



<u>Decision Ref:</u>	2019-0159
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Cards
<u>Conduct(s) complained of:</u>	Level of contact or communications re. Arrears Appointment of debt collection agency Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant previously held a current account with an attached overdraft facility, and a credit card account with the Provider.

On 11 September 2015, the Provider terminated the overdraft facility on the Complainant's current account and the account was referred to the Provider's Legal Department for management prior to referral to a debt collection agent for collection.

The Complainant complains that the referral of her current account to a firm of debt collection solicitors together with the closure of her current account was "unauthorised."

The Complainant's Case

The Complainant describes the Provider as having been "*premature in referring this matter to solicitors.*" She states that she called into the [Provider branch] in 2012/2013 and was advised that as long as the current account was operated in the manner it was being operated at that time that no action would be taken.

The Complainant adds that the Provider has applied "*draconian fees*" to the overdraft, and that the Provider "*aggregated two accounts wrongfully in relation to recovery when the current account was being operated as they had advised me to do.*"

The Complainant complains that the Provider has inappropriately applied fees and failed to acknowledge payments made on the account.

The Complainant also alleges that the Provider has exercised an abuse of power, and has harassed and intimidated her in, she says, withholding information, deliberately misleading her as to the status of her account, failing to adhere to ethical standards and closing her account and adding it to the Central Credit Register. The Complainant submits that she has been *“deluged with correspondence and phonecalls from various different sources within the bank at a very stressful time and the account was referred to the credit department at [Provider] without notifying her which meant that any correspondence sent to the branch at [Provider] took weeks to get through and made a mockery of her efforts to keep the accounts in balance.”*

The Complainant states that payments she made to her credit card account were not credited to the account. The Complainant describes a balance figure of €6,000 she received from the Provider in October 2010 as incorrect and *“hugely composed of incorrectly applied charges.”*

The Complainant states *“I would like you to investigate the unauthorised closure of the [current] account, the failure to disclose documents and the draconian fees applied”*.

The Complainant requests the following by way of resolution:

- (i) That the Provider apologises;
- (ii) That the Provider *“waives the horrendous fees and charges”* it imposed;
- (iii) That the Provider *“amalgamates”* the balance of the overdraft *“with the credit card so that I can pay them in sequence to reflect my circumstances”*;
- (iv) That the Provider writes off the debt and immediately remove the account from the Central Credit Register.

The Provider’s Case

The Provider rejects the Complainant’s contention that it was incorrect and premature in referring her current account to a firm of debt collection solicitors.

The Complainant’s credit card was being referred to the Provider’s debt recovery agents for recovery of the outstanding balance. The Provider notes that when it refers an outstanding debt to one of these agents, all accounts held by a debtor are reviewed. Therefore, as a result of the above, the Complainant’s current account was referred to the Provider’s Credit Operations Recovery department for management on the 30 July 2013.

The Provider states that it acted within the terms and conditions of the current account when the Complainant was requested to repay the outstanding balance on the current account in relation to the overdraft facility.

The Provider draws attention to Section 13.15 of the terms and conditions:

Overdrafts repayable on demand

If your Account is overdrawn you must repay the overdraft in full to us if we demand that in writing. This Clause applies even where the overdraft is within an agreed overdraft limit. If we demand repayment of an overdraft from you we will comply with consumer credit law.

The Provider states that it issued a 21 day default letter to the Complainant on 31 July 2013 in line with the above, advising the Complainant that the current account overdraft facility would be terminated and the outstanding balance would have to be cleared and the account would have to be closed within the 21 day notice period.

On 12 September 2013, the Provider states that it called the Complainant to discuss the current account and explain why the 21 day default letter was sent. The Provider submits that the Complainant agreed that she would engage with the debt collection agent to put a repayment plan in place for the credit card account. The Provider agreed that as the account was operating within the €1,500 overdraft permission, and there had been regular lodgements in the preceding number of months with no unpaid items, the Provider would not close the current account at this time but would review again in two weeks.

The Provider states that on 26 September 2013, it reviewed the account again and noted that the Complainant had not at that stage put a repayment plan in place with the Debt Collection agent for the credit card account and therefore the Complainant was issued a letter advising her if she did not revert to the Provider before 17 October 2013, the overdraft facility would be cancelled on the account as stated in the Provider's 21 day notice letter dated 31 July 2013.

The Complainant called to her account holding branch in response to the default letter issued on 26 September 2013. The Provider states that the Complainant was advised by the Provider that she needed to contact the debt collection agent in order to put a payment agreement in place for the credit card which the Complainant had not made a payment to since the previous November 2012.

The Provider states that it made many attempts to discuss the account with the Complainant and assist the Complainant over the months that followed, but there was no agreement made between the Complainant and the Provider in relation to this matter.

On 12 March 2014, the Provider received a letter from the Complainant advising that an agreement had been put in place with the debt collection agent regarding the credit card account. The Provider wrote on the same day acknowledging that no action would be taken

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in relation to the current account whilst payments were made as agreed to the credit card and the current account operated within the terms and conditions.

The Provider states that its records show that the current account had not held a credit balance since November 2013, and that therefore the operation of the current account was in breach of the Terms and Conditions. The Provider therefore issued a letter dated 19 January 2015 which requested the Complainant to contact their offices to discuss the operation of the account. The Complainant wrote to the Provider on 30 January 2015 stating that she would call to discuss this matter on 2 February 2015. On 2 February 2015, the Provider telephoned the Complainant and informed her that the turnover on the current account was not sufficient to warrant the overdraft on the account.

The Provider states that it provided the Complainant with more time when asked, as she was hoping to return to work and have her salary mandated to the current account. The Provider states that when it reviewed the account on 9 June 2015, the turnover had not increased and the Provider contacted the Complainant by phone to discuss. During this call, the Provider states that it advised the Complainant that in order to prevent the removal of the overdraft facility she should either increase the turnover on the account or alternatively the Provider could facilitate a phased reduction of the facility. The Provider states that the Complainant advised at that time that she would contact the Provider by the end of June at which time she hoped to be back in employment.

The Provider states that the Complainant did not contact it as agreed and the operation of the current account did not improve. On 18 July 2015, the Provider states that it issued a 'Notice of Default under Section 54 of the Consumer Credit Act 1995' letter to the Complainant, advising her that because of the continued unsatisfactory operation of her account, the Provider was no longer prepared to offer her banking facilities.

At that stage, the Provider notes that the Complainant's current account had an overdraft facility of €1,500 and the outstanding balance on the account owing was €1,523.84DR plus accruing interest. The Complainant was also advised at that stage to clear the outstanding balance and close her account within 21 days of the letter. The Provider further advised that if this was not done, the entire overdrawn balance would be immediately due and payable to the Provider and the Provider would refer the Complainant's file to their debt recovery agent for recovery of the outstanding balance.

The Provider states that when the Complainant wrote on 12 August 2015 requesting more time as she was hopeful her circumstances would improve, the Provider issued a letter confirming she would be provided with a further 30 days from the date of the letter. If there was no update or agreement by the 11th September 2015, the default notice issued 18 July 2015 would be actioned.

On 11 September 2015, the Provider terminated the overdraft facility on the Complainant's current account and the account was referred to the Provider's Legal Department for management prior to referral to a debt collection agent for collection. The Provider appointed a debt collection agent to manage the collection of the outstanding balance and

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the Complainant was informed that her account was being referred as per the Provider's letter dated 11 September 2015.

On 23 September 2015, the debt collection agent wrote to the Complainant advising that they would be managing the account and to contact them within 14 days to discuss repayment of the outstanding balance of €1,496.73.

In response to the Complainant's concerns in respect of the "unauthorised" closure of her current account and referral of the account to a firm of debt collection solicitors, the Provider states that the Complainant's current account has not held a credit balance since November 2013 and therefore the operation of the account was in breach of the terms and conditions required to hold an overdraft facility.

In support of its contention, the Provider cites Section 7.4 (a) of the relevant terms and conditions:

"The [Provider] requires you to ensure that the account reverts to credit for at least 30 days

(a) during the 12 month period that begins on the Date of Sanction in the Important information and during each subsequent 12 month period."

The Provider states that the overdraft facility on the Complainant's current account was terminated on 11th September 2015 prior to being referred to a nominated firm of solicitors.

The Provider states that it worked with the Complainant and afforded the Complainant ample time to rectify the outstanding balance owing on the current account.

In response to the Complainant's concerns regarding fees being applied to the overdraft facility attaching to her current account, the Provider states that on 21 October 2014, the Complainant raised a complaint in relation to the fees and charges and interest applied to her current account. In its final response letter, the Provider advised the Complainant that interest and fees were applied to the current account "under the terms and conditions of your account and the [Provider] is unable to suspend them on account that is still operating with facilities."

The Provider submits that a quarterly maintenance fee is charged on all personal current accounts. It is debited quarterly along with any transaction fees that may apply. The Provider states that current account transactions fees cover the following transactions on a current account: automated transactions e.g. direct debits (domestic and SEPA), [Name of Product Redacted] /Online or Mobile Banking transactions, standing orders, ATM withdrawals and debit card transactions, paper/staff assisted transactions e.g. lodgements, credits, cheques, cash withdrawals in branches.

The Provider maintains that customers receive a Fee/Interest/Charges Advice Statement approximately four weeks before the account transaction fees are charged to their current

account if the total is more than €12.70, otherwise the Fee/Interest/Charges Advice Statement will be included with their next regular account statement.

The Provider states that the Complainant received these Fee/Interest/Charges Advice Statements each quarter.

In response to the Complainant's concerns regarding fees being applied to her credit card account, the Provider submits that as set out in Condition 5 (iv) and (v) of the Conditions of Use of the credit card account, the cardholder agrees by using the credit card that they will not exceed the credit limit.

The Cardholder

- (v) *(in using the credit card must not exceed the credit limit notified to the cardholder from time to time or to the person in whose name the account for the credit card is maintained (the "principal cardholder");*
- (vi) *must not assume that the credit limit referred to in Condition 5 (iv) is still subsisting if the Cardholder is in breach of any of the conditions of use.*

Accordingly, each month the Provider states that it provides a statement outlining the minimum balance due which must be paid to the Provider within 25 days from the date of each statement. The Provider notes Condition 8 of the Conditions of Use in that regard:

Statements

8.

The [Provider] will prepare and will send periodic statements of account to the principal Cardholder. The minimum sum due and specified on the statement of account or any greater sum the Cardholder may choose shall be paid to the [Provider] within 25 days from the date of each statement. The minimum sum will be the outstanding balance shown on the statement if less than €5 or the greater of €5 or 2.5% of the said outstanding balance. The following fees will apply if you request a copy statement:

For the first page of each individual statement €3.80

For each subsequent page of statement €2.50

These fees will be debited to the relevant credit card account as they arise.

The Provider points out that if the outstanding balance is not cleared in full, the Provider will apply interest calculated at the rate appropriate to the credit card on a daily basis, as per Condition 7 of the Conditions of Use.

The Provider maintains that the credit card was in arrears and in excess of its credit limit of €6,000 in November 2012. On 13 December 2012, the Provider wrote to the Complainant

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advising that she was in breach of Condition 11 of the Conditions of Use, which provides as follows:

Outstanding Balance/Termination

11.

The whole of the outstanding balance on the account shall become due and payable to the [Provider] on the bankruptcy or death of the principal Cardholder (at the [Provider]'s discretion). Subject to the provisions of the CCA, the whole of the outstanding balance shall become due and payable to the [Provider] if the principal Cardholder or any additional Cardholder is in breach of any of the Conditions of Use.

The Provider also advised that in order to avoid incurring charges, the agreement being terminated and the credit card being cancelled, the overdue balance would need to be paid within 21 days. The Provider maintains that the Complainant did not contact the Provider and a default Notice Letter was issued on 28 January 2013. The letter advised the Complainant that the outstanding balance was now due and the account was terminated. Once the account was terminated on 28 January 2013, the Provider states that interest continued to accrue on the outstanding balance as per Condition 7 of the terms and conditions. The Complainant was advised by letter dated 7 June 2013 that the credit card account was being passed to the Provider's legal department for recovery of the outstanding debt.

The Provider states that the outstanding balance continued to accrue interest in line with the terms and conditions of the account until the file was referred to the Provider's debt collection agents. In the credit card statement issue 14 July 2013, the interest posted and total balance outstanding was €7,206.60DR. The credit card was referred to the Provider's debt collection agents on 31 July 2013, and the interest was suspended on the account. The outstanding balance remained at €7,206.60DR.

The Provider states that on 2 August 2013, the Provider's debt collection agent issued correspondence to the Complainant advising of the outstanding balance owing and requested the Complainant to contact the debt collection agent to discuss possible payment proposals.

The Provider rejects the Complainant's assertion that fees, charges and interest were misapplied to her current account and credit card account, and maintains that it applied fees and charges in line with the terms and conditions of her accounts.

In response to the Complainant's contention that it failed to apply payments made by the Complainant to her credit card, the Provider maintains that their assumption is that the Complainant is referring to a payment issue on 31 May 2016.

The Provider states that on that date, the Complainant posted a postal order for €50 and enclosed a letter instructing the debt collection agent to lodge the funds to [*****44P].

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The Provider states that this is a file reference assigned to the Complainant's current account.

The Provider notes that on 10 June 2016, the debt collection agent wrote to the Complainant advising that the June payment had not been made.

On 20 June 2016, the Debt Collection agent responded to the Complainant advising that they had followed her instruction for the payment to be credited to the file reference [*****44P], as per her letter dated 31 May 2016.

The Complainant wrote on 16 July 2016 stating, "*the payment in June was wrongly credited to the current account*" and advised that "*there was no agreed schedule on the [sic] current account so the error was clear*". The Complainant requested that the payment be transferred to the credit card account held under file reference [*****441].

On 21 July 2016, the Debt Collection agent wrote to the Complainant confirming the transfer of funds from the current account to the credit card account on 5 July 2016 after her request was approved by the Provider.

The Provider submits the following details regarding the repayments plans entered into by the parties regarding the Complainant's accounts during the relevant periods:

Credit card account

The Provider referred the Complainant's credit card account to a debt collection agent on 31 July 2013. The Complainant advised the Provider that she would engage with the debt collection agent on numerous occasions in order to put a payment schedule in place.

On 10 February 2014, the Complainant wrote to the debt collection agent and proposed a repayment plan consisting of monthly payments in the sum of €100 on the 7th of each month. On 13 February 2014, the proposal was accepted for a period of six months at which it would be reviewed again. Three payments of €100 each were received for March, April and May 2014, and a receipt issued for each respectively.

On 8 May 2014, the Complainant requested a reduction of the monthly repayment to €50 per month. Again, this proposal was accepted for six months subject to further review thereafter. Four payments of €50 each were received for June, July, August and September 2014 and a receipt issued for each respectively.

The Complainant requested a further reduction of the monthly repayment plan in September 2014. This was not accepted and the monthly repayment amount of €50 was to remain in place, again subject to review in six months. The Complainant made the agreed payment for September 2014 but not for October or December 2014.

The Complainant resumed the agreed payments in January 2015 but three monthly payments were missed in February, September and November 2015. The Complainant resumed payment in December 2015, but did not make payments in January, March, May, June, September and November 2016. The Complainant further failed to make payments in January, April, May, July, August, October and November 2017. The Complainant made payments in February and May in 2018, and at that stage the outstanding balance was €5,556.60DR on the credit card.

Current Account

The Provider referred the Complainant's current account to the debt collection agent in 2013. The Complainant has not entered into an agreed payment plan for the current account with the debt collection agent. The Complainant has not made a payment to the current account since 20 July 2015, and payment on this date was in the amount of €20. The outstanding balance of €1,496.74DR remains on the account.

In response to the Complainant's assertion that the Provider is pursuing an incorrect debt in respect of her credit card balance, the Provider expresses surprise, as the Complainant has never raised this issue before and states the statements provided by the debt collection agent encompass clearly all payment details to date.

The Provider suspended interest on the outstanding balance owed on the Complainant's credit card account on 31 July 2013 on the referral of the file to the debt collection agent. On 2 August 2013, the Debt collection agent wrote to the Complainant and advised that they would be responsible for recovering the outstanding debt of €7,206.06. The Provider maintains that the Complainant was issued with receipts for payments she made and was issued with up to date statements of her credit card account by the debt collection agent, which displayed the payments being made and the balance outstanding.

Ultimately, the Provider submits that as a direct result of the Complainant failing to meet the terms and conditions of the credit card and current account, both accounts were outsourced to the debt collection agent. The Provider maintains that it worked with the Complainant throughout her difficulties and claims that it wholeheartedly engaged with the Complainant in allowing her ample time to get her accounts in order. The Provider submits that the Complainant willingly entered into the payment plan agreement with the Provider in relation to her credit card account and she was fully informed and advised of the position of the account by the debt collection agent. Further, the Complainant has not entered into any arrangement in relation to the current account and the outstanding balance remains as it was on 23 September 2015 when it was referred to the debt collection agent.

The Provider states that it is satisfied that the Complainant's accounts were being administered in the agreed fashion as set down in the terms and conditions of the accounts and overdraft facility with the Provider and the debt collection agent, and that it fully adhered to the terms and conditions of the accounts as agreed with the Complainant.

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The Provider maintains that the Complainant failed to adhere to any agreements or repayment of the outstanding balances on her accounts and was aware and reminded of this by the Provider and the debt collection agent.

The Complaints for Adjudication

That the Provider was incorrect and premature in closing the current account and referring the current account to a firm of debt collection solicitors, and a failure to provide information about the charging of “*draconian*” fees.

The Complainant also states that the Provider exercised an abuse of power, and harassed and intimidated the Complainant in its communication and by withholding information, deliberately misleading her as to the status of her account, failing to adhere to ethical standards and closing her account and adding it to the Central Credit Register.

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 16th April 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 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 the Complainant made a further submission by letter dated 9th May, a copy of which was transmitted to the Provider for its consideration. The Provider advised this Office by letter dated 16th May that it had nothing further to add.

Following consideration of the Complainant's submission, together with all of the submissions and evidence, I set out below my final determination.

Closure and referral of the Complainant's current account to a firm of debt collection solicitors.

The Provider referred the Complainant's current account to a firm of debt collection solicitors on 11 September 2015 after:

- (i) a 21 day default letter was sent to the Complainant on 31 July 2013 in accordance with Section 13.15 of the terms and conditions of the current account;
- (ii) the account had not held a credit balance since November 2013;
- (iii) the Complainant failed on numerous occasions in 2013 to put a payment plan in place for her credit card account and was given extra time on each occasion by the Provider to do so;
- (iv) the Complainant, on numerous occasions, was informed that the turnover on the current account was not sufficient to warrant the overdraft on the account. In February, June and August 2015, the Provider had provided the Complainant with more time in making payments;
- (v) the Provider sent a 'Notice of Default under Section 54 of the Consumer Credit Act 1995' letter to the Complainant on 18 July 2015 advising her that because of the continued unsatisfactory operation of her account, the Provider was no longer prepared to offer her banking facilities, she asked for more time and was granted 30 days.

Having considered the submissions and documentation, I accept that it was not unreasonable for the Provider to refer the Complainant's current account to a firm of debt collection solicitors, nor was the closure by the Provider of the Complainant's current account unauthorised or unreasonable. The Provider acted in accordance with the terms and conditions of the account, the Complainant was given sufficient opportunity to rectify or reach an agreement to rectify the outstanding balance owing on the current account and was on notice of the situation throughout the relevant period.

Charges applied to current account

The Provider has submitted that a quarterly maintenance fee is charged on all personal current accounts. It is debited quarterly along with any transaction fees that may apply and current account transactions fees cover the following transactions on a current account: automated transactions e.g. direct debits (domestic and SEPA), Phone/Online or Mobile Banking transactions, standing orders, ATM withdrawals and debit card transactions, paper/staff assisted transactions e.g. lodgements, credits, cheques, cash withdrawals in branches. Customers receive a Fee/Interest/Charges Advice Statement approximately four weeks before the account transaction fees are charged to their current account if the total is more than €12.70, otherwise the Fee/Interest/Charges Advice Statement will be included with their next regular account statement. The Complainant received these Fee/Interest/Charges Advice Statements each quarter.

Fee Notification Statements have been submitted in evidence by the Provider. From May 2014 these were separate documents which were sent to the home address of the complainant. They provide detailed breakdowns of charges applied to the account for automated transactions and maintenance fees. Separate pages provide details of interest charged. The Notification statements were issued the required four weeks in advance of the charges being applied.

For the period November 2012 to May 2014, there appear to be no separate documents detailing the charges on the current account included in the evidence. However, the Notified interest and Notified Fees are listed as debits in the transaction history on the current account.

From May 2014, the Provider sent separate Fee Notification statements to the complainant. These detailed types of charges for different services, informing the account holder four weeks in advance of the application of the charges as required. There is a separate Interest Notification Statement which also informs the account holder four weeks before the application of the interest charged.

Statements of these types, (Over limit Charge Statements, Fee Notification Statements and Interest Notification Statements) have been supplied in evidence for the following dates; May 2014, August 2014, February 2015, May 2015 and August 2015. There is a current account statement for November 2014, which contains details of fees applied to the account.

The evidence provided to this Office would indicate that charges were applied as set out in the terms and conditions of the account and notifications of charges were made in advance.

Examples of some of the charges listed are set out in the Table below:

Type of Statement	Date Issued	Date applied to AC	Amount
Fees Notification	30.5.14	27.6.14	€52.40
Interest Notification	30.5.14	27.6.14	€43.58
Over Limit Fee	29.8.14	29.8.14	€7.00
Fee Notification	29.8.14	26.9.14	€40.00
Interest Notification	29.8.14	26.9.14	€44.82
Fee Notification	27.2.15	27.2.15	€12.20
Interest Notification	29.5.15	26.6.15	€49.20
Interest Notification	28.8.15	25.9.15	€49.55

Charges applied to credit card account

In Condition 5 (iv) and (v) of the Conditions of Use of the credit card account, the cardholder agrees by using the credit card that they will not exceed the credit limit.

The Cardholder

- (vii) *(in using the credit card must not exceed the credit limit notified to the cardholder from time to time or to the person in whose name the account for the credit card is maintained (the "principal cardholder"));*
- (viii) *must not assume that the credit limit referred to in Condition 5 (iv) is still subsisting if the Cardholder is in breach of any of the conditions of use.*

The Provider states that it provided a statement each month outlining the minimum balance due which must be paid to the Provider within 25 days from the date of each statement. The Provider notes Condition 8 of the Conditions of Use in that regard:

Statements

8.

The [Provider] will prepare and will send periodic statements of account to the principal Cardholder. The minimum sum due and specified on the statement of account or any greater sum the Cardholder may choose shall be paid to the [Provider] within 25 days from the date of each statement. The minimum sum will be the outstanding balance shown on the statement if less than €5 or the greater of €5 or 2.5% of the said outstanding balance. The following fees will apply if you request a copy statement:

For the first page of each individual statement €3.80

For each subsequent page of statement €2.50

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These fees will be debited to the relevant credit card account as they arise.

The Provider notes that if the outstanding balance is not cleared in full, the Provider will apply interest calculated at the rate appropriate to the credit card on a daily basis, as per Condition 7 of the Conditions of Use.

The Provider maintains that the Complainant's credit card was in arrears and in excess of its credit limit of €6,000 in November 2012. On 13 December 2012, the Provider wrote to the Complainant advising that she was in breach of Condition 11 of the Conditions of Use, which provides as follows:

Outstanding Balance/Termination

11.

The whole of the outstanding balance on the account shall become due and payable to the [Provider] on the bankruptcy or death of the principal Cardholder (at the [Provider]'s discretion). Subject to the provisions of the CCA, the whole of the outstanding balance shall become due and payable to the [Provider] if the principal Cardholder or any additional Cardholder is in breach of any of the Conditions of Use.

The Provider also advised that in order to avoid incurring charges, the agreement was being terminated and the credit card was being cancelled, the overdue balance would need to be paid within 21 days.

The Complainant did not contact the Provider and a default Notice Letter was issued on 28 January 2013. The letter advised the Complainant that the outstanding balance was now due and the account was terminated. Once the account was terminated on 28 January 2013, interest continued to accrue on the outstanding balance as per Condition 7 of the terms and conditions.

The Complainant was advised by letter dated 7 June 2013 that the credit card account was being passed to the Provider's legal department for recovery of the outstanding debt.

The outstanding balance continued to accrue interest in line with the terms and conditions of the account until the file was referred to the Provider's debt collection agents. In the credit card statement issued on 14 July 2013, the interest posted and total balance outstanding was €7,206.60DR. The credit card was referred to the Provider's debt collection agents on 31 July 2013, and the interest was suspended on the account. The outstanding balance remained at €7,206.60DR.

The evidence provided includes credit card statement from 14th January 2013 to 14th January 2016. The credit limit was €6,000. The balance on the first statement provided is €6,676.

Each statement details the Balance, including interest rates payable, Overdue Amounts, Minimum Payments and Total Minimum Payment Due.

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The Card was suspended on the 28th January 2013 which re-set the credit limit to zero. Interest continued to accrue on the account until 31st July 2013 when the card was referred to the Provider's recovery agents.

The Table below sets out some of the interest charged:

Date	Interest Purchases	on	Interest Advances	on	Total Interest
14.1.13	€67.00		€14.57		€81.57
14.2.13	€67.97		€14.81		€82.68
14.3.13	€62.62		€13.61		€76.23
14.4.13	€69.84		€15.29		€85.13
14.5.13	€68.38		€15.05		€83.43
14.6.13	€71.46		€15.81		€87.27
14.7.13	€69.96		€15.56		€85.52

Again, the evidence provided to this Office indicates that these charges conform to the terms and conditions of the credit card agreement. I also note that the charges are clearly laid out and the Provider, by suspending further interest charges in July, avoided placing additional charges on the Complainant.

In her post Preliminary Decision submission of 9 May, the Complainant has referred to fees charged by another bank. However, it is not the function of this Office to compare the fees of financial service Providers. The fees charged by another provider have no relevance to this complaint.

Payments made to the credit card account

It is clear from the correspondence that on 31 May 2016, the Complainant posted a postal order for €50 and enclosed a letter instructing the debt collection agent to lodge the funds to [*****44P], a file reference assigned to the Complainant's current account.

On 20 June 2016, the debt collection agent responded to the Complainant advising that it had followed her instruction for the payment to be credited to the file reference [*****44P], as per her letter dated 31 May 2016.

Separately, on 10 June 2016, the debt collection agent wrote to the Complainant advising that the June payment had not been made in respect of her credit card account.

The Complainant wrote on 16 July 2016 stating, *“the payment in June was wrongly credited to the current account”* and advised that *“there was no agreed schedule on the [sic] current account so the error was clear.”* The Complainant requested that the payment be transferred to the credit card account held under file reference [*****441].

On 21 July 2016, the debt collection agent wrote to the Complainant confirming the transfer of funds from the current account to the credit card account on 5 July 2016 after her request was approved by the Provider.

It is clear that the Complainant mistakenly referenced her current account instead of her credit card account when submitting the payment. This issue was identified by her when she realised her mistake and the Provider duly rectified the issue when requested by her. I am therefore satisfied that the Provider has not failed to apply payments made by the Complainant to her credit card account.

The Complainant, in her post Preliminary Decision submission of 9 May states *“the figure for the credit card is incorrect as I have stated and does not reflect payments that I have been making”*.

However, she has not pointed to any particular figure as being incorrect, nor has she provided any evidence to support this contention.

Communication by the Provider

The Complainant submits that she has been *“deluged with correspondence and phonecalls from various different sources within the bank at a very stressful time and the account was referred to the credit department at [Provider] without notifying her, which meant that any correspondence sent to the branch at [Provider] took weeks to get through and made a mockery of her efforts to keep the accounts in balance.”*

She further submits that the matter was treated in a *“very high handed and harsh manner.”* She also submits that the Provider *“applied erratic and excessive charging throughout, [the Complainant] would send a letter to cancel a direct debit which would not be received due to the rerouting of her account and the [Provider] would then apply harsh and punitive charges to the account as per paperwork submitted with pleadings.”*

Extensive records of the communication between the Provider and the Complainant, as well as the correspondence between its agent, the debt recovery company, and the Complainant have been supplied in evidence. I have considered these communications.

With specific reference to section 8 of the Consumer Protection Code 2012 (CPC) it is my view, based on the evidence before me, that the Provider has adhered to the requirements of the CPC,

It has remained in contact at the specified intervals when the account went into arrears. Updates with the specified information have been provided at three month intervals and

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the Provider informed the Complainant it intended to appoint a third party in advance of doing so.

I have not been provided with any evidence that the Provider's communications were excessive, nor that they were harassing or intimidating in their tone. I note the Provider has adhered to the required time scales for the provision of information about the operation of the account and the credit card. In this respect, I accept the Provider has acted in a reasonable and proportionate manner.

The Complainant adds that the Provider *"aggregated two accounts wrongfully in relation to recovery when the current account was being operated as they had advised me to do."* The Provider states that the Complainant's Credit Card was referred to the Provider's debt recovery agents for recovery of the outstanding balance. The Provider states that when it refers an outstanding debt to one of these agents, all accounts held by a debtor are reviewed. Therefore, as a result of the above, the Complainant's current account was referred to the Provider's Credit Operations Recovery department for management on the 30 July 2013.

The Provider referred both accounts to the debt collection agent. There is no evidence to show the accounts were aggregate though I accept that the effect was more or less the same as the agent became responsible for the collection of both. As noted above, when the Complainant requested a payment to be transferred from his current account to his credit card account, this was done. This would not support the contention that the accounts were aggregated.

It is clear that the Complainant entered into the payment plan agreement with the Provider in relation to her credit card account and she was informed and advised of the position of the account by the debt collection agent. She did not enter into any agreement to pay her current account balance.

I must accept from the evidence supplied to me that the Complainant's accounts were administered as set down in the terms and conditions.

I note that the Complainant, in her post Preliminary Decision submission of 9 May states:

"On the most basic level, in the David vs Goliath level of these endeavours, the Bank did not keep me informed of its change of address of my account for well over a year and even on the most basic level of the Consumer Credit legislation and Human Rights legislation, this was an abuse.

However, the Complainant, who is a lawyer, has not pointed to any particular provision in any legislation to support this contention, nor have I identified any breaches of legislation.

For the reasons outlined above, I do not uphold this complaint.

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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**

23rd May 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.