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| <u>Decision Ref:</u> | 2020-0156 |
| <u>Sector:</u> | Banking |
| <u>Product / Service:</u> | Debit Card |
| <u>Conduct(s) complained of:</u> | Dissatisfaction with customer service |
| <u>Outcome:</u> | Upheld |

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

The First Complainant was a customer of the Provider and had a mortgage account, current account and credit card account with the Provider. In November 2016, the First Complainant was deemed to be non-cooperating in relation to the repayment of her mortgage, which caused the Provider to take steps to limit the use of her account. In January 2018, the First Complainant's debit card was up for renewal, but was not automatically renewed.

Between February 2018 and September 2019, the First Complainant persistently tried to request a new debit card. As a result of an administrative error on the part of the Provider, all of the First Complainant's accounts had been restricted, including her current account which her debit card related to. The Provider intended to only restrict the mortgage account due to the arrears that existed.

In September 2019, the First Complainant received her debit card after the Provider fixed the error that had occurred.

The Complainants' Case

The primary issue in the Complainants' complaint relates to the reasons why the First Complainant was not issued with a new debit card notwithstanding her persistent requests and the Provider's responses, which were inconsistent and contrary to one another. In this regard, the Complainants note that there were frequent phone calls and written communications which involved requests and promises in relation to the debit card, but that the situation remained unresolved for almost two years.

The First Complainant estimates that she spent in excess of 50 hours trying to contact the Provider to resolve this issue and had to file two formal complaints and visited her local branch on 3 occasions. The precise content of the phone calls is set out below in greater detail. Linked to the issue of why the First Complainant did not receive her debit card is the issue of why the First Complainant's current account was affected by her mortgage account going into arrears. The First Complainant states that she raised this issue persistently with the Provider, but that the Provider did not do anything about it, or promised to do something about it but did not. On occasion, the First Complainant says that the Provider stated that it could not issue her a new debit card, as the account was in recovery.

The First Complainant also seeks to have a new debit card issued for her account to be taken out of recovery. Since the complaint was delivered, these have both occurred. As such, the Provider has accepted that it was in error in that regard. The Complainants specifically seek a determination of the legality of the actions of the Provider.

The Provider's Case

The Provider broadly acknowledges that it has acted unreasonably with respect to the Complainants. The Provider accepts that it failed in its customer service response to the Complainants. The Provider accepts that there was an excessive delay in responding to the Complainants' grievances. The Provider accepts that it should have issued a card to the First Complainant. The Provider also accepts that the First Complainant's current account should not have been impacted by the First Complainant being in arrears. The Provider accepts that it did not action each promise that it made to the First Complainant.

The Provider states that to explain what happened, it has conducted an investigation. The Provider states that each of its customers has a Customer Identification Number ('CIN'). The CIN links all the accounts of a customer under a unique identifier. Once the First Complainant went into arrears in respect of her mortgage account, there were certain markers placed on that account. The effect of these markers is that the ability to access that account is limited. The standard procedure when there are two accounts, one of which is to be limited and another which is not, is to create a second CIN. This was done by an employee in the particular case of the First Complainant, but was unfortunately undone by another employee on a later date. The consequence of this was that the First Complainant's current account was limited, which affected her ability to order a new debit card. This prevented the automatic renewal of her debit card. Each time the First Complainant attempted to order a new debit card, the Provider's representatives failed to identify this issue and this resulted in the debit card not issuing. Notwithstanding this explanation, the Provider accepts that it should have fixed the problem sooner.

The Provider issued a new debit card on **24 September 2019** and also ensured that the current account was no longer limited on or around that date. The Provider has expressly accepted that the account in question was covered by the European Union (Payment Accounts) Regulations 2016 and that the Provider acted contrary to those Regulations in the manner in which it precluded the First Complainant from having a proper debit card that would allow her to process payment transactions.

The Complaints for Adjudication

While different issues arose, many of these as set out above have been resolved. For example, the debit card has since been provided and the First Complainant's account has been restored to its normal status. The Provider has accepted responsibility for various matters. Therefore, the complaints that remain to be considered by this Office are the complaint handling process engaged by the Provider and the lack of a proper explanation given by the Provider. This decision, therefore, concerns those two complaints.

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 Complainants were 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 6 April 2020, outlining my preliminary determination 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, I set out below my final determination.

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In respect of the complaint handling process, the first relevant matter is the time that it took to resolve the First Complainant's issues. The issue arose in February 2018 and it took until September 2019, which was after the Complainants made their complaint to this Office to fix the issues. Recordings of 20 phone calls have been submitted in evidence during the course of this investigation. In broad terms, those phone calls follow a similar trend. The First Complainant explains that she has not received a card and that she wants one.

The Provider's representatives then ensure the First Complainant that a card will be sent or that a card is in the process of being sent. As early as the 3rd phone call, the First Complainant indicated that the problem may be linked to her mortgage account being in recovery which has impacted her current account. The First Complainant is reassured that there is no problem with her current account. In the 4th phone call, the First Complainant is told that the card is in transit. In the 6th phone call, the First Complainant again sets out her issue and the Provider's representative assures her that the problem will be resolved and that her current account is not in recovery. In the 7th phone call, the First Complainant says that she was promised that the new card had been issued and was on its way. In the 8th phone call, the First Complainant sets out the problem that she has been encountering and the promises that have been broken.

The Provider's representative accepts the customer service failings, and notes that a formal complaint has been lodged. Critically the First Complainant expressly says to the representative that the issue is to do with her account being in recovery. In the 9th phone call, the First Complainant indicates that she is self-employed and that her capacity to work is being affected by spending so much time trying to resolve the issue. In the 10th phone call, the Provider's representative tries to arrange for the bank card to be sent to a particular branch near to the First Complainant. The First Complainant again raises the issue that she feels that one of her accounts may be flagged in some way which is impeding the processing of her card request. In the 11th phone call, the First Complainant states that she has asked 4 times for a bank card at that stage but that the Provider has not supplied it. In the 13th phone call, the Provider's representative states that there is no card noted on her current account for her. In the 15th phone call, the First Complainant again reiterates the problem she has in that she keeps being sent from department to department within the Provider. Each department indicates that the other department should be able to resolve the problem. In the later phone calls, the same issues arise as well as the First Complainant seeking further details of her precise terms and conditions.

It is accepted by the Provider that it had customer service failings in how it handled the First Complainant's requests and queries. It is clear to me that the First Complainant, pursuant to the Regulations set out above, was lawfully entitled to a debit card during the relevant period, and the Provider is clearly in breach of that obligation to provide her with one. I believe the time that it took for the Provider to resolve this issue is particularly egregious. Furthermore, the issue was only resolved once the matter was escalated as a formal complaint to this office. The frustration of the First Complainant is understandable; as I have set out above, the First Complainant routinely explained that, in her opinion, her current account had somehow been affected by her mortgage account being in arrears.

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In light of the Provider's explanation furnished, that was what actually occurred. The fact that the First Complainant was guiding the Provider in the correct direction, but that the issue still continued, is most unacceptable.

Insofar as the First Complainant asserts that the complaint handling of the Provider was inadequate, she is correct. The First Complainant could not have done any more to resolve the issue, but the Provider consistently failed to resolve the matter.

I find that the First Complainant has contributed a significant amount of time and effort at great inconvenience and to her detriment trying to amicably resolve the matter without escalating it.

Insofar as the First Complainant asserts that no explanation has been provided for why it took so long to resolve her issue, I note that the Provider has since set out a coherent explanation of what happened. As noted above, the Provider indicates that the key error related to the misapplication of the First Complainant's CIN such that her mortgage account was limited, but also so was her current account. This affected her ability and the Provider's administrative ability to issue the card. While this explanation does not explain the delay or the inadequacy of the Provider's response, it is at the very least an explanation of why the card would not issue. This explanation was only furnished in the Provider's official response to this Office. As such, while this explanation was significantly delayed, I find that the Provider has belatedly explained why it happened.

In relation to the additional issues raised in the First Complainant's e-mail of 9 December 2019, I also note that not all of the phone calls appear to have been provided.

In particular, the Complainant states that *"the files do not include the initial call on 20/2/2018 when I was informed that my account was blocked and told me [to] open another account elsewhere. Some calls end when I am transferred internally within the bank and the full extent of the amount of time I spent trying to sort out this problem is therefore not reflected. It also does not accurately represent the different people I had to speak to and the amount of time I had to repeat the issue"*.

This is the Provider's failure and is not acceptable. The remainder of the e-mail deals with the complaint that the Provider did not adequately investigate and deal with the First Complainant's issue. As noted above, I have already determined that this was so and the Provider has accepted that it failed to do so.

In all of the circumstances, I find that as a consequence of the Provider's actions, the First Complainant has suffered considerable inconvenience by not being able to process payments and direct debits, and also in the significant amount of time spent by her, as a self-employed person, in trying to resolve the issue amicably.

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It is clear to me that the Provider did not listen to the Complainant or take her complaint seriously, this persisted even during the investigation of the complaint. If any of the Provider's staff had actually listened and believed what the Complainant was telling them this problem could have been resolved at a very early stage rather than persisting for over a year and a half. The Provider has made an offer of €4,000.

Given the inconvenience caused to the Complainants and the length of time it has taken to resolve the complaint, I do not believe this to be sufficient. Therefore, I uphold the complaint and direct the Provider to pay a sum of €8,000 to the Complainants.

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) (a), (b) and (c)**.

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 Complainants in the sum of €8,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

28 April 2020

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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.

