



<u>Decision Ref:</u>	2019-0149
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Cards
<u>Conduct(s) complained of:</u>	Fees & charges applied Failure to provide correct information
<u>Outcome:</u>	Rejected

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

Background

This complaint concerns the Provider's application of late payment fees and interest on the Complainant's credit card account.

The Complainant's Case

The Complainant held a credit card account with the Provider.

On the 8th of July 2016 the Complainant contacted the Provider by telephone to enquire as to the balance on his account. He was told that he had an available balance of €979.71 to spend on the card. He was told that a direct debit payment would have been applied to the account on the 6th or 7th of July.

In the event, on the 11th of July 2016 the direct debit payment that had been applied to the account on the 6th of July 2016 was returned to the Provider, unpaid, by the Complainant's bank. This returned direct debit resulted in an unpaid direct debit fee of €4.44 being applied. It also precipitated a late payment fee of €6.35 which was applied on the 15th of July 2016, and on the 17th of August 2016 interest of €4.63 was applied to the account.

The Complainant states that if there was an issue with the repayment on the account he should have been told as much in his phone call on the 8th of July 2016, but he states that he was led to believe that everything was in order on the account. He feels that the late payment fee and returned direct debit fee are a result of the Provider's failure to inform him that the minimum payment (or any payment) had not been applied to the account. He states that if he was told that a payment was due on the account on the 11th of July 2016 he would have made that payment.

The complaint is that the Provider failed to provide accurate information to the Complainant about his account balance and that it failed to communicate in a clear and efficient manner. He would like to be refunded the interest and charges that were applied to the account as a result of the July direct debit being returned unpaid.

The Provider's Case

The Provider states that although the July direct debit was returned unpaid, its customer service agent could not have known that was the case during the telephone call of the 8th of July 2016. Since it is the Complainant's responsibility to ensure there are sufficient funds to meet a direct debit, the Provider denies it was at fault and accordingly the disputed charges and interest were correctly applied to the account.

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 1st May 2019, 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

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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, I set out my final determination below.

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 Preliminary 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 do 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 are sufficient to enable a Preliminary Decision to be made in this complaint without the necessity for holding an Oral Hearing.

The terms and conditions applicable to the Complainant's account contain the following provisions, relevant to this complaint:

"Our charges are:

[...]

€4.44 if you cannot pay a cheque or direct debit"

"You will be charged:

(a) The applicable interest rate as detailed above, which can be varied from time to time at our absolute discretion and;

(b) €6.35 for late payments."

In telephone calls to the Provider, the Complainant contends that there was no mention of late payment charges or any issue with the direct debit or account balance during the telephone call of the 8th of July 2016, and that his impression was that his payment had been made on time. Recordings of those telephone calls have been provided in evidence and I have considered the content of the calls.

The Complainant, in the course of his telephone calls, notes that on the 7th of July 2016 his bank account balance would have been more than sufficient to cover the direct debit payment, which was, in fact, called for on the 6th July by the Provider.

Analysis

There is no doubt that the Provider is entitled to apply charges for late payments (and interest) under certain circumstances.

In this complaint, when the Complainant called customer service on the 8th of July 2016, a direct debit had been applied to the account on the 6th July, but the funds had not yet been received from the Complainant's bank account. On the 11th July 2016, the direct debit was returned unpaid by the Complainant's payer bank.

A direct debit is an instruction from a customer (in this case the Complainant) to their bank or payment services provider, authorising an organisation (in this case the Provider) to collect variable or fixed amounts from their bank account, as long as the customer is given advance notice of the collection amounts and dates (in a statement, for example). A customer gives a mandate to the Provider authorising it to collect these amounts from their bank.

The Complainant believes he was given incorrect information during the phone call on the 8th of July 2018, and this led to late payment charges, interest etc being incurred.

In fact, the direct debit was returned unpaid by the Complainant's own bank. The Provider listed the cause of the return as, "Due to insufficient funds." On the 6th July, it would appear that there was not enough money in this bank account, held with a third party bank, and that situation resulted in the Direct Debit being returned unpaid by the Complainant's bank.

This is what gave rise to the late payment charges and the interest being applied to the account. This is not a matter that was within the control of the Provider, nor could the Provider's agent on the 8th of July 2016 have known that the Complainant's direct debit was going to be returned unpaid, since it was only on the 11th of July 2016 that the direct debit instruction was returned unpaid.

The Complainant contends in his telephone calls at one point that this issue has nothing to do with his paying bank. It is unclear why he should think that to be the case. The direct debit was returned unpaid to the Provider at the instruction of the Complainant's bank.

The Complainant contends that he did everything reasonable to avoid these charges. However, his paying bank did not make payment from his account on foot of the direct debit.

Where a customer sets up a direct debit to satisfy their repayments on an account, it is that customer's responsibility to ensure that there are sufficient funds in the paying account to satisfy the direct debit instruction when it is applied for by the receiving bank (In this case, the Provider).

If the direct debit was wrongly returned unpaid (for example, if there were in fact sufficient funds to meet it when it was applied for), that is a matter that the Complainant would have to take up with his own bank.

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I note from the submissions that the Provider sends monthly statements to customers. I accept that the Provider informed the Complainant on the 17th June, 2016 that the direct debit would be called for from his usual bank account 'on 6th July or soon after'. I also accept that the Provider's representative, during the telephone call on the 8th July, gave an accurate account of the information that would have been available to it at the time.

It seems clear that the Direct Debit was correctly called for, on the date the Provider had said it would call for it, on Wednesday 6th July. On that basis, the fact that the Complainant may not have had sufficient funds in the bank account until the 7th July, was not under the control of the Provider. Since the Provider had told the Complainant in a timely and appropriate manner, in writing, of the date the direct debit would be collected, I have been provided with no evidence that the Provider has acted wrongly in this respect.

The Provider states that it applies the value of a direct debit to any account, 'in good faith' that the funds will be received. If the transaction fails, the Provider does not find out immediately. In this case it took five calendar or three business days until Monday 11th July, for the Provider to become aware of the failed transaction.

The Complainant states that he was given different dates for when a direct debit is applied to the account. The Provider submits that different dates exist for when payments are taken for a variety of reasons. In this case, the Complainant's credit card account allowed twenty five days from the date the monthly statement is produced, to pay at least the minimum amount, otherwise a late payment is incurred, as provided for by the terms and conditions. The Complainant had set up his account to pay the full amount owing on the card, this is clear from the previous balance statement. Although the actual date may vary depending on the number of days in the month, according to the Provider, the specific date is shown on the front of the statement, in this case, 'your nominated bank account will be debited with the full balance on 06/07/2016 or soon after'.

I do not accept that the Provider's representative could have known on the 8th July that the direct debit would be returned unpaid by the Complainant's bank. The Complainant is of the view that the Provider's agent on the 8th of July 2016 ought to have advised the Complainant that the direct debit instruction had been credited to his account but payment had not yet been received from his bank, and that until payment was in fact received, there was still a risk that he would be subject to fees.

I am not satisfied that it is reasonable to have expected the telephone agent to have provided advice of that nature. There was no way for the Provider to know in advance that the complainant did not have sufficient funds in his account, that the direct debit would be returned due to insufficient funds being in the Complainant's bank account or any other reason. This is information which should have been known to the Complainant.

The Complainant contends that he did everything reasonable to avoid these charges. He contends that the delay in processing the direct debit was an unreasonable one.

The direct debit was applied to his account on the 6th of July 2016, a Wednesday. The Complainant spoke to the Provider's agent on the 8th of July 2016, a Friday. On the 11th of

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July 2016, a Monday, the direct debit was returned unpaid by the Complainant's paying bank.

Direct debit payments are not immediate. The recipient must apply for payment from the customer's bank. The customer's bank must then verify there are funds in the account to meet the request. The customer's bank then approves/rejects the direct debit payment. In this complaint, the process took 3 business days from application to rejection. This, in my view, does not constitute an unreasonable delay.

There is no evidence to support a finding of any wrongful conduct on the part of the Provider, whether by reason of charges being applied to the Complainant's account wrongfully, or by reason of any incorrect information being given to him.

The cause of the disputed charges was that the Complainant's bank returned the direct debit as unpaid. The charges did not result from wrongful conduct on the part of the Provider.

The charges themselves appear to be correctly applied under the terms and conditions of the contract and I accept that the Provider was entitled to apply them.

The Complainant has maintained that he did everything reasonable within his power to avoid these charges. If the direct debit was wrongfully refused by his paying bank, then that is a matter between him and his paying bank – not the Provider. If there were insufficient funds in the account to meet the direct debit on the 6th July, that is the responsibility of the Complainant not the Provider.

For the above reasons, 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**

30 May 2019

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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.

