



<b><u>Decision Ref:</u></b>	2019-0291
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Credit Cards
<b><u>Conduct(s) complained of:</u></b>	Delayed or inadequate communication Dissatisfaction with customer service
<b><u>Outcome:</u></b>	Upheld

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

**Background**

The Complainant holds a credit card with the Provider. On Tuesday **10 January 2017**, the Provider placed a temporary block on the Complainant's credit card because it was believed that a suspicious transaction had taken place on the card. On the same date, the Provider unsuccessfully attempted to contact the Complainant by telephone to notify him about this transaction and the block being imposed on his card. A letter dated **10 January 2017** was then issued by the Provider to the Complainant in respect of this issue.

The Complainant's position is that he never received the telephone call or any voicemail and that he did not receive the Provider's letter until Wednesday **18 January 2017**. The Complainant states that insufficient efforts were made to inform him that his credit card had been blocked.

**The Complainant's Case**

The Complainant states that on Thursday **12 January 2017**, he made two attempts to make a payment using his credit card but both attempts were unsuccessful. On Monday **16 January 2017** the Complainant again tried to make a payment using his credit card and this was also unsuccessful.

The Complainant telephoned the Provider on **16 January 2017** in respect of this issue and states that he was informed by the Provider's agent that a block had been placed on his credit card on **10 January 2017** because of a suspicious transaction.

The Complainant then enquired as to why he was not informed of this and states that he was told that an unsuccessful attempt had been made to contact him by telephone on **10 January 2017** and as there was no voicemail facility, no message could be left. The Complainant states that he was told that a letter in respect of the block on his credit card was sent to him on the same day.

The Complainant states that he has no record on his phone or the device attaching to his phone of having received a call, from the Provider on **10 January 2017**. The Complainant also states that there is an answering service attaching to the phone. The Complainant states that he further expressed his displeasure at the length of this call before speaking to "*an actual human being.*"

The Complainant then telephoned the Provider's customer complaints department on the same date and questioned why his account had been blocked and why he was not informed about this. The Complainant states that while he may have mentioned his frustration at the duration of the call, this was not intended to be part of his complaint.

The Complainant states that, contrary to the Provider's position, there is no record of a telephone call or voicemail having been received on his home phone or his wife's mobile phone.

On **18 January 2017**, the Complainant received the Provider's letter dated **10 January 2017**. He states that he telephoned the Provider's complaints department to inform them of this "*astonishing 'coincidence'.*" The Complainant states that this letter was not posted until after his telephone call on **16 January 2017** and he disputes that it could have taken 8 days to arrive. The Complainant states that the delay in receiving correspondence from the Provider is an internal issue and is not due to the postal services.

The Complainant questioned why the Provider would consider one attempted telephone call as sufficient to discharge its responsibilities to a customer especially in light of the acknowledgement by the Provider that a letter can take up to 8 days to arrive, particularly in circumstances where the Complainant states that the Provider knew how frequently he uses his credit card.

### **The Provider's Case**

The Provider's case is that it attempted to contact the Complainant by telephone on **10 January 2017** on the number registered to his account, in order to verify the suspicious transaction but there was no answer to the call and no facility to leave a voicemail. The Provider states that as contact could not be made with the Complainant, a security letter was issued to the Complainant on the same day, requesting that the Complainant contact the Provider to verify the details of the suspicious transaction.

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The Provider states that it cannot offer an explanation as to why the Complainant did not receive its letter dated **10 January 2017** until **18 January 2017** as the postal system is outside of its control.

The Provider states that it is satisfied that it acted in the best interests of the Complainant when an alert was raised on his credit card account and that it further acted with due skill, care and diligence.

### **The Complaint for Adjudication**

The complaint for adjudication is that in January 2017 the Provider failed to adequately notify the Complainant that his credit card account had been blocked.

### **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 3 September 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.

The Provider has furnished recordings of telephone conversations that took place between the Complainant and the Provider on **16 January 2017** which have been listened to and considered.

The Complainant holds a credit card with the Provider and has done so for a number of years. On **10 January 2017**, the Provider placed a temporary block on the Complainant's credit card as it believed that a suspicious transaction had taken place on the card. The Provider's entitlement to impose this temporary block is not in issue in this complaint and the Complainant acknowledges that the Provider is entitled to place a block on this credit card if it believes that a suspicious transaction has taken place and he does not take issue with the Provider's conduct in this regard. Indeed, it is for the potential benefit of its customers, that a Provider will impose such a temporary block.

In order to verify the transaction and inform the Complainant of the block on his credit card account, the Provider's agent attempted to contact the Complainant by phone on the telephone number associated with the Complainant's card on **10 January 2017**. The internal records maintained by the Provider, records a call being made at 9:23am. The number maintained by the Provider is the Complainant's wife's mobile phone number. In the telephone conversation that took place between the Complainant and the Provider at 9:12am on **16 January 2017**, the Complainant confirms that he does not have "*a mobile phone number.*" The Complainant states that neither he nor his wife received a call or voicemail from the Provider.

The Provider states that since it was unable to contact the Complainant by telephone, it subsequently issued a letter to the Complainant in respect of this matter. I note from the internal records furnished by the Provider that a request for correspondence was made at 9:26am.

The block on the Complainant's credit card remained in place until the Complainant contacted the Provider on **16 January 2017**. It was at this point that the Complainant was made aware of the block on his account. Following this, on **18 January 2017** the Complainant received the Provider's letter dated **10 January 2017**. A copy of this actual letter has not been submitted to this office by the parties to this complaint and instead the Provider's evidence contains a template of the format of the letter.

In its Final Response letter dated **25 January 2017**, the Provider apologised for any inconvenience caused to the Complainant and stated that it did not have any other way of contacting the Complainant:

*"As we did not have any other way of contacting you, a letter was issued to your correspondence address. This is the normal procedure for matters such has [sic] this when a customer cannot be contacted via telephone."*

I note in the Provider's Final Response letter it requested that the Complainant provide further contact details to ensure that he can be contacted at the first available opportunity. Further to this, in a letter to this Office dated **19 December 2018**, the Provider states:

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*“The [Provider] submits that it made every effort to contact the Complainant to discuss the matter however it was unsuccessful on the day in question.” [My emphasis]*

In a subsequent letter to this Office dated **13 February 2019**, the Provider acknowledges that it can take up to 5 to 8 working days for post to be delivered to a customer.

In considering this complaint I have had regard to Regulation 69 of the **European Communities (Payment Services) Regulations 2009** (S.I. No. 383 of 2009) which was in place at the relevant time, and which states:

*“(2) If agreed in the relevant framework contract, a payment service provider may reserve the right to block a payment instrument for objectively justified reasons related to the security of the payment instrument, any suspicion of unauthorised or fraudulent use of the payment instrument or, in the case of a payment instrument with a credit line, a significantly increased risk that the payer may be unable to fulfil his or her obligation to pay.*

*(3) In such cases the payment service provider shall inform the payer in an agreed manner of the blocking of the payment instrument and the reasons for it, if possible before the payment instrument is blocked and at the latest immediately after the blocking, unless giving such information would compromise the security of the payment service provider or is prohibited by another law.” [My emphasis]*

Furthermore, I have also had regard to the general principles contained in Chapter 2 of the **Consumer Protection Code 2012** which require a regulated entity to act in the best interests of a customer, act with due skill, care and diligence and also to employ effective policies and procedures, systems and control checks and does not prevent access to basic financial services.

While the Complainant states that he did not receive a telephone call from the Provider on **10 January 2017**, the Provider maintains that a call was made on that date and a record of this is reflected on its internal system. The Provider submits that this call went unanswered and its agent was unable to leave a voicemail due to this option not being available. A security letter dated **10 January 2017** was then issued to the Complainant.

There is a clear conflict between the evidence of the parties on this point. However, the Provider’s records contain a contemporaneous note of the telephone call being recorded on its internal system which demonstrates unsuccessful telephone contact at that time. These records however, do not indicate that any further telephone contact was attempted nor do they indicate that any follow-up telephone contact was attempted or scheduled. I do not consider in all of the circumstances that it was reasonable for the Provider to effect one attempt only at contacting the Complainant by phone, and not to attempt further telephone contact with the Complainant, in light of the fact that no successful contact had been made.

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The records maintained by the Provider in respect of the Complainant also record an email address for the Complainant. Therefore, I do not accept the Provider's submission that it had no other means of contacting the Complainant or that it made every effort in that regard.

The Provider further maintains that it is satisfied with its conduct despite acknowledging that it can take up to 8 days for a letter to arrive. In this instance the security letter which was actioned on 10 January, arrived 8 days later, on 18 January. With the benefit of this knowledge regarding the potential timeline for surface post, I do not accept that the Provider acted reasonably in its efforts to contact the Complainant.

The effect of the Provider's conduct or lack thereof was that the Complainant was unaware of the block on his card and that he could not use it. The Complainant sets out in his submissions that he found this to be both frustrating and embarrassing.

Finally, in an email to this Office dated **26 April 2019** the Complainant has identified further conduct of the Provider relating to a block being imposed on his credit card account. While the Complainant may be dissatisfied with the Provider's conduct in respect of this, this conduct does not form part of this complaint, and cannot be determined without an adequate investigation. If the Complainant wishes to make a complaint in respect of this more recent conduct of the Provider, he should do so by way of formal complaint to the Provider, and if needs be, if the matter is not then resolved, he can subsequently pursue his complaint via this Office.

For the reasons set out above, I consider it appropriate to 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 upheld on the grounds prescribed in **Section 60(2)(b) & (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 €250, 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.**

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

25 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.