the Complainant stating that there was a payment overdue of €50 and it was over the credit limit. The Complainant stated that she would pay €109 on the following Wednesday when she got paid and that would cover the overdue payment as well as the current month's due payment. The Complainant was advised that it

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might be recorded on her credit file as a late payment which might have an effect on her ability to obtain credit and on her ability to renew the card. The Complainant confirmed her understanding of this.

Over the course of the following months, the Provider wrote to the Complainant on 23 April 2015, 25 May 2015, 26 May 2015, 12 June 2015 and 14 September 2015. These letters related to arrears and/or missed payments on the credit card account.

I accept, in light of the foregoing, that the credit card account was in arrears and that payments being made by the Complainant to pay off the arrears fell short of the amounts of repayments that the Provider had requested or agreed on occasions.

The Provider then sent to the Complainant by letter dated 17 September 2015, a default notice under Section 54(2) of the Consumer Credit Act 1995. She was informed that the account was in arrears of €154 and requested a payment of a minimum of €154. The letter stated that if the breach was not remedied within 28 days, the agreement would be terminated and the account would be reported to the credit reference agencies as a default which would remain on file for 6 years.

A further default notice under Section 54(2) of the Consumer Credit Act 1995 was sent to the Complainant on 16 October 2015 stating that the account was in arrears of €144 and requested a payment of a minimum of €144. The letter stated that if the breach was not remedied within 28 days, the agreement would be terminated and the account would be reported to the credit reference agencies as a default which would remain on file for 6 years.

When a Provider serves a default notice on a customer under Section 54(2) of the Consumer Credit Act 1995 it must 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;
- (iv) the nature of the alleged breach;
- (iii) the name and address of the consumer;
- (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.

I accept from examination of the notices dated 17 September 2015 and 16 October 2015 that these requirements were met and the amount of arrears is not disputed by the

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Complainant. The Complainant states that when she sought to set up a direct debit on 26 November 2015, the Provider gave her incorrect details but the agreement had already been terminated at that date and therefore this would have had no bearing on the validity of the termination of the agreement. As set out above, it is clear that the Complainant was informed on a number of occasions that the Irish Credit Bureau would be informed of the termination of the agreement and any arrears.

It is also clear from the correspondence dated 17 September 2015 and 16 October 2015 that the Complainant was informed that the credit card was revoked.

It is clear therefore, in light of all of the foregoing, that the Complainant was aware that her arrears and failure to make repayments cause the agreement to terminate and could affect her credit rating and that this eventuality was represented to her by the Provider. Accordingly, I do not uphold this aspect of the complaint.

The second aspect of this complaint relates to the assertion that the Provider failed to comply with obligations in relation to dealing with the formal complaint that the Complainant lodged with the Provider on 2 December 2016.

The Provider's relevant obligations in complaint resolution is provided in Section 10.9 of the Consumer Protection Code 2012 which provides as follows:

"A regulated entity must have in place a written procedure for the proper handling of complaints. This procedure need not apply where the complaint has been resolved to the Complainant's satisfaction within five business days, provided however that a record of this fact is maintained. At a minimum this procedure must provide that:

a) the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received;

b) the regulated entity must provide the Complainant with the name of one or more individuals appointed by the regulated entity to be the Complainant's point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further;

c) the regulated entity must provide the Complainant with a regular update, on paper or on another durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made;

d) the regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; where the 40 business days have elapsed and the complaint is not resolved, the regulated entity must inform the Complainant of the

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anticipated timeframe within which the regulated entity hopes to resolve the complaint and must inform the consumer that they can refer the matter to the relevant Ombudsman, and must provide the consumer with the contact details of such Ombudsman; and

e) within five business days of the completion of the investigation, the regulated entity must advise the consumer on paper or on another durable medium of:

- i) the outcome of the investigation;*
- ii) where applicable, the terms of any offer or settlement being made;*
- iii) that the consumer can refer the matter to the relevant Ombudsman, and*
- iv) the contact details of such Ombudsman.”*

The Bank clearly investigated the complaint and issued the Complainant with a letter dated 14 January 2016 outlining the outcome of its investigations. This was a reasonable time period in which to conclude the investigation. However, the Bank has failed to establish or provide any correspondence which evidences that it acknowledged the complaint within five business days of the complaint being received, or at all. There is no correspondence which evidences that the Complainant was provided with the name of an individual appointed by the Provider to be the Complainant's point of contact in relation to the complaint and there appears to have been no update provided to the Complainant between the date of the lodgement of the complaint and the letter of 14 January 2016 detailing the outcome of the investigation. Therefore, the Provider did not adhere to its obligations in this regard and accordingly, I uphold this aspect of the complaint and direct payment of €100 to the Complainant arising out of this aspect of the complaint.

In her post Preliminary Decision submission, the Complainant raised the issue of further alleged incorrect reporting of her account to the ICB that was not included in her original complaint.

This conduct has not been investigated as part of the complaint and therefore does not form part of this Decision. Therefore, the Complainant may wish to submit a new complaint to this Office in relation to that conduct and the ICB reporting that did not form part of this Decision.

Conclusion

My Decision pursuant to **Section 60(1) (c)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2)** in respect of the poor complaint handling.

Pursuant to **Section 60(4) 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 Complainant in the sum of €100, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant 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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

28 November 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) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.