



<u>Decision Ref:</u>	2019-0316
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Cards
<u>Conduct(s) complained of:</u>	Errors in calculations
<u>Outcome:</u>	Partially upheld

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

Background

This complaint concerns a personal credit card account applied for by the Complainant on **31 August 2010** and opened on **6 September 2010** with the Provider.

The complaint specifically arises from correspondence received by the Complainant from the Provider dated **18 July 2017** which advised the Complainant that the Representative Annual Percentage Rate (“RAPR”) displayed on the personal credit card documentation that the Complainant received when he applied for his personal credit card account was understated by 0.2%. This letter of the 18 July 2017 further advised that this incorrect display had now been corrected and, in recognition of the incorrect display of the RAPR, the Provider had made a donation to a number of charities.

The Complainant’s Case

The Complainant states that he received a letter dated **18 July 2017** from the Provider, wherein, the Provider informed the Complainant that the RAPR displayed on the personal credit card documentation supplied to the Complainant when the Complainant applied for and opened his personal credit card account in **September 2010** had been incorrect. The Complainant states that the Provider confirmed in this letter that the RAPR was stated as being 22.7% when it was actually 22.9%, amounting to an understatement of the RAPR % on the documentation initially supplied of 0.2%.

The letter received by the Complainant states that the rate is used for comparison purposes only and no overcharge arose as a result of the understatement. The Complainant states that the purpose of RAPR is to enable customers/potential customers to compare the credit card products on offer with other Providers to enable customers/potential customers to make a choice between Providers.

He states that this "misinformation" caused him not to have the true information on the product he purchased from the Provider and gave the Provider an advantage over the other providers and made the Provider in question more preferable and the Provider of choice. Further, the Complainant submits the RAPR is not solely for comparison purposes. The Complainant states that the RAPR figure has an effect on the calculation of the Annual Percentage Rate ("APR") and the Annual Interest Rate ("AIR") attributable to his personal credit card account. Because of this, the Complainant submits that he has been overcharged in respect of his personal credit card account because of this understatement. He states that this overcharging occurred for a period of approximately 7 years, from **6 September 2010** to **18 July 2017**.

Furthermore, the Complainant notes that the Provider has made donations to various charities in recognition of this incorrect display of the RAPR. The Complainant states that the proper course of action would have been for the money used for these donations to have been divided amongst any of the Provider's customers affected by the misstated RAPR. The Complainant also seeks to have the exact amount of the charitable donations paid by the Provider, made known to this Office.

The Complainant further states that the Provider's failure to bring this issue concerning the misstated RAPR to his attention for a period of 7 years amounts to negligence.

The Provider's Case

The Provider acknowledges that the Complainant applied for a personal credit card account with the Provider on **31 August 2010** and that a personal credit card account was opened on **6 September 2010**.

The Provider acknowledges that the RAPR was understated by 0.2% in its documentation for the period **1 July 2010** to **18 August 2016**. The Provider states that following an independent review carried out in 2016 on foot of a request from the Central Bank of Ireland, it was determined that the methodology the Provider used for the calculation of RAPR did not adequately account for the treatment of annual fees or for the requirement for equal repayments of capital as prescribed in the Consumer Credit Directive 2010. The Provider confirms that it sent a letter to the Complainant on **18 July 2017** advising the Complainant of this, confirming that the correct rate for RAPR was in fact 22.9% and advising that this misstated percentage for RAPR had been corrected across the Provider's credit card documentation in **August 2016**.

The Provider submits that the display of the RAPR on the Provider's documentation was to enable comparison of credit card products from various providers. Therefore, the Provider

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states that the RAPR was and is used for comparison purposes only and that there had been no overcharging arising from this misstatement. The Provider states that the interest charged to its personal credit card accounts is the AIR, which was not affected by the misstated RAPR.

The Provider further states that the AIR charged to the Complainant's personal credit card account has been validated as having been correctly applied, by the Provider's external auditors. The Provider states that it has conducted an investigation into whether there was overcharging on the Complainant's account and the conclusion of this investigation was that there was no overcharging. The Provider states that this investigation was verified by an independent external auditor and communicated to the Central Bank of Ireland.

The Provider states that it did not become aware of the issue concerning the understatement of the RAPR until **2016**, following the review undertaken at the request of the Central Bank of Ireland, and that as soon as this issue was identified, it corrected its documentation to ensure that from **August 2016** onwards the RAPR was advertised correctly. After the identification of the issue the Provider entered into discussions with the Central Bank of Ireland and it established a team to identify and communicate with all impacted customers and due to the number of customers involved and the time frame of 6 years (from **01 July 2010** to **18 August 2016**) it took some time to identify and notify these customers. The Provider submits that all customers were notified of the issue during **July 2017**.

The Provider does not accept that it deliberately misrepresented the RAPR in order to make its offerings and services more preferable than its competitors. The Provider submits that the error arose due to the methodology used by the Provider in calculating the RAPR, as set out above.

The Provider states that, although it says that no overcharging arose as a result of the issue, it made the decision to anonymously make a donation to a number of charities to acknowledge the understated RAPR. The Provider states that these donations were communicated to the Central Bank of Ireland at the time when the donations were made. In recognition of its oversight in understating the RAPR by 0.2%, the Provider has offered an ex-gratia payment of €100 to the Complainant in full and final settlement of his complaint.

The Complaint for Adjudication

The complaint for adjudication in this matter is that by reason of the Provider understating the RAPR by 0.2% on the credit card account of the Complainant:

- (a) The Complainant was overcharged by the Provider;
- (b) The understated RAPR gave the Provider an unfair advantage over its competitors in that the understated RAPR made it the preferable choice when deciding on which Provider to choose.

The Complainant also has a complaint in respect of the actions of the Provider in making a payment to a charity in acknowledgement of the misstatement, instead of compensating the affected customers including him. The Complainant further complains that the Provider was negligent in its failure to bring this issue to the attention of the Complainant for a period of 7 years.

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 **27 February 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 consideration of a number of additional submissions from the parties, the final determination of this office is set out below.

When considering whether the Complainant was overcharged by the Respondent, one of the primary issues to be resolved is whether the RAPR was actually applied to the personal credit card account held by the Complainant. I note that the Provider states that the interest charged to the personal credit card account held by the Complainant was the AIR as opposed to the RAPR and that the AIR was not affected by the understatement of the RAPR

The documentary evidence furnished by the Provider shows that notwithstanding the understatement made in respect of the RAPR, the AIR in respect of the Complainant's personal credit card account was correctly stated at Section 3 of the Provider's Terms of Business and that this AIR was charged to the Complainant on purchases (16.79% variable per annum) and cash withdrawals (19.68% variable per annum) made by him using his

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personal credit card. I further note that the AIR charged to the Complainant's personal credit card account has been validated by the Provider's external auditors as having been correctly applied and that the breakdown of the monthly interest charges to the Complainant's personal credit card account furnished by the Provider to this Office further demonstrates that the Complainant was charged the correct AIR.

I take the view on the basis of the evidence available to this Office, including the position taken by the Provider's external auditors, that notwithstanding the fact that the RAPR was incorrectly stated, this mistake on the part of the Provider did not have an impact on the rate of AIR charged to the Complainant's personal credit card account and therefore did not result in any overcharging to the Complainant's personal credit card account, as he has suggested.

In relation to the complaint that the understatement of the RAPR gave the Provider an unfair advantage over other Providers, I note that the essence of the Complainant's grievance is that, owing to the Provider's conduct he was denied the opportunity of making a better choice, at the time when he selected his credit card provider in 2010. It is accepted by the Provider that it incorrectly displayed an RAPR rate of 0.2% less than the actual rate on its documentation.

I am satisfied that the conduct of the Provider which is the subject of this complaint is conduct of a continuing nature for the purpose of **Section 51(5)** of the **Financial Services and Pensions Ombudsman Act 2017**. I note that this conduct continued over a number of years between 2010 and 2016.

At the time that the Complainant opened his account with the Provider, the Consumer Protection Code 2006 was in force. Section 1.3 of the Consumer Protection Code 2006 provided that the Provider must-

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

Subsequently, the Consumer Protection Code 2012 provides that a Provider, pursuant to Section 4.1:

"must ensure that all information it provides to a consumer is clear, accurate, up to date and written in plain English".

and also, pursuant to Section 4.6 a Provider:

"must update such information services as soon as any interest rate change comes into effect".

The failure of the Provider to adhere to these sections of the Consumer Protection Codes 2006 and 2012, between 2010 and 2016, by misleading the Complainant as to the correct RAPR, was unacceptable and represents a shortcoming on the part of the Provider.

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The FSPO can investigate and adjudicate a complaint regarding an individual Complainant and where more systemic issues arise, it is the responsibility of the Central Bank of Ireland to engage more generally with the Provider, as I note it has done in this instance.

Whilst the Complainant has, since the Preliminary Decision was issued to the parties, made further observations to this office, to the effect that the Provider has been guilty of “improper commercial practices” as defined within the **Consumer Protection Act 2007**, the prosecution of any such offences is a matter for the Central Bank of Ireland, as the regulator of the Provider; the FSPO has no role to play in any such prosecution.

Indeed, it was on foot of an independent review, requested by the Central Bank of Ireland, that the mis-statement of the RAPR was identified. The Provider has since engaged with the Central Bank of Ireland in relation to the issue, and it appears that it has taken such steps as were considered appropriate and agreed with the Central Bank of Ireland, in that context. The FSPO has no role to play regarding such regulatory interactions as between the Central Bank of Ireland and the Provider.

I note that the charitable donation which the Provider has made, occurred in the context of its interactions with the Central Bank of Ireland, in relation to this particular issue which required a Central Bank driven, overall review. Accordingly, the action of the Provider in making such charitable donations, is not an action with which this office will interfere as such action was taken arising from the Provider’s interactions with its regulator, the Central Bank of Ireland, as part of the measures considered appropriate to redress the error on the part of the Provider, during the years in question, when this came to light in 2016.

This Office can adjudicate only upon the specific grievances raised by the Complainant against the Provider. In this regard, I am cognisant of the judgment of the High Court in October 2007, in Quinn Direct Insurance Limited v Financial Services Ombudsman [2007] IEHC 323 where the Court was clear in its statement regarding the powers of this Office that:

“...a direction in a finding of the respondent given under s57CI(4)(a) may only relate to conduct of the financial service provider specifically relating to the consumer who is the complainant or its consequences for that person. The authority given by this section does not extend to similar conduct of the financial service provider in relation to other customers.”

[My emphasis]

Therefore, this Office can make no decision or finding as to any impact that the understatement of RAPR had on other customers of the Provider, between **1 July 2010** and **18 August 2016**, as it is the Provider’s conduct, regarding the Complainant only, which is the subject of this decision.

Given my opinion that the Complainant was not overcharged by the Provider arising from the understated RAPR, I take the view that the Complainant has suffered no financial loss, as a result of the issue which he has complained of. That aspect of the Complainant’s grievance cannot be upheld. Theoretically, it is possible that the Provider could have gained an advantage with the Complainant over its competitors, due to an understatement of its

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RAPR in documentation accompanying the personal credit card application; customers or potential customers of the Provider may use this factor as a reason to choose a Provider.

The Complainant has indeed referred to another credit card product which was available from a competitor of the Provider in 2010. Indeed, he says that at the time when he selected the credit card product from the Provider, the information he took into account including the Provider's suggested RAPR of 22.7%

" ... was obtained from the website of the then National Consumer Agency which had all the information of the 3 banks I mentioned with regard to their products and services offers including all the charges and rate related with each of them."

The Complainant points out in that regard that the comparison platform in question offered the public easy access to be able to compare all the products and services of the various financial institutions. He contends that in 2010 *"there was a more truthful and better alternative"* available to him than the product he selected from this Provider.

In that respect, the Complainant has stated:-

"[Provider X] was providing its service at 22.9% with all charges including Government Stamp Duty, while [Provider Y] was providing theirs at 22.7% with Government Stamp Duty excluded.

[The Provider] presented theirs as 22.7% with all charges including Government Stamp Duty as well and therefore I was left to choose between them and [Provider Y] if [the Provider] indicated that its RAPR excluded certain charges, then obviously I would have opted for [Provider Y] but because they were at par with [Provider Y]...I chose it because it is a more bank in order to support But it has turned out that it understated its RAPR by 0.2%."

With the passage of time, it is difficult to establish definitively that an advantage was in fact gained by the respondent Provider over any other Provider. The basis upon which the Complainant decided to open a personal credit card account with the Provider may have been due, partly or indeed fully, to the understated RAPR as specified in the application documentation available, or it may have had no bearing at all. There can be a wide variety of other reasons why a customer will select a particular financial service provider, eg. an introductory rate on purchases (which I note was available from the Provider) or indeed, an introductory rate on balance transfers.

The Complainant submitted additional information regarding another bank's credit card facility (information which was procured from a publicly available website) and has suggested that *"the details of the [other bank] product...stands true and its been so since the time I opted for [the Provider's] credit card"*. The Provider has pointed out that the information gleaned from the website in question is dated 18 June 2019. This has given rise to a disagreement between the parties as to the value to be ascribed to that evidence which the Complainant has furnished.

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At this remove, having considered the matter at length, I do not consider it appropriate to form any definitive opinion as to the importance attached by the Complainant to the RAPR which was specified by the Provider in August/September 2010 at the time when he applied to the Provider for his credit card account. In my opinion, there is no adequate determinative evidence before this Office to support a finding that the Provider succeeded in gaining an unfair advantage with the Complainant, over its competitors, by understating its RAPR to this Complainant by 0.2%.

I am also conscious that even if the Provider gained an advantage over another Provider by virtue of the Complainant's reliance on the stated RAPR, when selecting his credit card provider, it is the said third party provider i.e. Provider X or Provider Y which may have suffered the financial loss, rather than the Complainant.

Nevertheless I take the view that the *ex gratia* payment of €100 offered by the Provider to the Complainant to resolve his complaint, was inadequate, given the nature of the issue and indeed the duration of the shortcoming by the Provider in misstating the RAPR.

Accordingly, I consider it appropriate to partially uphold this complaint and although I am satisfied that the Complainant has not suffered any financial loss as a result of overcharging to his account, nevertheless, to take account of the inconvenience caused to the Complainant by virtue of this error discovered in 2016, and his concerns that his options in 2010, may have been misunderstood by him, because of the Provider's misrepresentation, I consider it appropriate to direct the Provider to make a compensatory payment to the Complainant, as outlined below.

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)(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 €175, 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

9 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.