



<b><u>Decision Ref:</u></b>	2019-0021
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Accounts
<b><u>Conduct(s) complained of:</u></b>	Fees & charges applied Maladministration
<b><u>Outcome:</u></b>	Rejected

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

**Background**

This complaint concerns the Provider's application of referral fees to the Complainant's current account.

**The Complainant's Case**

The Complainant holds a current account with the Provider.

During the 19<sup>th</sup> and 20<sup>th</sup> of January 2017 a €5 referral fee was charged to her account on three occasions, resulting in a total of €15 charges being incurred.

The Complainant states that she had sufficient funds in her account to carry out the Visa debit card transactions to which the referral fees applied, and that the fees have therefore been charged to her account in error. She notes that the transactions were processed, and contends that if the account was not in funds to meet the transactions they would/should not have been processed.

The Complainant states that she was not given adequate notice of the application of a quarterly interest charge to her account.

The complaint is that the Bank have wrongfully applied referral fees to her account resulting in charges of €15, and failed to respond to her complaint in a fair or efficient manner.

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

The Provider states that the referral fees were correctly applied to the account. Nonetheless, it offered an ex gratia payment of €15 to the Complainant as a goodwill gesture, which it has since increased to €65.

### **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 20 August 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 issue of my Preliminary Decision in this matter, the Complainant made further submissions as follows:

1. E-mail from the Complainant to this Office dated 23 August 2018.
2. 2 e-mails from the Complainant to this Office dated 24 August 2018 respectively.
3. E-mail from the Complainant to this Office dated 10 December 2018.

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4. E-mail from the Complainant to this Office dated 14 December 2018.

Copies of the Complainant's submissions were transmitted to the Provider for its consideration. However, the Provider advised this Office that it had no further submission to make.

Having considered the additional submissions from the Complainant, I set out below my final determination.

The Complainant holds a current account with the Provider, which had an authorised overdraft facility of €2,500.00.

The account terms and conditions include the following applicable terms pertinent to this complaint:

*"4. Operating in Credit and Overdrafts*

- (a) Save where we have granted an overdraft Facility on an Account, each Account must be operated in credit. Where a Facility has been granted on an Account, the Account must be operated within the overdraft limit from time to time applicable to the Account.*
- (b) Without prejudice to condition 4(a) of these Current Account Terms and Conditions, we may at our discretion permit you to overdraw in excess of an agreed overdraft limit or where no overdraft limit has been agreed however permitting an excess on any particular occasion or occasions (however frequent) shall not oblige us to do so on any other occasion."*

*"5. Debit Interest*

- (a) Where we have granted a Facility on an Account, debit interest is calculated and charged on a daily basis on the cleared daily balance on the Account. That is, allowance is not made for cheques, drafts, or other credits lodged until value has been received for credit interest accrued but not yet credited to the Account.*
- (b) Debit interest will be debited to the Account quarterly (or such other intervals as may be agreed) in arrears and on final payment.*

*[...]*

- (g) Where the interest to be charged is above €12.70, it will be pre-notified to you 14 days in advance of being debited from your Account."*

*"8. Account Balance Information*

- (a) While we currently operate a real time on-line system, which enables immediate updates to Accounts, the time necessary to complete the processing of instructions and requests may vary depending on whether they can be immediately processed and the nature of the*

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*instruction or request.*

*Accordingly, the User acknowledges that account balance information given through [the online platform] is as up-to-date as our systems permit at the time of the User's enquiry, but it may not reflect transactions that are in hand, but which still have to be processed."*

*"13. Payments*

- (a) Payments using the Card may not be countermanded by a Cardholder for whatever reason and we may debit the amount of any such payment to the Card Account.*
- (b) Debit Card Transactions will reduce the available balance on the Card Account, even though the relevant Debit Card Transaction might not yet appear on your statement.*
- (c) The amount of any Debit Card Transaction will normally be debited to the Card Account within two days following receipt by us of the transaction record from the Retailer. This is the normal time-scale but cannot be guaranteed."*

The Provider has furnished the following submissions in relation to contactless transactions:

*"Due to the nature of contactless transactions, it is not possible for these transactions to immediately appear on the Complainant's Online Banking Statement, therefore the onus is always on the Complainant, as Account Holder, to keep track of her Visa Debit Card transactions to ensure that there are sufficient funds available to meet same at all times. To clarify, and contrary to the Complainant's assertion, a contactless transaction does not immediately reduce the Available Balance of a Current Account, and is not listed on an Online Banking Statement immediately as a 'pending transaction'. A contactless transaction is not reflected on the Complainant's Current Account for several hours, or even days after the transaction has taken place."*

The Provider's brochure on charges (which form part of the account terms and conditions) provides for a €5 charge (up to a maximum of €15 per day), *"when cheques or debits are presented for payment and there are insufficient cleared funds at the time of presentation in an account to meet the debit(s)",* to be applied on the day of the transaction or the next working day.

### **Analysis**

The first issue in time is whether or not the Complainant was adequately notified of the application of overdraft interest on her account.

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The Complainant's account statement dated 29 December 2016 states that Overdraft Interest of €87.79 "will be deducted from your account 21 days after the statement date". On that basis, I accept the Complainant was adequately notified that her account would be debited the sum of €87.79 on 19 January 2017.

The following is a timeline of relevant events, together with the available account balances at each stage.

Date	Event	Credit Amount (€)	Debit Amount (€)	Balance (€)
17/1/17	Chip & PIN transaction		1	Not updated immediately
18/1/17	ATM lodgement	40		2482.10OD
18/1/17	Contactless transaction 2		2.99	Not updated immediately
18/1/17	Contactless transaction 3		2	Not updated immediately
19/1/17	Quarterly Interest		87.79	2569.89OD
19/1/17	Chip & PIN transaction 1 applied (€1)			2570.89OD
19/1/17	Referral fee for above transaction		5	2575.89OD
20/1/17	Standing Order unpaid fee		10	2585.89OD
20/1/17	Contactless Transaction 2 applied (€2.99)			2588.88OD
20/1/17	Contactless Transaction 3 applied (€2)			2590.88OD
20/1/17	Referral fees for above transactions applied		10	2600.88

The first thing to note is that the Provider has acted in accordance with the account terms and conditions, which make it clear that, amongst other things, account balances may not update immediately and the onus is on the customer to keep track of transactions and balances.

In this instance, the timing of the application of each of the transactions to the account conspired to produce a situation where the customer could have checked her balance on 18 January 2017 (having made a lodgement the previous day) and believed she had sufficient funds to make the three transactions (totalling €5.99) that she did.

It appears to me that an unfortunate chain of events resulted in charges being applied to the Complainant's account, not through any fault of hers or any culpable fault on the part of the Provider.

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However, I welcome that the Provider offered to refund the €15 of fees to the Complainant on an *ex gratia* basis on 9 May 2016, and has since offered an additional €50 in its final submission to this office.

On the basis of the foregoing, I accept that the offer made by the Provider is, in all the circumstances, a fair one. Given that the foregoing complaint arises out of charges that were somewhat unfortunate, but correctly applied, and given that I believe the Complainant received adequate notice of the application of interest to her account, I do not 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 rejected.

**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**

18 January 2019

**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.**