



<u>Decision Ref:</u>	2019-0277
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Cards
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service Fees & charges applied Maladministration
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant holds a credit card with the Provider. The Complainant was charged interest and a late payment fee in respect of the amount due on his credit card for the period **26 October 2016** to **25 November 2016**. Payment in respect of the amount due for this period was payable on **20 December 2016**. The Complainant states he did not receive the **November 2016** statement until **28 December 2016**.

The Complainant's Case

The Complainant states that he received his credit card statement dated **25 November 2016** on **28 December 2016**. The payment due date in respect of this statement was **20 December 2016**. The Complainant states that the Provider does not have online banking for its Irish customers and the only means of checking his balance is by calling the Provider. The Complainant states that this is not a very practical way of checking his balance on a daily or weekly basis. The Complainant states that his normal practice is to wait until he receives his statement and he then processes payment in respect of the amount due more or less immediately.

The Complainant states that when reviewing his statement dated **25 December 2016** he was charged a late payment fee of €6.35 and interest of €46.42 on the November 2016 balance. The Complainant states that he had no opportunity to pay the amount due on time and that it is unfair to expect him to pay interest on an amount which he had no awareness of as his statement arrived over a month late. The Complainant states that the supply chain for statements is the Provider's responsibility.

The Provider's Case

The Provider's case is that no errors were made by it and that it complied with the terms and conditions applicable to the Complainant's account. In its response to the Complainant, it states that the statement was generated on 25 November issued and passed to the Royal Mail on 28 November It goes on to state, "They, [Royal Mail] in turn, handed this to An Post within two working days." The monthly statement is issued on the 25th day of each month and payment is due within 25 working days regardless of when the statement is received. It is the Complainant's responsibility to ensure payments are made by the due date.

The Provider states that the Complainant has been making payments on or around the same day each month since January 2014 and he ought reasonably to have been aware that a payment was due regardless of receiving a statement.

The Provider states that the Complainant had other statements with its contact number on it which he could have called. The Complainant did not call the Provider to advise that the statement was not received or to make payment. The Provider states that the Complainant knew there were transactions on the account for the relevant period and that it would not have been unreasonable to assume he knew payment would need to be made.

The Provider states that as the November 2016 statements was not paid until **3 January 2017**, a late payment fee of €6.35 and interest of €46.42 was correctly charged to the Complainant's account on **23 December 2016**. The Provider agreed in its letter to the Complainant of **1 March 2017**, to refund the €6.35 fee. In a letter dated **5 April 2017**, the Provider offered an additional £30 as a gesture of goodwill.

The Complaint for Adjudication

The complaint for adjudication is that the Provider wrongfully charged the Complainant interest and a late payment fee in respect of his credit card.

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 29 July 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 Provider made a submission under cover of its letter dated 14 August 2019, together with enclosures, a copy of which was transmitted to the Complainant for his consideration.

The Complainant advised this Office by e-mail dated 29 August 2019 that he did not wish to make any further submission.

Having considered the Provider's additional submission and all of the submissions and evidence furnished, I set out below my final determination.

Credit Agreement

The Provider has furnished a copy of its Credit Agreement. A number of the terms contained in this agreement are relevant to this complaint. Paragraph 2 of the agreement states:

*"2 Within 25 days after the date of each **statement** you must pay **us** at least the minimum payment shown on **your statement**. ..."*

Paragraph 3 of the agreement then sets out the rates of interest charged by the Provider. In terms of the application of interest, the agreement states:

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*“4 If **you** pay the full new balance shown on **your statement** within 25 days of the **statement date**, **we** will not charge **you** interest on any **purchases** shown on that **statement**.”*

Terms similar to these are also contained in the Provider’s Terms and Conditions.

Terms and Conditions

A number of relevant terms are also contained in the Provider’s terms and conditions. The section dealing with interest states:

“Interest

*j The interest rates that apply to the **card** will be the interest rates set out in Section 3 of the credit **agreement**. These interest rates can be changed by **us** as **we** see fit.*

*k For **purchases**, **balance transfers** and **advances** we will charge interest ...”*

The section dealing with statements states:

“Statements

*o Each month **we** will send **you** a **statement** showing:*

- all amounts charged to **your account** for the time covered by the **statement**;
and*
- any repayments **you** have made since **your last statement**. **You** must pay **us** the minimum payment shown on **your statement** on or before the payment date shown on **your statement**.”*

In respect of charges the terms and conditions state:

“Charges

*s If **you** do not keep any of these **conditions**, **you** may have to pay **our** administration charges ... **We** will apply these charges to **your account** ... These charges will be charged to **your account** where:*

...

- **you** make a late payment ...”*

In terms of repayments, the terms and conditions state:

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*“y If **you** miss a payment, as well as having to pay additional interest and charges under this **agreement**, **your** credit record may be affected ...”*

Section 12 of the terms and conditions deals with the non-provision of services by the Provider which includes the sending and receiving of statements:

“12. General

*a **We** are not liable to **you** if **we** cannot provide any part of **our** service for a reason beyond **our** control ... If **we** cannot produce or send a **statement** to **you** for any reason beyond **our** control, or **you** do not receive any **statement**, **your** responsibilities under the **agreement** will continue.”*

Section 16 sets out the various tariffs and charges and identifies a charge of €6.35 in respect of late payments.

Standard European Consumer Credit Information

The Provider has also provided its Standard European Consumer Credit Information. At section 3 it states under the heading *Costs in the case of late payments*:

“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.”

Account Statements

The Complainant and the Provider have furnished copies of the **November 2016** and **December 2016** statements. In the *Summary Box* contained on the second page of both statements it states the following:

“Interest Charging Information

...

If the account is not fully cleared, interest will be charged on the average daily balance until full payment is made and credited to your account. Therefore, the longer you take to make a payment, the more interest will be charged.

...

Default Charges

...

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Late Payment Fee €6.36”

Consumer Protection Code

A number of the provisions of the Consumer Protection Code 2012 (the **Code**) are of relevance to this complaint. In particular, I note the following:

“A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

2.1 acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;

2.2 acts with due skill, care and diligence in the best interests of its customers;

2.3 does not recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages or disadvantages of any product or service;

2.4 has and employs effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with this Code;

...

2.8 corrects errors and handles complaints speedily, efficiently and fairly;”

In so far as concerns the provision of information, the Code states:

“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.”

In terms of complaint handling, section 10 states:

“10.9 A regulated entity must have in place a written procedure for the proper handling of complaints. This procedure need not apply where the complaint has been resolved to the complainant’s satisfaction within five business days, provided however that a record of this fact is maintained. At a minimum this procedure must provide that:

- a) the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received;*
- b) the regulated entity must provide the complainant with the name of one or more individuals appointed by the regulated entity to be the*

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complainant's point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further;

c) the regulated entity must provide the complainant with a regular update, on paper or on another durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made;

...

10.11 A regulated entity must maintain up to date and comprehensive records for each complaint received from a consumer."

The Complainant applied for one of the Provider's credit cards in **October 2013** and was ultimately successful in this application. When subscribing to the Provider's credit card service the Complainant agreed to be bound by the various terms and conditions associated with this service.

Having considered the various documents furnished by the parties which I have outlined above, I find that the terms and conditions associated with the credit card are set out in a plain and clear manner. It is clear that a statement will be issued on the 25th day of each month indicating the amount outstanding in respect of the credit card. Payment of the amount due must then be made within 25 days of the statement date to avoid interest and charges. The terms of the credit card make clear when and in what circumstances interest and charges will be applied to an account. Furthermore, the various charges and applicable rate are also clearly set out in the documents referred to above.

Section 12 of the Terms and Conditions is particularly relevant to this complaint. It makes clear that if a customer does not receive a statement then its responsibilities under the agreement will continue. This means that payments are still due as normal and interest and charges will be applied to an account should payment not be made on time. Section 12 (a) states, "*We are not liable to you if we cannot provide and part of our service beyond our control. If we cannot produce or send statements to you for any reason beyond our control, or you do not receive any statement, your responsibilities under the agreement will continue.*"

Since it is not in dispute that the statement was generated and committed to the postal services, given that the Complainant received the statement late on **28 December 2016**, I accept that the circumstances of the late delivery were not attributable to the Provider and the terms of Section 12 (a) specifically cover this circumstance. In addition, having sent a statement in the normal manner, there could be no way for the Provider to have known of its failure to be delivered. That said, I believe the Provider should be more careful in its communication. I note the Provider states that the statement was handed to An Post within two days of being handed to the Royal Mail. I note the Provider has not furnished any evidence to support this claim other than it has a Service level Agreement with the Royal Mail which does not prove this to be the case. That said, I accept that the statement was posted and did eventually arrive, but it is not possible to attribute responsibility for this delay.

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It is the Complainant's evidence that the receipt of his statement is his way of reminding himself to pay. While this is the practice the Complainant has adopted and is a reasonable approach when it comes to paying his credit card bill, this does not alter or affect the payment obligations imposed by the terms and conditions of the credit card. Even though the Complainant's **November 2016** statement was not received until after the relevant payment due date, this does not mean that the amount in question was not payable within the 25 day period. Given the reliance the Complainant places on his statement I note that no enquires were made by him as to why it had not arrived nor was any attempt made to inform the Provider of this in advance of the payment due date. Therefore, taking the above considerations into account, the Provider was entitled to charge interest and a late payment fee in respect of the **November 2016** statement. That said, I would expect the Provider to show some flexibility given the circumstances, and particularly given that the provider does not provide on-line access to its Irish customers and that the Complainant would have had to phone in order to establish his balance and the payment date. In that regard, I note from the correspondence, specifically the second Final Response Letter of **5 April 2017**, that the Provider refunded the late payment fee on **1 March 2017** which was visible on the March statement. In addition, I note the goodwill gesture of a payment of €30 for its failure to mention the interest of €46.42 in the first letter of **1 March 2017**.

In commenting on the Provider's handling of the complaint made by the Complainant by letter dated **8 January 2017** and received by the Provider on **24 January 2017**, in my Preliminary Decision I stated that no acknowledgment of this complaint was furnished by the Provider to the Complainant within 5 working days as required by section 10.9(a) of the Code. I further stated that the Provider failed to comply with section 10.9(b). I did note that the Provider responded to the complaint by telephone on **1 March 2017** and by letter of the same date, this being its Final Response. This was because at that stage I had been provided with no evidence that demonstrated that the Complainant was given any update as to the status of his complaint from when it was received by the Provider and the time of the call on **1 March 2017**. I also noted that not all of the issues raised by the Complainant were addressed in the Final Response letter and a further Final Response was issued on **5 April 2017**.

The Provider, in a post Preliminary Decision submission dated 14 August 2019, stated:

"From reviewing the 'Schedule of Evidence/Information Required', I note under point 13 this relates to the complaint. However, as the [Complainant] had not complained about not receiving acknowledgements or holding letters, I believe this is why, when we replied, this was marked as N/A.

On checking our complaints system and our archived documentation I can see we issued an acknowledgement to [the Complainant] on the fifth working day (30 January 2017), we then sent holding letters (regular update letters) on business day fifteen (13 February 2017) and then again on business day twenty five (27 February 2017). I've enclosed copies of the letters for your information along with a screen

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print from our complaint management system which confirms the letters were generated and the dates they were sent”.

I accept from the additional information furnished by the Provider that it has met the requirements of the CPC in relation to dealing with the complaint. However, it is most disappointing that this information was only furnished to this Office after I issued my Preliminary Decision. When asked to respond to the complaint by this Office, the Provider was clearly asked for the following:

A copy of all correspondence, in chronological sequence, between the Provider, its servants and agents and the Complainant, for the period relevant to the conduct complained of.

A copy of any contemporaneous notes records, minutes, memoranda etc., whether held in electronic form or otherwise, prepared by the Provider regarding the dispute at issue, for the period relevant to the conduct complained of.

Evidence of compliance by the Provider with the provisions of the applicable Consumer Protection Code, relevant to/pertaining to the complaint.

This Office expects financial service providers to furnish it with all relevant documentation and evidence at the earliest possible stage in the complaint investigation process.

I accept that the late arrival of the statement in December may have been inconvenient for the Complainant but the terms and conditions of his account expressly cover this scenario. The responsibility remained on him to manage his account effectively. While the Provider was entitled to apply fees and charges, I consider their refund of the late payment fee and the goodwill gesture of €30 to be appropriate and proportionate under the circumstances.

However, as the Provider did not provide as fulsome an explanation as it should have when it should have been given, I partially uphold the complaint and direct the Provider to pay a sum of €100 to the Complainant.

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) (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 €100, 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**

11 September 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.