



<u>Decision Ref:</u>	2019-0235
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Accessibility issues
<u>Outcome:</u>	Partially upheld

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

Background

This complaint concerns the Provider's application of a payment to the Complainant's credit card account.

The Complainant's Case

The Complainant holds a credit card account with the Provider.

The Complainant states that on **3 April 2018** he paid funds into his account at a local post office cash point. He states that at about 7.30pm that evening he contacted the Provider and was informed that the monies had been received but it might take two further days for the monies to clear. The Complainant submits that he telephoned the Provider a week later (on 9 April 2018), only to be advised that the monies had not yet reached his account. He was offered no explanation and was told that it was a procedural issue.

The Complainant submits that it is his understanding that once funds are received they should be applied. When the Complainant raised this with the Provider he was told that the Provider's procedures differ. The Complainant was subsequently furnished with a Final Response Letter, which he says annoyed him even further.

The Complainant wants to know why the Provider does not apply funds once they are received. He explains that when he tried to ascertain why his funds had not been applied

to his account in a more timely manner, he was provided with contradictory information. Initially he was advised that funds might require two days to clear. Subsequently he was told that funds might take as long as seven days to reach a designated account.

The Complainant further points out that in the Provider's letter of 1 May 2018, certain timescales were outlined. The letter indicates that customers should allow 3 working days for funds paid via post office to reach an account. Given this information, the Complainant is wondering why it took well in excess of 3 days for monies paid at the post office, to reach his account.

The Complainant submits that as a consequence of the delay in funds reaching his account, some point of sale transactions were declined, which caused him huge embarrassment.

The Provider's Case

The Provider states that a hold was placed on the payment as the Complainant's payments for that billing cycle had exceeded the credit limit on his card.

It has set out the timescales for payments by various methods (including 3 working days for payment made at the post office).

It has accepted that the Complainant was provided with conflicting information when he was told in a phone call that a post office payment would take 2 days (as opposed to 3 days), and it has apologised for this. It has offered €50 by way of goodwill payment, to resolve this complaint.

The Complaint for Adjudication

The complaint is that the Provider wrongfully failed to apply funds, lodged via a post office cash point, to the Complainant's account in a sufficiently timely manner.

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

/Cont'd...

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 8 August 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.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

On 3 April 2018 the Complainant called the Provider to enquire as to the balance on his credit card account. He was told his available balance was €1,123.81 and this took into account a payment of €650 he had paid by way of SEPA transfer that morning.

The Complainant then effected another payment to his credit card account, by point of sale transaction at a post office. He attempted to pay €800 off his credit card balance.

This €800 payment occurred when his total payments for that billing cycle were already above €2,000 – which is the limit on the credit card account. This link in the chain of events became an issue after the Complainant made a formal complaint to the Provider (ultimately, he made another payment of €350 which brought the total payments for that billing cycle to €3,028.95).

The following day the Complainant telephoned the Provider querying why his card had been declined for a transaction. He explained that he had lodged €650 by SEPA transfer and €800 in cash at the post office the previous day. He was told it didn't look like the SEPA payment had cleared yet, that payments could take 2 working days to go through, and that his available balance at that time was €112.57. It is not entirely clear from that call whether the Provider's agent was referring to SEPA transfers or post office payments.

On 9 April 2018 – the 4th working day after the payment was made at the post office – the Complainant telephoned the Provider. He was told his available balance was zero and that there was a hold on the €800 payment. The Complainant noted that that payment was made "last Tuesday". After a short wait, the Provider's agent confirmed that the payment had now been applied and the up to date outstanding balance was now €1,215.43. The Complainant then lodged a complaint by telephone and explained his grievance. The Provider's agent explained that a post office payment would take a "couple of" days, but in this case he had paid too much (i.e. a greater sum than the credit limit) during the billing period and the system accordingly placed a hold on the payment. Essentially, it seems that the system is set up like this, to flag when a customer is spending more than their credit limit in a given month.

In its final response letter, the Provider reiterated that a hold had been placed on the €800 payment due to the fact that it brought the payments for that month, over the agreed credit limit.

/Cont'd...

Analysis

The Complainant was misinformed as to the timescale for a post office payment being applied to his account. The Provider has accepted this.

However, this became something of a side issue, as the reason that the Complainant's post office payment was not applied within the (as he now knows) 3 day timescale for post office payments, was due to the fact that he had made payments of over €2,000 to the account during that billing period. In this regard, the Provider places a hold on payments which exceed the credit limit for a billing period.

The decision to hold payments on this basis is a business decision made by the Provider. It is not provided for in the card terms and conditions furnished to this office, nor does it appear to have been notified to the Complainant prior to it being applied to his payment of €800.

I am cognisant that the Consumer Protection Code 2012 (as amended) prescribes at Chapter 4 under "General Requirements" that:-

"4.1 A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information."

I note in that regard that "key information" is explained to mean "Any information which is likely to influence a consumer's actions with regard to a product or service".

The Provider may very well have sound reasons for applying a hold or block on payments which would exceed the credit limit in a given month. It has chosen however not to furnish those reasons in response to this complaint.

Whatever the reasons, the Provider does not appear to have advised the Complainant that payments made above the credit limit in a given billing period, may be subject to a block.

Furthermore, in my opinion, the Provider ought to have been in a position to explain to the Complainant that the €800 payment would be subject to a hold (by reason of it exceeding the credit limit) when the Complainant told its agent that he had made such a payment (ie during the telephone call of April 4th).

The Provider may very well not have the facilities in place to be able to advise a customer that a payment is or will be subject to a hold in these circumstances. This is a matter that the Provider ought to address, whether by updating its facilities or by ensuring that customers are notified in advance that payments made above the credit limit may be subject to a block.

The Complainant was unable to obtain correct or consistent information as to his available balance when he called the Provider's agents.

/Cont'd...

While a customer should be aware of the difference between a balance and a “cleared” or “available” balance, in this complaint there is no evidence before me that the Complainant had any way of knowing that his €800 payment would be subject to a hold, by virtue of it bringing his payments for that billing period over €2,000.

In my opinion, the €50 offered by the Provider is not an amount commensurate with the inconvenience caused to the Complainant, nor with the level of failing by the Provider. Accordingly, having considered the evidence available, I take the view that this complaint must be partially upheld.

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) (a)** and **(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €1,000, to an account of the Complainant’s choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory 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.
- I also recommend that the Provider give significant consideration to amending its Terms and Conditions to ensure that the relevant information is included regarding its potential application of a hold or block on payments which exceed the credit limit in a given month, for this sort of account.
- 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.

**MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

30 August 2019

/Cont’d...

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.

