



<u>Decision Ref:</u>	2018-0190
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Cards
<u>Conduct(s) complained of:</u>	Maladministration
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a credit card account and alleged maladministration and substandard complaint handling.

The Complainant's Case

The Complainant states that in April 2017, she applied to open a new Visa card account with the Bank. She explains that she had previously held a Visa card account with the Bank which she had closed. The Complainant states in her complaint form that she transferred the balance of that credit card to a new credit card account with [a third party Financial Service Provider]. The Complainant states that after she had applied to open up a new credit card account with the Bank in April 2017, she received a telephone call from the Bank stating that she already had an active credit card account and that there was a balance outstanding on the credit card account. The Complainant states that she did not or should not have had an active credit card account due to the fact that she had closed her previous account. The Complainant states that she was told by the Bank that she needed to get in touch with [a third party Financial Service Provider] in order to complete the closure of the previous account. The Complainant states that she was told that she cannot keep changing Banks and that she was wrongly told that she owed money on the account when she did not.

In addition to the foregoing, the Complainant lodged a formal complaint with the Bank arising out of the above matters and she asserts that the Bank failed to deal with her complaint adequately.

The Complainant makes this complaint on the basis that the Bank has wrongfully, unreasonably and through a mistake of law or fact failed to close her credit card account and had wrongfully provided her with incorrect information and had failed to adequately deal with her complaint.

The Complainant asserts that the Bank has been guilty of maladministration and poor customer service and complaint handling. She is seeking compensation.

The Provider's Case

The Bank's position is that it accepts that there were shortcomings in the service it provided to the Complainant arising out of her request to close her credit card account in February 2017. The Bank accepts that this was not carried out as per the Complainant's request. In this regard the Bank has offered an ex-gratia payment in the amount of €500 to the Complainant.

In relation to the complaint regarding the inappropriate manner in which the Complainant alleges the Bank dealt with her formal complaint, the Bank asserts that handled the complaint appropriately and in line with its obligations under the Consumer Protection Code 2012.

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 10 October 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.

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In the absence of additional submissions from the parties, my final determination is set out below.

In relation to the complaint relating to the Complainant's request to close her Visa credit card, a number of audio recordings of telephone calls have been supplied in evidence. I have considered the content of the telephone recordings provided to this office. They can be summarised as follows:

On 17 February 2017, the Complainant called the Bank seeking to close the account. The Complainant was told that there was a balance of €561.33 which she paid over the telephone during the call. She was told by the Bank that the account was marked as exempt from Government Stamp Duty. The Complainant was told the account should close the same day.

29 May 2017: Call from Bank in relation to the Complainant's application to open up a new credit card account. A call back was rescheduled.

30 May 2017: Call from Complainant returning a missed call to the Bank. A call back was rescheduled.

31 May 2017: Call from Bank to the Complainant. Bank informed the Complainant that she still had an active account. The Complainant explained to the Bank that she 'transferred' the account to [a third party Financial Service Provider] and that she had carried out a balance transfer on the account. The Complainant was informed that the account was never closed. The Complainant explained that she had received a letter from the Bank confirming the account was closed. The Complainant was told she cannot do a balance transfer into the existing account and that she would have to attend a branch in order to close the account. The Bank stated it would look into it and would call her back.

1 June 2017: Call from the Bank to the Complainant, Bank's employee explained that the account was left open as the [third party Financial Service Provider] did not action the balance transfer between the accounts. He stated that she did a balance transfer between two institutions. The Complainant explained she simply closed the account with the Bank and opened a new account with [a third party Financial Service Provider]. She stated that she did not carry out a balance transfer between the Bank and [the third party Financial Service Provider]. The Complainant was then transferred to the Bank's Visa department where she was informed that the Bank would send an email to VISA to close the account and that it would take a day or two to process.

9 June 2017: Call from the Complainant to the Bank. The Complainant stated she wished to formally lodge a complaint and stated she was given the wrong information and asserting that she closed the account but that the Bank had failed to close the account.

In relation to the call on 17 February 2017, the Bank states that its employee provided the Complainant with the incorrect balance owing on the account in order for same to be closed. The Bank states that as a result, there was still an outstanding balance of €40.83 and the

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account and its Visa department were not in a position to close the account when requested to do so by the Bank's employee.

No evidence or supporting documentation has been provided by the Bank which demonstrates that the Bank contacted the Complainant to advise that an additional payment was due in order for the account to be closed and there was also no record of the Bank following up with the Visa department to have this request processed. Insofar as this aspect of the complaint is concerned, the Bank has conceded that there were shortcomings in the service provided to the Complainant.

The second aspect of this complaint relates to the assertion that the Bank failed to comply with obligations in relation to dealing with the formal complaint that the Complainant lodged with the Bank in the above mentioned telephone call on 9 June 2017.

The Bank'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 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.”*

I have reviewed the correspondence issued to the Complainant by the Bank following her lodgement of the complaint on 9 June 2017. In particular those letters dated 15 June 2017, 6 July 2017, 3 August 2017, 1 September 2017, 29 September 2017, and 4 October 2017. Having considered the correspondence that issued to the Complainant during the course of the investigation of the complaint, I am not satisfied that the Bank has complied with its obligations under the Consumer Protection Code 2012, as set out above.

While it is clear that the Bank issued correspondence to the Complainant at intervals that are in compliance with the Consumer Protection Code 2012 there has been no explanation as to why the investigation took the length of time that it did and secondly the letter of 4 October 2017 which sets out the outcome of the investigation denies any misinformation being provided to the Complainant regarding the status of her account. This was not correct. By the Bank's own subsequent admission, when the Complainant sought to close her account, she was misinformed of the balance which was required to be cleared on the account in order to close it and she was misinformed that her account would be closed the same day. Furthermore, I consider that the time period which it took to investigate complaints and issue the Complainant with the outcome of the investigation was unreasonable in light of the factual circumstances of this case.

In all of the circumstances, I do not consider the Bank's offer of €500 to be sufficient given the misinformation provided in relation to the closing of the account and the misinformation provided in relation to her complaint.

I believe a sum of €1,000 to be more appropriate and I therefore uphold this complaint.

Conclusion

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

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 €1,000 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

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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**

9 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.