



<u>Decision Ref:</u>	2019-0292
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Cards
<u>Conduct(s) complained of:</u>	Failure to advise on key product/service features Fees & charges applied
<u>Outcome:</u>	Rejected

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

Background

This complaint concerns the administration of the Complainant's credit card account.

The Complainant's Case

The Complainant holds a credit card account with the Provider.

Her account went into arrears on **28 June 2016**. The card was cancelled by the Provider on 3 November 2016 and the Provider issued a letter to this effect on **7 November 2016**.

On **18 November 2016**, the Complainant contacted the Provider by telephone to enquire as to why her card had been declined when she tried to use it.

During a telephone call in July 2016 the Complainant had given details of her mobile number to the Provider and had asked the Provider to use her mobile number to contact her rather than her landline number.

The Complainant states that she advised the Provider on numerous occasions that her address had changed from the address the Provider had on record.

The Complainant contends that she has been intimidated by the Provider's debt collection measures, and that the interest that has been applied to her account is not possible to verify.

She would like her ICB record to be amended such that no adverse information as a result of the credit card cancellation is shown; she also seeks a lower rate of interest on her credit card account and compensation taking account of the embarrassment and threatening behaviour she has been subjected to, together with an apology.

The Provider's Case

The Provider states it issued correspondence to the address it held on its records, as furnished to it by the Complainant at all times.

The Provider says that the Complainant's credit card account went into arrears on 28 June 2016. Following this, the Provider made a number of attempts to contact the Complainant by telephone and it refers to telephone calls that were made on 11 July, 13 July and 15 July 2016 when voicemails were left with the individual who answered the call. No return telephone call from the Complainant was received and the Provider issued correspondence to the Complainant at "Number 8" on 18 July 2016, which advised the Complainant that the account had fallen into arrears and that she should contact the Provider on the number provided to discuss her financial situation and the payment options available to her.

The Provider accepts that on 19 July 2016 the Complainant made contact with the Provider's Credit Card Centre and wished to check that the Provider held the correct address for her and that her credit card payments had been switched back to a minimum 3% of the outstanding balance. The Complainant referred to a number of missed calls to her landline recently and she wished to provide a mobile number. The Complainant also clarified that she had changed her address details "some time the previous week in the branch" but wanted to check the address the Provider had on file. The Provider says that it confirmed to the Complainant that her address at "Number 8", was the address it had on file.

The Provider says that it explained to the Complainant that telephone calls she had missed probably related to a missed payment to her credit card account. She was advised that the account was in arrears of one payment, due to a missed payment on 28 June 2016. The Complainant advised that she had made a manual payment of €300 on 11 July 2016 which covered the arrears of €287.08. The Complainant was given her balance and was advised that the next payment due date was 28 July 2016. The Complainant also asked the Provider to use her mobile phone number, rather than her landline. She raised a query regarding how she might change her address in the future and was given the appropriate details to enable her to telephone the Credit Card Centre.

The Provider acknowledges that contrary to the Complainant's instructions, further attempts to contact her by phone were made to her landline on 9 August, 16 August, 18

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August, 22 August, 6 September, 8 September and 16 September 2016. In the majority of these instances, the voicemail was full.

The Provider also confirms that it issued correspondence to the address which it held on file ("*Number 8*") on 26 September 2016 advising that arrears remained on the account and encouraging the Complainant to work with the Provider to resolve the outstanding arrears.

On 30 September 2016, the Provider wrote to the Complainant again at "*Number 8*" advising that as the account remained in arrears therefore, in accordance with the Terms and Conditions of the account, the Complainant was no longer entitled to use the credit card and that any transactions attempted by the Complainant would not be authorised. The Provider confirmed that the minimum payment required to bring the account up to date was €8,710.78 and it called for payment within a period of 21 days, failing which the Provider would terminate the agreement and the credit card facility would be permanently cancelled. Whilst another phonecall was made to the Complainant's landline on 5 October 2016, in the absence of the security questions being answered, the call could not progress. Thereafter, on 7 November 2016, the Provider confirmed to the Complainant in writing to her address at "*Number 8*" that the credit card had been permanently cancelled and the account was being passed to the Customer Recoveries Department for collection.

The Provider says that the Complainant made contact with it on 18 November 2016 and a discussion ensued around the Provider's attempt to contact the Complainant on her landline. A further discussion ensued about the Complainant's correct address and the Provider says that although the Complainant took issue with the address details, when it explained that the address had been changed to "*Number 8*" from a previous "*Number 15*", the Complainant seemed to accept this and didn't press the matter any further. The Complainant then, requested the amendment of her address, to an address beginning with "*Number 6*".

The Provider has also explained that in the period up to the statement issued on 3 May 2016, the Complainant made the minimum payment due of 3% of the outstanding balance, by direct debit each month. The Complainant contacted the Credit Card Centre on 10 May 2016 and requested that the monthly payment direct debit arrangement be amended from 3% to 100% of the outstanding balance. A manual payment for €2,000 was made to the credit card account on 12 May 2016. In those circumstances, on 28 June 2016, as requested, the direct debit called for 100% of the outstanding balance due from 3 June 2016 (a figure of €8,434.80 DR). This item however, was unpaid on 30 June 2016 and thereafter, on 8 July 2016 the Complainant contacted the Credit Card Centre and requested that the direct debit payment be reduced from 100%, back to the original 3%. The Complainant then made a manual payment for €300 to the account on 11 July 2016.

In those circumstances, when the following month's direct debit fell due, it called for €8,721.88 DR, a figure representing the current minimum payment for that month, but also including the arrears from the previous month due to the direct debit being unpaid at that earlier time. This direct debit request was unpaid on 1 August 2016 and the direct debit instruction automatically cancelled at that point, due to it having been unpaid twice and no further payments were made to the account.

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No repayments have been made to the account since **11 July 2016**.

In an effort to resolve matters for the Complainant in early 2017, her credit card account was reinstated, with no arrears as before the initial direct debit having been unpaid on 30 June 2016. The Provider was willing to refund all interest and fees applied to the credit card account and also confirmed that at that time, the Complainant's name did not appear on the ICB in respect of the credit card account. Thereafter, monthly statements issued again from 3 March 2017 and were posted to "*Number 6*". As no payments were received however, the card again went into arrears and was charged off on 3 August 2017.

In **February 2018**, the Provider offered to reinstate the credit card account refunding all interest and fees (a total of €1,081.82) incurred since the first direct debit was returned unpaid (on 30 June 2016) and also offered the sum of €1,000 as a goodwill gesture.

The Complaint for Adjudication

The complaint is that the Provider was guilty of maladministration in its management of the Complainant's credit card account in 2016 – 2017.

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 7 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.

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Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

From the evidence made available to me, it seems that:-

From **March 2015**, statements issued to the "Number 8" address.

On **18 May 2015**, the Complainant instructed the Provider to change her address on file to the "Number 15" address.

On **10 May 2016**, the Complainant instructed the Provider to change her address back to the "Number 8" address.

On **18 November 2016**, the Complainant instructed the Provider to change her address to the "Number 6" address.

The Complainant's credit card fell into arrears in July 2016.

The chain of events for the card falling into arrears is somewhat unusual. On **10 May 2016**, the Complainant instructed the Provider to amend the monthly direct debit to be 100% of the outstanding balance (as opposed to the minimum payment of 3%). On 12 May 2016 the Complainant made a payment of €2,000 toward the outstanding balance, resulting in a balance on the 3 June 2016 statement of €8,434.80 which because of the Complainant's own instructions to the Provider on 10 May, was due for payment in full by direct debit on 28 June 2016.

The direct debit for the full amount was however, returned unpaid, due to insufficient funds.

As a result, the 3 July 2016 statement displayed the €8,434.80 both as having been received and as being a "*previous minimum payment overdue*", in addition to the "current minimum payment" of €287.08. The "*Total Minimum Payment*" set out as being due on 28 July 2016 was therefore €8,721.88.

On **8 July 2016**, the Complainant contacted the Provider, gave her mobile number and instructed it to reduce the direct debit back to the minimum payment of 3%. On **11 July 2016**, the Complainant made a payment of €300.00 to the account. This was the last payment made to the account.

The Provider wrote to the Complainant at the "Number 8" address on 18 July 2016 to inform her of the arrears, and set out the "*Arrears Due*" as €8,572.90.

The Complainant confirmed the "Number 8" address during a telephone call on 19 July 2016. The Complainant was advised that a payment for €300.00 had been received. During that telephone call the Complainant also instructed the Provider to use her mobile number rather than her landline for telephone contact.

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Presumably, at this point the Complainant believed that the direct debit that would be applied for on 28 July 2016 and would be in the region of €300.00 as opposed to the full amount of €8,721.88. This would not have been an unreasonable belief in the circumstances.

In the event, €8,721.88 was applied for by direct debit, as opposed to the 3% amount. This was because the larger sum was now “overdue” since the previous failed direct debit at the end of June. As a result, this direct debit was also returned unpaid. This resulted in the direct debit being cancelled (for two missed payments).

The Provider issued a statement to the Complainant on 3 August 2016, an arrears warning letter on 26 September 2016, an ending of agreement warning letter on 30 September 2016, and a card cancellation letter on 7 November 2016. All of the foregoing correspondence issued to the Complainant’s “*Number 8*” address which she had confirmed as being her address, on 19 July 2016.

Throughout August and September 2016, the Provider attempted to contact the Complainant by telephone to her landline, despite having been asked by the Complainant to contact her on her mobile phone.

Analysis

There is no evidence before me, that the Provider has applied any interest or charges, or taken any steps in relation to collection of this debt, other than in accordance with the card terms and conditions.

Furthermore, debt collection measures are a natural next step that a provider is entitled to take when a debt remains due and owing with no repayments being made. Referral to a debt collection agency is an unfortunate consequence of failing to make payments on a debt, I am not satisfied that this measure constituted an attempt at harassment or intimidation, on the basis of the evidence made available.

I can find no evidence to suggest that the Provider issued correspondence to any address other than an address which the Complainant had provided it with at any given point in time. The addresses that the Complainant had advised the Provider of were: the “*Number 8*” address up to May 2015. The “*Number 15*” address from 18 May 2015 to 10 May 2016; the “*Number 8*” address from 10 May 2016 up to November 2016 (and confirmed on 19 July 2016); and, the “*Number 6*” address from 18 November 2016 onwards. It is the customer’s responsibility to inform a provider of any change of address – a provider cannot know, that a customer has moved location, unless the customer tells it.

The Provider’s final response letter of 23 November 2016 states that the warning letters of 18 July, 26 September, and 30 September 2016 were sent to the “*Number 6*” address. This is clearly a simple typographical or clerical error as I have been furnished with those letters, all of which were in fact sent to the “*Number 8*” address.

The Provider did not, however, contact the Complainant on her mobile phone as she requested it to do in July 2016. Instead, for reasons unknown, it persisted with unsuccessful attempts to contact her on her landline, for a number of months. There is no explanation as to why a mobile number which was obviously noted on the file and which the Provider has since stated was requested by the Complainant on 19 July 2016, was not used.

It must also be acknowledged that the chain of events leading to the direct debits being missed and ultimately cancelled in June/July 2016 were unfortunate and can be attributed in part to a lack of clarity in the statements, together with the telephone conversations in and around that time. The Provider has made certain acknowledgments in that respect.

However, I am not satisfied that the Complainant could have been totally unaware of any issue with her account post July 2016, given that statements and correspondence were being issued to the Number 8 address which she herself had confirmed that July. If indeed, she was totally unaware and if the card being declined in November 2016 came as a surprise to her, I cannot accept that that was due to a failure on the part of the Provider. I appreciate that the Complainant was experiencing some personal family difficulties at the time, but the Provider took the necessary steps to communicate with her at the address which she had notified to it.

On the basis of its failure to use the Complainant's mobile number rather than her landline, from July 2016, as well as the confusing nature of the direct debits being missed and ultimately cancelled, the Provider reinstated the Complainant's credit card account on **1 March 2017**, putting the account back to its position prior to the direct debit being missed on 30 June 2016, with no arrears, and refunding all fees and interest. In my opinion, this was an appropriate measure for the Provider to take, in light of the events up to that point.

The Provider also confirmed to the Complainant that her ICB record had not been affected. (It seems that this was because of the precise terms of the name in which the Complainant's credit card account had been issued.)

I note that despite receiving this "*clean slate*" of sorts, the Complainant then failed to make any payments at all to the account from that point in time, and ultimately the card was once again cancelled by the Provider on 3 August 2017. Arrears/warning correspondence had issued to the "*Number 6*" address, which appears to have been the correct one at that stage.

Notwithstanding this, the Provider offered again, in **February 2018**, to reinstate the Complainant's card, again on the basis of a "*clean slate*" (ie refunding interest and fees incurred since 30 June 2016) and indeed, the Provider offered the Complainant a compensatory sum of €1,000 with a view to resolving the complaint.

Whilst I can see no reason why the Provider did not use the Complainant's mobile number to contact her between July and September 2016, and if it had done so, I believe that this could have brought about a resolution to the issue, prior to the card being cancelled, nevertheless, I am satisfied that in meeting the Complainant's complaint, the Provider has acknowledged its shortcomings, in early course, and in addition, has offered the Complainant a package of redress which is appropriate in the circumstances. It is unclear to

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me why the Complainant has made no repayments whatsoever to the account since July 2016. The Complainant has an outstanding liability to the Provider and it is important that she work with the Provider in order to take the necessary steps to reduce the debt in question.

Accordingly, whilst the evidence before me discloses certain shortcomings on the part of the Provider, I am satisfied for the reasons outlined, that the Provider has acknowledged those shortcomings and has made a proposal to the Complainant which is suitable in the circumstances. Accordingly, on the basis that this proposal remains open to the Complainant for acceptance, I do not consider it necessary or appropriate to uphold this complaint. It will be important for the Complainant to understand that if she wishes to accept this proposal from the Provider, it will be necessary for her to contact the Provider in early course, to confirm this and to implement the terms of that proposal, as the Provider cannot be expected to hold that proposal open indefinitely. This of course is entirely a matter for the Complainant if she wishes to do so.

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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

3 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.