



<u>Decision Ref:</u>	2019-0114
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Cards
<u>Conduct(s) complained of:</u>	Selling loan to third party provider Delayed or inadequate communication Misrepresentation (at point of sale or after)
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

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

The Complainant's Case

The Complainant submits that he went into default on his credit card account in 2013, and agreed with the Provider to make continuing and increasing payments which he kept to.

The Complainant states that *"On 7th December full and final payment schedule of 12 payments of €144.59 "agreed" between [him] & [the Provider]. Then letter arrives advising account will be sold to third party – directly contradicting agreement of 7th Dec 2017"*.

The Complainant states that he is seeking for the Provider *"to be instructed to comply with [its] agreement of 7th December 2017 to accept 12 payments of €144.59 from Jan 18 – Dec 18. I wish [the Provider] to be instructed not to sell account to third party under these circumstances"*.

The Provider's Case

The Provider, in its final response letter dated 22 December 2017 to the Complainants, submits that it gave the Complainant 60 days' notice period, confirming its intention to transfer his account to another entity. The Provider states that *"This is simply a Notification*

of Sale letter, and it provides you with 60 days in which to contact us prior to the sales completion. Your legal rights as a customer are not affected by the transfer”.

The Provider states that its terms and conditions confirm that *“We may transfer, assign or securitise all or any of our rights under this agreement and/or all or part of the debt owed by you under this agreement to any person or entity without telling you. You agree that we can share any financial or other information about you, the additional cardholder and/or this agreement with the person or entity that the rights and/or debt are transferred to”.*

The Provider, in its final response letter dated 22 December 2017, states *“In order to prevent the sale you would be required to clear the remaining balance in full prior to the 31 January 2018”.*

The Complaint for Adjudication

The complaint is that the Provider failed to comply with an agreement entered into with the Complainant in December 2017.

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. During the investigation of this complaint, a number of questions were put to, and certain evidence sought from, the Provider. Most regrettably, the Provider did not respond to these questions, and did not supply the evidence sought. In this regard, the following sequence of events sets out the attempts by this office to elicit a response from the Provider to the Summary of Complaint letter dated 28 August 2018:-

- On **28 August 2018** this office issued a formal Summary of Complaint to the Provider outlining the complaint which was the subject of an investigation by this office, calling for responses to certain identified queries (numbered 1 to 6), and requesting a number of items of documentary evidence (numbered 1 to 3).
- On **6 November 2018**, by way of email and post, this office wrote again to the Provider in circumstances where its formal response to the Summary of Complaint was outstanding *“notwithstanding the elapse of nearly 10 weeks”*. This letter stated, among other things, that:

*“I would ask you to note that **Section 59(1)** of the **Financial Services and Pensions Ombudsman Act 2017** provides:*

“A person who- ...

(c) without reasonable excuse, fails to comply with a requirement or request made by the Ombudsman under this Act,

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commits an offence and is liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 3 months, or both."

Please also note that **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017** provides:

"A complaint may be found to be upheld, substantially upheld or partially upheld only on one or more of the following grounds:

...

(f) an explanation for the conduct complained of was not given when it should have been given; "

*I am now affording the Provider **a final period of 10 working days from the date of this letter** to submit the outstanding formal response to the investigation, failing which the FSPO will proceed as it considers appropriate, in accordance with the provisions of the governing legislation which are quoted above."*

- On **4 December 2018**, given that no response whatsoever had been received from the Provider, this office wrote again advising that:

"In accordance with the contents of [letter dated 6 November 2018], I now wish to advise you that the FSPO is now proceeding with the investigation and adjudication of this complaint, on the basis that the Provider has failed, refused and/or neglected to furnish the requested responses and documentary evidence to this office; the adjudication will proceed on the basis of the limited evidence that is contained on our formal investigation file, and a Preliminary Decision will be issued to the parties in due course."

A Preliminary Decision was issued to the parties on 18 February 2019, outlining the preliminary determination of this office in relation to the complaint. The Preliminary Decision set out, among other things, that:

"It is most disappointing to note that notwithstanding the history of the correspondence in this matter, this office has not received the Provider's response to the "Schedule of Questions" attached to this Office's Summary of Complaint dated 28 August 2018 together with the evidence as requested under the "Schedule of Evidence Required". In such circumstances, I am now issuing a Preliminary Decision in the absence of a formal response from the Provider to the Summary of Complaint document dated 28 August 2018."

The parties were advised on 18 February 2019, 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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A Submission dated 27 February 2019 from the Provider was received by this office after the issue of a Preliminary Decision to the parties. The cover letter attached to the Provider's submission dated 27 February 2019 states, among other things, the following:

"Please accept my sincere apologies, despite requesting a business file, this wasn't sent. We have taken steps to ensure this doesn't happen again.

Whilst I appreciate you've reviewed [the Complainant's] complaint and provided your preliminary decision along with what you consider we should compensate [the Complainant] with, I would be grateful if you could consider the attached documentation which includes the information and documentation that was originally requested.

We do understand we haven't provided our file by the date requested, but we cannot agree with level of compensation you believe we should award to [the Complainant]".

A submission dated 8 March 2019 from the Complainant, was received by this office after the issue of a Preliminary Decision to the parties. The Complainant's submission states, among other things, the following:

"In the service provider's letter dated 27th February 2019 there is clear acceptance that the service provider did not provide the Office of the Financial Services and Pensions Ombudsman with a business file within the prescribed timeframe.

In the Preliminary Decision of the Financial Services and Pensions Ombudsman it is clearly stated that the service provider failed, refused and or neglected to furnish requested responses and documentation to the Office of the Financial Services and Pensions Ombudsman (within the prescribed timeframe).

The service provider has offered no explanation or provided any mitigating circumstance whatsoever for not sending the required information within the required timeframe.

In the absence of any explanation for not supplying the information within the required timeframe the apparent explanation is that the Service Provider neglected to take the necessary and simple steps to submit the required information in the permitted timeframe.

Notwithstanding the fact that [the] service provider failed, refused and or neglected to furnish requested responses and documentation to the Office of the Financial Services and Pensions Ombudsman within the prescribed timeframe the Service Provider is now requesting that information be accepted after the prescribed timeframe has elapsed.

It is beyond any doubt that the Service Provider had ample opportunity to provide the Information that the Financial Services and Pensions Ombudsman sought prior

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to the preliminary decision made by the Financial Services and Pensions Ombudsman.

Any acceptance or consideration of files furnished after the advised and prescribed times for such files has elapsed [and] would fundamentally undermine the integrity of the process and unfairly change the rules in favour of one party (the service provider) over the other party the complainant.

For reasons above the complainant fundamentally objects to the introduction or consideration of such files after the prescribed timeframe has elapsed and argues that to allow this would facilitate the unnecessary and unfair delay of the process at the sole request of the Service Provider because of a clear failure, refusal and or neglect on behalf of the Service Provider.

In these circumstances I request that the Financial Services and Pensions Ombudsman irrevocably reject to accept files or consider any requested information that was not furnished within the prescribed timeframes."

These submissions were exchanged between the parties and an opportunity was made available to both parties for any additional observations arising from the said additional submissions. I have considered the contents of these additional submissions for the purpose of setting out the final determination of this office below.

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.

I note the provider in its submission to this office dated 27 February 2019 following receipt of my Preliminary Decision states:

"Customer Service - I am unsure in what relation you believe there has been lapses. If this relates to our failure to submit the business file as requested, I disagree that this should be considered as part of your assessment as this didn't form part of [the Complainant's] complaint to us."

I find this to be a bizarre argument by the Provider to avoid taking responsibility for its appalling communications, in the first instance with the Complainant, and secondly its refusal or neglect in engaging with this office in order to resolve the complaint with the Complainant, their customer. The conduct of the Provider in not cooperating with the investigation by this office of the complaint put a considerable delay and additional significant inconvenience on the Complainant. Furthermore it is ridiculous to argue the Providers lack of cooperation with this office was not included in his complaint. How could the Complainant have known in advance that the Provider would not cooperate with this office? I note he certainly expressed his considerable dissatisfaction with the Provider's

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conduct in not cooperating with this office in his Post Preliminary Decision Submission. This was the first opportunity that the Complainant was in a position to do so.

I would also remind the Provider of my powers under 60(2)(F) of the Financial Services and Pensions Ombudsman Act 2017 to uphold, substantially uphold or partially uphold a complaint where an explanation for the conduct complained of was not given when it should have been given. I believe the explanation should have been given in the first instance to the Complainant and failing that an explanation should have been given to this office when sought. Therefore, I believe the lack of communication and cooperation by the Provider at all times in relation to this complaint is relevant to my decision.

I also note the Provider, in its submission to this office dated 27 February 2019 following receipt of my Preliminary Decision, states:

"If [the Complainant] is unhappy with any aspect of how his complaint was dealt with or the customer service he'd received prior to contacting your service, he would need to raise a new complaint and allow us the opportunity to review his concerns and respond. We therefore do not permit your service to review this as part of his complaint about his payment arrangement."

It is clear from the complaint that the main issue in relation to this complaint relates to poor communication by the Provider and its unwillingness to engage and communicate with both the Complainant and this office in order to resolve his complaint. Given the history of non-engagement and poor communication from the Provider, I believe the Complainant has given the Provider a reasonable opportunity to deal with the complaint, through the internal dispute resolution procedures. I believe it would not be reasonable to expect the Complainant to engage in its complaints process further.

In relation to the jurisdiction of this office, I would direct the Provider to Section 50 (1)(b) of the Financial Services and Pensions Ombudsman Act 2017 which states:

"Where a question arises as to whether the Ombudsman has jurisdiction, under this Act, to investigate a complaint, the question shall be determined by the Ombudsman whose decision shall be final."

Therefore, it is not a matter for the Provider as to whether or not to "permit" this office to investigate a complaint. Such matters are determined by the governing legislation.

The issue to be determined is whether the Provider failed to comply with an agreement entered into with the Complainant in December 2017.

The Complainant states that:

"My credit card debt went into default in 2013.

Since then I have agreed continuing and increasing payments and have kept to all agreements:

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May 13:	€20 per month
Jan 14:	€25 per month
Dec 14:	€30 per month
July 15:	€50 per month
July 16:	€60 per month
April 17:	€75 per month
August 17:	€90 per month

On 7th December full and final payment schedule of 12 payments of €144.59 “agreed” between [me] and [the Provider]. Then letter arrives advising account will be sold to third party – directly contradicting agreement of 7th Dec 2017”.

The Complainant has submitted a copy of the Provider’s letter to him dated 9 January 2018. I note that this states, among other things, the following:

“Please find enclosed a copy of my [colleagues] Final Response Letter. There was no specific letter issued for this at the time, but please treat this letter as confirmation that we agreed a payment arrangement with you of €144.59 for 12 months, to commence from January 2018”.

The Provider, in its submission dated 27 February 2019, submits that the Complainant’s account was opened on 12 February 2003. The Provider states, *“The default was issued on 18 July 2013 and he was given 25 days to clear the arrears of €1,208.00 to stop the termination of the account”*. The Provider goes on to state that *“The balance on 8 July 2013 was €4,290.11 and 25 days later it was €4,270.11”*.

The Provider, in its final response letter to the Complainant dated 22 December 2017, submits that it gave the Complainant 60 days’ notice period, confirming its intention to transfer his account to another entity. The Provider states that *“This is simply a Notification of Sale letter, and it provides you with 60 days in which to contact us prior to the sales completion. Your legal rights as a customer are not affected by the transfer”*.

The Provider states that its terms and conditions confirm that *“We may transfer, assign or securitise all or any of our rights under this agreement and/or all or part of the debt owed by you under this agreement to any person or entity without telling you. You agree that we can share any financial or other information about you, the additional cardholder and/or this agreement with the person or entity that the rights and/or debt are transferred to”*.

The Provider, in its final response letter dated 22 December 2017, also states *“In order to prevent the sale you would be required to clear the remaining balance in full prior to the 31 January 2018”*. The Provider’s final response letter dated 22 December 2017 goes on to state that:

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"My Decision

In light of the circumstances, we will be proceeding with transferring/selling your account onto [the third party entity]. I appreciate this is disappointing news, but thank you for allowing us to explain our position.

Next Steps

We will issue a further letter after the 60 day notice period has expired. [The third party entity] will then be in touch to assess your current circumstances and to discuss any affordable repayment options based on your current position."

I accept the Complainant's submission that he entered into an agreement with the Provider on 7 December 2018 of twelve monthly payments of €144.59 from January 2018 to December 2018 in full and final payment of the credit card account. I note that the Provider wrote to the Complainant by way of letter dated 7 December 2017 stating that:

"We wish to notify you pursuant to the requirements of the Consumer Protection Code 2012 (as amended), that we intend to sell all of our rights, title and interest in and to all amounts owing to us by you in respect of the Account as well as to the agreements relating to the Account to [a third party entity].

Please note that you do not need to take any action with respect to your Account at this time.

We will be in touch with you in the coming months to confirm details in relation to the Sale..."

The Provider, in its submission dated 27 February 2019 submits that the Complainant's agreement came up for review in December 2017 and we agreed a 12 month repayment plan of €144.59 per month to clear the full outstanding balance. The Complainant states that *"However, at the same time a business decision was taken to sell all of our Republic of Ireland (ROI) Credit Card accounts, this just wasn't ones that were in debt, but all accounts. Accounts that had a debt were sold to [a named third party entity] and those that were still operational were sold to [another named third party entity]. This decision was taken as it was felt both organisations could provide additional services that would suit our ROI customers' needs"*. The Provider goes on to state that *"The decision was not taken to cause any customer any detriment, but to improve upon the service they already had"*.

While I note that the Provider, in its submission dated 27 February 2019, submits that a decision was taken to sell all of its Republic of Ireland Credit Card accounts, it is disappointing that the Provider did not inform the Complainant of this in its letter to him of 7 December 2017 or indeed at any stage prior to the issue of the Preliminary Decision on 18 February 2019.

The Provider submits that the Complainant's account was sold at the end of January 2018.

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The Provider states that:

“We do not accept we are in breach of the repayment agreement, as it was, [the Complainant] had already breached the T&Cs of his account by failing to make the contractual minimum payments requested resulting in his account being defaulted and terminated.

The decision to accept a payment plan is not a legal or regulatory agreement, but an informal agreement between us and the customer. There is no requirement for us to accept a payment plan offer, however we must be seen to be treating customers fairly and to consider their circumstances and the difficulties they are facing.

Whilst we’d agreed the payment plan prior to the debt being transferred, there was nothing to support that [the third party entity] wouldn’t do the same. As it turns out, although [the Complainant] was unhappy we’d contacted [the third party entity] about this..., they agreed to continue with the payment plan.

As the debt/account has been sold and [the Complainant] no longer has a relationship with us, I cannot say whether or not the payment arrangement was adhered to. If it was, [the Complainant] would not have suffered any financial detriment as he would simply be making payments to [the debt collection provider] instead of [the Provider].”

The Provider, in its submission to this Office dated 27 February 2019, has submitted a copy of the terms and conditions of the account. I note that Condition 10 states that:

“10. Transferring debts

We may transfer, assign or securitise all or any of our rights under this agreement and/or all or part of the debt owed by you under this agreement to any person or entity without telling you. You agree that we can share any financial or other information about you, the additional cardholder and /or this agreement with the person or entity that the rights and/or debt are transferred to.”

The Provider states that *“Although as you can see there was no requirement for us to tell [the Complainant] we were transferring his debt to another organisation, we gave him 60 days’ notice”*.

In response, the Complainant in his submission dated 8 March 2019, states that he was not given 60 days’ notice of the Providers intention to transfer his account to another entity.

Provision 3.10 of the Consumer Protection Code 2012 provides that:

*“3.10 Where a **regulated entity** intends to amend or alter the range of services it provides, it must give notice to affected **consumers** at least one month in advance of the amendment being introduced.”*

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While I am of the view that the Provider was required to only provide one month's notice to the Complainant in relation to transferring the debt to another entity, it is disappointing that the Provider submits that it gave the Complainant 60 days prior notice in circumstances where it wrote to the Complainant on 7 December 2019 and sold the account at the end of January 2018.

I note that the Complainant handwrote a note on the Provider's final response letter dated 22 December 2017, which states that:

"12/1/18

Rang [the Provider] – 10.25am

[named representative of the Provider] or no other person available – left number told they would ring back.

12/1/18

Called by [Provider's representative] won't be delaying or postponing sale of loan to [third party entity] while I go through any appeals procedure."

I note that on a copy of the Provider's letter dated 9 January 2018 there is a handwritten note by the Complainant, which states that:

"Rang [Provider's representative] 12/1/2018 [11.24 am]

Notified that I am appealing to [the Financial Services and Pensions Ombudsman] – requesting confirmation that no action be taken until [adjudication] by [FSPO] – [the Provider's representative] went to check if this could be agreed/ confirmed – on hold final decision made"

I note the Provider states, *"Whilst we'd agreed the payment plan prior to the debt being transferred, there was nothing to support that [the third party entity] wouldn't do the same. As it turns out, although [the Complainant] was unhappy we'd contacted [the third party entity] about this..., they agreed to continue with the payment plan."*, and *"Therefore he wouldn't have been inconvenienced nor suffered any financial detriment as a result of the sale of his account to [the third party entity]"*. The Provider would not have been aware that the third party entity would agree to the payment plan entered into with the Provider, at the time it informed the Complainant that it was transferring his account.

While I accept that the Provider was entitled to transfer the Complainant's account to the third party entity, I am of the view that the Provider's communications with the Complainant in December 2017 were confusing and in this regard the Provider failed to comply with Chapter 2.2 of the Consumer Protection Code 2012, which requires the Provider to act with due skill, care and diligence in the best interest of its customer. Furthermore, I believe the Provider should have, at the outset, communicated the arrangement it had entered into with the Complainant to the entity it sold his debt to in order to ensure that the agreement was honoured. I believe it was not acceptable for the Provider to wash its hands of the matter once the debt was sold.

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In recognition of the Provider's failure to communicate clearly with the Complainant, its failure to give an explanation for the conduct complained of when it should have been given and for the inconvenience caused to the Complainant, I direct the Provider to make a compensatory payment to the Complainant in the sum of €3,000.00.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld on the grounds prescribed in **Section 60(2)(g)(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 €3,000.00, 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**

29 April 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.