



<u>Decision Ref:</u>	2020-0104
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Cards
<u>Conduct(s) complained of:</u>	Fees & charges applied
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant held a credit card with the respondent. The credit card account was closed in **July 2018**.

The Complainant's Case

The Complainant submits that he telephoned the Provider on **2 January 2018** to seek a closing balance and to terminate his credit card account. The Complainant states that after seeking to close his credit card account, government stamp duty was subsequently applied to the account and a transaction to an insurance company was made and late payment and interest charges were applied. The Complainant claims that by 5 June 2018, the total charges on his account amounted to €232.32 which he then had to pay off to clear his account.

The Complainant says that he made a complaint to the Provider relating to the non-cancellation of his credit card account. The Complainant states that he also sought clarification of the potential effect of the issue on his credit rating, which the Complainant submits he is yet to receive.

The Complainant also queries how stamp duty can be applied twice in one year and how it can be applied to a card that does not exist. The Complainant highlights that the Provider accepts that his call in January 2018 was to request closure of the account in the settlement amount. He further argues that the Provider did not adhere to its own policy and procedure

by not discussing the closure protocol. The Complainant argues that the complaint has absorbed valuable time and cost and stress.

The Complainant is seeking reasonable compensation for the costs incurred and further compensation for the time required to deal with the issue, which he estimates at €1,000 to date.

The Provider's Case

The Provider submits that it has a process for closing credit card accounts which includes asking the customer to cancel any subscriptions and advising them that they will be charged €30 in government stamp duty. The Provider states that the closure process was not discussed with the Complainant in his call to the Provider on 2 January 2018. It states that the call was answered by its collections team due to the status of the Complainant's account, and the collections' representative explained that he would need to speak to customer services to close the account. After discussing the possibility of residual interest on the account, the Provider states that the Complainant said he would call back but the Provider did not hear from him again until **10 July 2018** when his complaint was registered. The Provider states that as the Complainant did not call back after 2 January 2018 to close the account, it remained open.

The Provider argues that even if an account is closed, if the customer does not contact the merchant to cancel a subscription or regular payment, there can be instances where the transaction can still be authorised and processed. As the Complainant's account was not closed, and the merchant requested payment, the Provider had no reason to believe it should not be authorised and paid.

The Provider argues that contrary to the belief of the Complainant, government stamp duty is charged in arrears and is not something the Provider has any control over. It argues that as the Complainant's account was open during the period between 2 April 2017 and 1 April 2018, the €30 stamp duty debited on 2 April 2018 was correctly applied. Likewise the Provider argues that the government stamp duty applied to his account on 30 July 2018 was correct.

The Provider argues that although the Complainant's account was then closed and he had not used the card during the new stamp duty year (i.e. 2 April 2018 to 1 April 2019) the account was closed during this period and therefore government stamp duty is automatically applied when this happens.

The Provider states that the Complainant was charged late payment fees and interest as he did not pay at least the minimum payments requested in the March and April 2018 statements. As the Complainant's account was not closed as he believed, the Provider argues that the late payment fees and interest were correctly applied. The Provider states that the monthly account statements confirm that a customer will be charged if the payment is late.

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In relation to the Complainant's concern about the effect of this credit rating, the Provider states that where a customer is late paying, it applies a late payment fee. The customer's account will not however fall into arrears until the next statement is produced, and nothing will be reported about payment being late until the end of the month after the next statement is produced. The Provider states that the Complainant's statements were produced on the 17th of each month and that payments are due 25 days later, which would normally fall on the 11th of 12th of the following month. The Provider argues therefore that even if the late payment fee had been charged, as long as the Complainant made a payment before the last day of the month, nothing would have been reported. The Provider states that from January 2018 it would expect to have reported late payments on 11 April and 12 May 2018. The Provider states that as the Complainant is no longer a customer, it is unable to view what might have been reported to the Central Credit Register.

The Provider accepts that the Complainant made reference to his credit file during a call on 10 July 2018 but as explained on a later call on 26 July 2018 the Provider's position was that it had not made any errors and that the government stamp duty, late payment fees, and interest have been charged correctly, so there would have been no requirement or agreement for it to review what may have been reported on his credit file or to make any amendments thereto.

The Provider argues that the information given to the Complainant in a call on 2 January 2018 was correct. As his account was in arrears at the time, the call was answered by its collections department and this department does not close customer accounts. It argues that it was correct for the representative in question to confirm that this would need to be done by the customer service team, because that team need to explain the closure process and take any action if a customer has a regular payment or subscription on the account. The representative was also correct to say that residual interest might be charged the following month. The representative would not have known how much would be charged until the statement was actually produced.

The Provider argues that it was the Complainant's decision not to be transferred to customer service to close his account on 2 January 2018 and he stated that he would call back. The Provider also argues that the Complainant confirmed that he had received correspondence and statements from the Provider about an outstanding debt but had not contacted it again until 10 July 2018. Therefore it argues that if any information has been reported to his credit file, he had not taken any action to mitigate the impact this would have.

On the call of 26 July 2018 as part of this complaint, the Provider states that it never corrected the Complainant that government stamp duty is charged in arrears and not in advance but this does not change the fact that it was charged correctly, both on 2 April 2018 and 30 July 2018. The Provider accepts that it agreed to refund the €0.10 that he was in credit by, but after the Complainant's account was closed and the government stamp duty automatically applied, there was no credit balance and he actually owed €29.90.

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The Provider states that it stands over its decision not to uphold the Complainant's complaint and not to refund either government stamp duty charges or the interest and fees applied as they were correctly incurred. It argues that at no time has the Provider agreed that it should have closed the account when he called on 2 January 2018. Further, the Provider argues that the Complainant has taken no action to mitigate his credit file being impacted despite confirming that he received correspondence about missed payments and that his account was in arrears. The Provider refutes the Complainant's claim that he should receive €1,000 in compensation.

The Provider states that the Complainant's account was closed on **26 July 2018** and a copy of the closure letter confirming this was made available. The Provider argues that the account can be closed with either a credit or debit balance and when this occurs, it would communicate with the customer and issue correspondence about the status of the account. It will also continue to issue a statement each month with the balance, regardless of whether it is in debit or credit. In relation to stamp duty charged on 30 July 2018, the Provider confirms that this was for the period from 2 April 2018 until the account was closed. It states that a letter issued on 30 July 2018 which confirmed this charge for the period ending 1 April 2019. The Provider argues that whenever an account is closed, regardless of whether it is one day into the new charging period or 363 days, €30 will be applied and it is not something the Provider has any control over. It argues that it is required to adhere to the requirements of the Irish Government in this regard. The Provider states that although the stamp duty debited on 30 July 2018 was technically applied after the account had been closed on 26 July 2018, it was only four days later and this was done as part of the closure process but related to the charging period that started on 2 April 2018.

The Provider argues that it is not in dispute that the Complainant asked, during the call on 2 January 2018, to close the account but as he did not follow the instructions that he had been given (i.e. that he would need to speak with the customer service team or call back) the Provider argues that it has not done anything wrong and that the account should not have been closed at that time.

The Complaint for Adjudication

The complaint is that the Provider failed to follow the Complainant's instructions in January 2018, to close his credit card account, resulting in charges wrongfully accruing on the account. In that context, the Complainant is unhappy about his dealings with 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.

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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 17 February 2020, 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.

I have been supplied with and considered all correspondence that issued to the Complainant in 2018 and also the recordings of phone calls between the Complainant and the Provider during the relevant period. The key phone call in the present complaint is the one which occurred on 2 January 2018. On this call, the Complainant stated that he wanted to know what the settlement amount on the account was, and to close his account. He indicated that both cards associated with the account had been shredded. He was immediately informed that a customer services agent would have to close the account but that the representative in question (from the collections department) could process a payment on the account and then transfer the Complainant to customer services to close the account. The representative in question warned the Complainant that there might be residual interest on the account. The Complainant indicated that he wanted a full and final settlement figure but the representative explained that he did not know what interest amount would be applied and only had the then current balance. The representative indicated that he would let customer service explain the position (in relation to residual interest) to the Complainant but that he just wanted to give him a "heads up" on what they were likely to say on closing the account. Although the Complainant initially indicated that he would like to be transferred to customer services rather than making a payment, he then indicated that he would sort out the payment with the representative's customer service colleagues in due course, and ended the call.

While I accept – and indeed the Provider has accepted – that the Complainant requested the closure of his credit card account on this call of 2 January 2018, I do not accept that the Provider failed to follow his instructions in that regard. The Complainant was clearly told by the representative who he was speaking to, that this person was not in a position to close the account. He was informed that if he wished to close his credit card account, he would have to speak to a customer service representative who would go through the process with him. The representative offered to transfer the Complainant to customer services but ultimately the Complainant indicated that he would call customer service himself in due course.

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While I appreciate that the Complainant may be confused as to the exact conversation he had on the 2 January 2018, I am clear from my review of the audio evidence of the telephone call that the Complainant was informed that he would have to speak to customer services in order to close his account and that he indicated he would do so.

As the Complainant does not appear to have made any further contact with the Provider, until his call on **10 July 2018**, I do not accept that the Provider failed to follow his instructions in January 2018 or indeed that it acted in any way wrongfully or unreasonably in not closing the account on that occasion.

In a call on 10 July 2018, the Complainant indicated that he had requested an account closure in February or March and that stamp duty had been applied in the meantime. The representative in question indicated that a customer service representative would be able to assist the Complainant and passed him through to a customer service representative. The customer service representative confirmed that the account was still open and indicated that he could close the account now. In relation to the complaint that the account should have been terminated after the previous phone call, the representative stated that he would have to get a colleague to listen to the call and if the Complainant had made a closure request, he would arrange to have any fees that were applied to the account in the meantime, refunded. The representative indicated that he was formally opening a complaint and would get the matter resolved. He also indicated that the Provider would correct the credit details that were sent in relation to the Complainant if that was necessary and discussed the timelines of the complaint with him. The Complainant admitted that he had received account statements from the Provider, in the intervening period.

In a further call on 26 July 2018, a representative of the Provider informed the Complainant that having gone through the call of 2 January 2018, it had no record of any notification to the customer services team to close the Complainant's account. In the circumstances, the representative explained that the Provider would not refund the fees or the interest charged in the interim. The Complainant requested confirmation of the account closure and a letter to confirm that his credit rating would not be affected by the late payment to the account. He also sought compensation for the stamp duty charged. The Complainant was informed that the Provider was not in a position to refund the charges and that he could appeal to this office. The representative confirmed that he would arrange for the account to be closed and that the account was then €0.10 in credit as a payment had been made to the account in June 2018, to clear the balance. On the call, the representative confirmed that the account was now closed and that confirmation of same would be sent to the Complainant in addition to one final statement. He confirmed that the €0.10 would be refunded to the Complainant.

On 22 October 2018, the Complainant contacted the Provider again to complain that stamp duty had been applied to his account in July 2018 even though it had been closed. The Complainant argued that the Provider had accepted that it had been instructed to close the account in January. The Provider's representative explained that stamp duty had been charged in July 2018 because the account had still been open after April 2018, and that he would raise a second complaint for the Complainant.

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An account statement dated 17 March 2018 was sent to the Complainant which informed him of an account balance of €185.88 arising from a payment to an insurance company on 14 March 2018. By letter dated 25 April 2018, the Provider wrote to the Complainant indicating that his credit card account was in arrears and requesting that he make a payment or contact it to discuss proposals. By letter dated 7 May 2018, the Provider wrote to the Complainant indicating that the balance on the account was €224.65 and that there was an overdue payment amount of €5 in relation to the account. The letter informed him that the Provider had charged a late payment fee of €6.35 to the account because it had not received the previous month's minimum payment. The letter requested an immediate payment of €5.

A further letter was sent on 14 May 2018 indicating that the card was in arrears from 12 April 2018 and that the outstanding arrears was €5. By letter dated 28 May 2018, a letter was sent to remind the Complainant that the credit card account remained in arrears and that there was a minimum payment of €11 now due and owing. All of the letters were sent to the Complainant at his address and he accepted in the call of 10 July 2018, that he had received account statements during the period. Any one of these letters ought to have alerted the Complainant to the fact that his account was still open if he had been under the mistaken impression that the account had been closed after his telephone call of 2 January 2018.

I am satisfied that until the point of the telephone call of 10 July 2018, the Provider acted appropriately in its engagement with the Complainant. There is no question that under the terms and conditions of the account, as notified to the Complainant, the Provider was entitled to charge late payment fees and interest on overdue balances. Further, I accept that stamp duty is collected on 1 April of each year and is charged in arrears for the preceding year (and not in advance as the Complainant has argued). I further accept that the €30 stamp duty charge will be applied to an account that is closed during a particular year for an account maintained during that year. This is made clear by the Revenue Commissioners and is not something that the Provider has discretion in relation to. In light of the fact that the Complainant's account remained open on 1 April 2018, I accept that the Provider was entitled and obliged to apply the government stamp duty on that date.

As is clear from the above, I do not accept that the Complainant instructed the Provider to close his credit card account by making the relevant instruction to the customer service team in January 2018 as he had been informed to do. I further accept that as the account remained open during the period between 2 April 2018 and 1 April 2019, the Provider was obliged to apply an additional Government stamp duty charge of €30 on the closure of the relevant account. As regards the application of the stamp duty, therefore, I am unable to uphold any complaint from the Complainant.

There are three customer service issues I consider it appropriate to note. Firstly, the Complainant has argued that he sought clarification of the potential effect of the late payments on his credit card rating. I accept that in the call of 26 July 2018, the Complainant requested a letter to confirm that his credit rating would not be affected by the late

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payments to the account, in addition to a request for compensation for the stamp duty charged.

In response the Complainant was told that there would be no refunds made to the account. He also requested confirmation on 22 October 2018 that the matters that he was complaining about would not affect his credit rating. The Complainant was informed in writing on 26 July and 25 October 2018 that neither of his complaints were being upheld and the fees and interest would not be refunded.

I accept that the Provider is not in a position to now confirm the details given to the Central Credit Register in respect of the Complainant in light of the fact that the Complainant is no longer a customer. The record would therefore need to be requested by the Complainant himself and any errors brought to the attention of the Provider. I also accept that since the Complainant's account was in arrears in April and May 2018 (as no payments have been made on the account balance) the Provider was entitled to send notification of this arrears position to the Register under its legislative obligations.

The Provider never clarified this position to the Complainant however, either on telephone calls or in response to his written complaints. The Provider should have clarified to the Complainant that it had or was entitled to send notification of the arrears balance on the credit card account to the Central Credit Register. The Provider was not in a position to provide the Complainant with the specific confirmation that he sought (i.e. that his credit rating would not be affected) as the Provider did not accept that it had failed to terminate the account in January 2018. However, in light of the fact that this issue had been raised by the Complainant, the Provider could have done more to explain the position to the Complainant in advance of its formal response to queries raised by this office for the purpose of the investigation of this complaint.

Secondly, in the call of 10 July 2018, the customer service agent in question indicated that he would close the account, but failed to do so. I appreciate that the conversation moved on to the complaint and time lines, and further that the representative in question may have felt it appropriate that the complaint be resolved before the account was closed. However, and although the account was then closed two weeks later, it is my view that the account ought to have been closed on 10 July 2018 or that the Complainant should have been informed that the representative did not intend to close the account pending the resolution of the complaint.

Thirdly, in the call of 26 July 2018, the customer service representative closed the Complainant's account and informed him that there was a €0.10 balance on the account which would be refunded to him. The Complainant was not informed that on the closure of the account, the Government stamp duty of €30 would be levied. In my view, this ought to have been made clear to the Complainant during the call of 26 July 2018, especially in light of the substance of the complaint that was being made. I accept that the Provider was correct to levy the stamp duty on the closure of the account but I believe that the representative should have informed the Complainant of this on the call. Having said that, by letter dated 26 July 2018, the Provider wrote to the Complainant confirming that it had closed his credit card account and indicating as follows in relation to stamp duty:

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“Government legislation means we have to collect Stamp Duty. We’ll show this on your final statement.”

Furthermore, by letter dated 30 July 2018, the Provider wrote to the Complainant to inform him that the credit card account had been closed in the 12 month chargeable period ending on 1 April 2019 and that Government stamp duty of €30 for that chargeable period had been collected. The stamp duty levied then appeared on the statement of account dated 17 August 2018 which was sent to the Complainant.

The second and third customer service failings that I have identified were remedied in very short order. The account was closed on 26 July 2018 following a speedy resolution of the Complainant’s complaint, and the stamp duty that was levied in July 2018 was notified to the Complainant by letter within a few days of the call of 26 July 2018. It is also important to point out that the representatives of the Provider who dealt with the Complainant were extremely courteous and patient in their dealings with him, as the Complainant was with them. Although the failings referred to above, were minor in nature, the cumulative effect of the three issues highlighted, were such that I consider it appropriate to partially uphold the complaint. I do not consider it appropriate to uphold the primary aspect of the complaint that the Provider wrongfully failed to close the Complainant’s account in January 2018 and thereafter wrongfully levied stamp duty and late payment fees and interest on the account. I am satisfied that there was no failing by the Provider in this regard. Rather, having considered the complaint in detail, there are customer service failings noted, which it is appropriate to recognise.

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 make a compensatory payment to the Complainant in the sum of €75.00, 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.

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MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

10 March 2020

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.