



<u>Decision Ref:</u>	2019-0393
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Store Cards
<u>Conduct(s) complained of:</u>	Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Maladministration
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant opened an online flexible payment account with the Provider on **16 June 2018**. The Complainant subsequently placed an order for an “[Brand] *smart television*” with the Provider which order was confirmed.

On **18 June 2018** the Complainant was advised that his account was closed and his order for the television was not being processed.

The complaint is that the Provider wrongfully closed the Complainant’s online flexible payment account resulting in the failure to complete his order for a new television. The Complainant further complains about the unsatisfactory manner in which his complaint has been managed.

The Complainant’s Case

On **18 June 2016** the Complainant received an email from the Provider advising that:

“due to conflicting information the Provider was unable to meet your request”

The Complainant was further advised to contact a customer service number which he did. He had two telephone conversations with two different members of the Provider’s staff but

neither could help. In particular, the Complainant asserts that one of the Provider's staff members informed him that:

"the request had been rejected following a security check by the Dublin staff who would write to the Complainant and explain why"

The Complainant states that he was given an e-mail address for a staff member in Dublin but he was told that no name or contact phone number was known to either staff member. The Complainant found this not to be credible.

The Complainant states that he e-mailed the address demanding to know the reason for the rejection of his application and he was told that it was down to *"human error"* and that his account was now open.

The Complainant states that in the meantime, he had purchased a television as he *"simply did not want to be without one"*. The Complainant confirms that he received an apology from the Provider but he rejected it as it did not answer his questions as to why his application was rejected.

The Complainant received an email from the Provider on **21 June 2018** stating that upon investigation, it appeared that his account was closed due to *"human error"*. The Complainant was informed that his account was re-activated and that he was free to place orders, going forward.

The Complainant objects that he received a letter from the Provider's *"customer excellence"* section which was addressed to him but the salutation was to an unknown third party.

The complaint is that the Provider wrongfully closed the Complainant's online flexible payment account resulting in the failure to complete his order for a new television. The Complainant's further complaint relates to the unsatisfactory manner in which his complaint has been managed.

The Provider's Case

The Provider states that the Complainant's account was rejected in error, when an administrator incorrectly flagged his application as rejected. This triggered an automated e-mail to the Complainant that suggested that there was conflicting information. The Provider states that due to the manual nature of this process there is an increased risk of human error.

The Provider states that the Complainant contacted its contact centre and spoke with an advisor. The Provider states that the information given to the Complainant at this time, was incorrect as the Provider's staff member would not have been able to identify that the error was caused by a manual error and the staff member made an assumption that it was a security check. The Provider states that it was disappointed with this service and it has addressed it with the contact care supervisor.

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The Provider states that proof of identity and address were requested from the Complainant by email on **21 June 2018**. The Provider states that this is due to it being regulated by the Central Bank and subject to AML legislation.

The Provider states that the order confirmation email that the Complainant received contained an estimated timeline for delivery. The Provider states that this is provided for in its terms and conditions under Section 2(2.2) which states:

“neither of these acknowledgement emails constitute acceptance of the order by us. Your order will be accepted by us (and a contract will then be formed between us) when we despatch the goods to you. Title to the goods will pass to you on delivery”

The Provider states that the Complainant’s account was reinstated upon identification of the error and the status remains open as the Provider has not received notice to close the account.

The Provider states that its records show that the Complainant made contact with its contact centre on **19 June 2018** and spoke to an advisor. The Provider states that a response was issued to the Complainant on **21 June 2018** informing him of the error, and that his account had been reopened to trade. The Complainant requested further clarification from the Provider. The Provider contacted the Complainant by telephone on **27 June 2018** to discuss his complaint and the issue. The Provider states that the Complainant was provided with a direct number for a customer services representative and also with a work email address. The Provider states that an email was sent to the Complainant responding to the questions the Complainant had raised. The Provider states that the Complainant telephoned the contact centre twice on **19 June 2018**.

The Provider notes that the Complainant sold his television within four hours of ordering a new television from the Provider and was therefore left without a television. The Provider states that had the Complainant reviewed the information available to him in the terms and conditions section he would have had a more reasonable expectation of the delivery of his television.

The Complaint for Adjudication

The complaint is that the Provider wrongfully closed the Complainant’s online flexible account, resulting in the failure to complete his order for a new television. The Complainant’s further complaint relates to the unsatisfactory manner in which his complaint has been managed by the Provider.

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 24 October 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 an additional submission from the Complainant, the final determination of this office is set out below.

The Complainant opened an online flexible payment account with the Provider for the purposes of purchasing a new television. On **16 June 2018** the Complainant placed an order with the Provider for a "[Brand] smart television". This order was confirmed by email. On **19 June 2018** the Complainant received an email from the Provider advising him that

"due to conflicting information on this occasion, we are unable to meet your request"

The Complainant was further informed that his account was closed and the order for the television was not being processed.

The Complainant contacted the Provider's customer service centre for clarification as to why his account had been closed. The Complainant had two telephone calls with two different members of the Provider's staff who were unable to assist the Complainant. The Complainant states that he was informed by the Provider's staff that

"the request had been rejected following a security check by the Dublin staff who would write to the Complainant and explain why"

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I note from the documentary evidence before me that the Complainant was given incorrect information on this occasion. The Provider states that

“what the advisor informed the Complainant was incorrect as they would not have been able to identify that it was caused by manual error and made an assumption that it was a security check”

The Provider confirms that the Complainant’s account was rejected in error. I note that the Provider confirms that no conflicting information was provided by the Complainant which in any way led to the rejection of the application

It is apparent that the Complainant received a poor standard of customer service throughout his correspondence with the Provider on this issue. I further note a letter dated **22 June 2018** from the Provider addressed to the Complainant however, the salutation on the letter reads

“Dear Ms [not the Complainant’s surname]”

By email dated **9 August 2018**, the Provider emailed the Complainant setting out further clarification in relation to his complaints. I note that the Provider offered the Complainant an apology for the poor customer service and €40 as a goodwill gesture. In my opinion, this was an extremely poor gesture given the inconvenience suffered by the Complainant. At all times, the Complainant sought further information as to why his order had been rejected and he was given incorrect information as well as experiencing a poor level of customer service.

I note that the Provider refers the Complainant to its terms and conditions section in relation to estimated timescale for delivery. I am unsure as to why the Provider refers to delivery times on a number of occasions throughout its submissions, when the Complainant’s complaint does not concern the delivery aspect of the transaction.

I have noted the audio evidence furnished of two telephone calls that took place between the Complainant and the Provider on 19 June 2018. The Complainant was unable to get any information from customer services and the security department as to why his order had been declined. The Complainant was informed that on the Provider’s system it was noted that the Provider was unable to provide a credit facility. This came as a surprise to the Complainant as he had never had any credit issues previously. The telephone conversations were frustrating for the Complainant as he was passed through a number of different departments and did not receive an answer as to why his application had been declined. Instead, the Complainant was given an email address to write to the Provider. In my opinion, the level of customer service that the Complainant received throughout this time, fell below the level a consumer would reasonably expect to receive.

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It is also disappointing that one of the Provider's staff members who had no information regarding the reasons for the problem, advised the Complainant that the problem had arisen as a result of a security check. This appears to have been conjecture on the staff member's part and, in the absence of definitive information, this was simply not appropriate and indeed was purely an unprofessional guess. In those circumstances, I consider it appropriate to uphold this complaint. At this point, it has become clear that owing to an error on the part of the staff member dealing with the Complainant's order, the Purchase Request was incorrectly flagged as rejected. I don't believe that it is appropriate to compel the Provider to make available any additional information regarding what was clearly a human error, but I take the view that in the circumstances as outlined, the gesture of €40 which was previously offered by the Provider was at all times inadequate in the circumstances.

After the FSPO's Preliminary Decision was issued to the parties on 24 October 2019, the Complainant thereafter made it clear that the stated intention within the Preliminary Decision to direct compensation of €300, was very disappointing to him, and he believes that this figure represents no deterrent to the Provider.

It is important for the parties to understand however that the provisions of **Section 60(4) (d)** the **Financial Services and Pensions Ombudsman Act 2017**, permit the FSPO to direct compensation to the complainant for "*any loss, expense or inconvenience sustained by the complainant as a result of the conduct complained of.*" The FSPO is not empowered to direct compensation as a deterrent to the Provider, regarding the conduct complained of, but rather to redress the Complainant for any loss inconvenience and expense.

Having considered the circumstances of this complaint, I am satisfied that, in this instance, a compensatory payment of €300 to the Complainant, is appropriate for the poor level of customer service he received and the unsatisfactory manner in which his complaint was dealt with by the Provider.

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), (f) 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 €300, 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 November 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.