



<b><u>Decision Ref:</u></b>	2021-0491
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Current Account
<b><u>Conduct(s) complained of:</u></b>	Disputed transactions Dissatisfaction with customer service Handling of fraudulent transactions
<b><u>Outcome:</u></b>	Substantially upheld

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

This complaint relates to the loss of a debit card on a current account held by the Complainant with the Provider, against which this complaint is made, and transactions made with that card.

**The Complainant's Case**

The Complainant held two current accounts with the Provider. In late May 2018, the Complainant lost his debit card that was connected to one of these accounts. On 24 May 2018 and 26 May 2018, debits were made from the Complainant's account, which he states he did not authorise, leaving the account overdrawn by almost €9,700.

The Complainant notified the Provider that his card was lost and also sought the return of the money taken from his account.

The Provider has declined to provide the Complainant with a refund and regards the Complainant as being liable to repay the amount by which his account is overdrawn.

The Complainant explains that in **May 2018** he lost his debit card and he contacted the Provider to inform the Provider that his card was lost. The Complainant submits that he requested the Provider to "close" his card and issue a new card and PIN. The Complainant

submits that the Provider failed to “close” his account or card and as a result, funds were taken from his account without his knowledge or authorisation.

The Complainant states that the Provider sent him a new bank card and PIN which he could not activate “... as the bank had not closed down the old account.”

In resolution of this complaint, the Complainant wants to be reimbursed for the transactions he states were unauthorised. He also wants to be able to access his account.

### **The Provider’s Case**

#### ***Status of the account***

The Provider explains that the Complainant’s current account ending 0656 remains open as of the date of its submission to this Office. The Provider states that the account has an overdrawn balance of €9,695.89 without any authorised overdraft facility granted on the account.

#### ***Notification of the lost card***

The Provider states that the Complainant reported his debit card ending 0980, as lost during a telephone call on **27 May 2018** at 11:43pm. The Provider points out that at the beginning of this telephone conversation, the Complainant stated that his debit card and PIN had been lost for two days and that “*I have the PIN together with my card.*” Later in the conversation, the Complainant advised the Provider that his card had been missing for 4 to 5 days.

The Provider submits that the information provided by the Complainant differed from the information provided to one of its agents on **12 July 2018**. During this conversation, the Provider states, referring to the documents contained in its Schedule of Evidence and the relevant call recording, that the Complainant advised its agent of a different timeframe for the loss of his card and PIN. The Provider submits that the Final Response Letter dated **12 July 2018** also states the details of the information provided by the Complainant.

The Provider submits that despite the foregoing, it can conclusively prove on the basis of the records supplied in evidence, that the Complainant’s card was immediately cancelled as soon as the Provider was advised that it had been lost.

The Provider explains that a complaint was originally raised on **6 July 2018** as a result of the Provider’s decision to decline the Complainant’s claim for the return of money withdrawn from his account on foot of the disputed transactions and that it was recorded as *Lost* on its system.

#### ***Cancellation of the card***

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The Provider states that the Complainant was initially unable to provide sufficient detail to identify his account or the affected card during the call on **27 May 2018**. The Provider's agent had to carry out a search for the Complainant's account using other details.

While the search was underway, the Complainant was able to locate a picture of his card. The Provider explains that its agent informed the Complainant that his card had been cancelled and also advised him that a new card was ordered.

The Provider notes that the Complainant asked its agent for the balance on the account prior to the call ending. The Provider's agent advised the Complainant that his balance stood at Sterling £7.18.

The Provider points out that its agents quoted the account in the wrong currency and apologises for this mistake. The correct balance was €7.18. The Provider wishes to make the following observation in respect of this aspect of the conversation:

*"... the Bank finds it unusual that the Complainant did not query this small credit balance ... or raise any concern with the Bank's agent during the telephone conversation, considering he had made two large lodgements to the Bank account on 24 May 2018, which totalled €9,579.84. It must be noted that the lodgements were outside the normal account operation pattern ..."*

#### **Activation of new debit card**

The Provider explains, as outlined above, that a new debit card was ordered for the Complainant and this was dispatched to his correspondence address on **31 May 2018**. The PIN for the new card was separately dispatched on a different date.

The Provider points out that it was not the account itself that the Complainant wanted to close, rather it was the debit card and PIN attaching to this account that he wanted to cancel. The Provider points out that there was no requirement to close the account and open a new account in order to safeguard the account from fraudulent activity upon the loss of the card. The Provider adds that it would not have been possible to order a replacement card for a closed account. The Provider also advises that the Complainant's debit card ending 0492 was cancelled on **1 June 2018**.

#### **Amount claimed by the Complainant**

The Provider states that it is unable to establish how the Complainant has derived a figure of €9,769.00. When raising his fraud claim, the Complainant claimed the amount of €9,533.60 from the Provider. The Complainant disputed the An Post transactions on **24 and 26 May 2018**, together with two ATM transactions on **26 May 2018**. The Provider explains that the €9,533.60 was the unauthorised overdrawn balance on the account when the last of the transactions were deducted from the Complainant's account on **30 May 2018**.

The Provider had prepared a list of the transactions that the Complainant appears to be disputing and has provided details of these transactions. The Provider submits that all of the disputed transactions occurred before the Complainant reported his debit card ending 0980 as lost on **27 May 2018**. As a result the Provider argues that, under the account terms and conditions, the Provider is not obliged to return the disputed sums.

The Provider notes that the Complainant does not appear to be disputing two transactions. First, a €50.00 ATM cash withdrawal on **24 May 2018** at 11:41am and second, a €59.34 point of sale transaction at a petrol station on **26 May 2018** at 3:02pm. The Provider remarks that the first transaction occurred after the first of the disputed transactions and the PIN number for the debit card ending 0980 was used to verify both transactions. The Provider states this shows that the debit card and PIN were in the Complainant's possession during the timeframe of the disputed transactions.

By way of conclusion to its submission, the Provider states the following:

- When reporting the card as lost on **27 May 2018**, the Complainant advised the Provider's agent that *"I have the PIN together with my card."* Such a practice is in breach of clause 9 of the account terms and conditions.
- There are serious discrepancies in the Complainant's statements as to when he lost his card.
- When the Complainant spoke to the Provider's agent on **12 July 2018**, he stated that he had visited one of the Provider's branches and spoke to a member of staff who gave him a number to ring to cancel his card. However, during the call on **12 July 2018**, the Complainant changed the information regarding the date he visited the branch referring to **26 May 2018** and **27 May 2018** as the date which he visited the branch.
- The Provider explains the Complainant stated that he went *"straight home"* and called *London* regarding his lost card. The Provider refers to the time of the call on **27 May 2018** being 11:43pm. This was significantly after branch opening hours.
- The Provider submits that as the Complainant did not inform it promptly of the loss of the card, it is entitled to invoke clause 7.2 of the account terms and conditions which makes the Complainant liable for all of the unauthorised amounts taken from the account.
- The Provider can prove the disputed transactions occurred between the morning of **24 May 2018** and the afternoon of **26 May 2018** which was before the Complainant reported the card as lost.
- The Complainant has not raised the authenticity of two transactions that occurred during the period of the disputed transactions.

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- The Provider took immediate and correct action upon notification that the card was lost.
- There are no errors or service shortcomings identified on the part of the Provider in its dealings with the Complainant which would result in its decision on the fraud claim to be overturned. Therefore, the Provider's decision not to refund the disputed transactions remains unchanged.

### **Further Submissions**

On **23 August 2019**, the Provider wrote to this Office in response to a request regarding its compliance with certain provisions of the ***European Communities (Payment Services) Regulations 2009***.

In an email to this Office dated **18 February 2020**, the Complainant states:

*"... the only two things I'm not ok with are that the response from [the Provider] is taking too long from England and Ireland are not in my favour to result my innocence also I was waiting for an answer from higher court with all evidence sent by me with the new card and pin sent by [the Provider] and the voice messages I got I got no answer from the competent authorities favourable for me to use my card and my money to be back on my card. The [Provider's] staff from [branch] including manager to the rest we're aware of my problem and had nothing done about this day. I'm not agreeing with the [Provider's] rights so I want my right to solve this problem. ..."*

The Provider responded to this by email dated **26 February 2020**, explaining that the Complainant raised a claim on the fraudulent transactions with the Provider on **6 June 2018**. As a result of the declined claim, the Complainant raised a complaint by telephone on **6 July 2018**. A conversation was held with the Complainant regarding his complaint on **12 July 2018** and a Final Response Letter also issued that day. Accordingly, the Provider submits that it investigated and responded to the Complainant's fraud claim and subsequent complaint in a timely and efficient manner, albeit the outcome was not the one the Complainant was hoping for.

### **The Complaints for Adjudication**

The complaints are that the Provider:

Failed to cancel the Complainant's debit card/close his account once he notified the Provider that his card had been lost;

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Delayed in investigating the Complainant's fraud claim and/or complaint;

Wrongfully and/or unreasonably declined to uphold the Complainant's fraud claim and/or complaint; and

Wrongfully and/or unreasonably refused the Complainant access to and the use of, his account.

### **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 18 November 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.

Following the issue of my Preliminary Decision, the Provider made a submission under cover of its letter to this Office dated 8 December 2020, a copy of which was transmitted to the Complainant for his consideration.

The Complainant has not made any further submission.

Having considered the Provider's additional submission and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

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## **Terms and Conditions**

The Provider's terms and conditions state as follows:

**"A. General Account Terms and Conditions**

...

**8 Operations on the Account**

...

8.4 *If your Account becomes overdrawn without prior consent You will be responsible for any debt, including any referral item (irregular account charge), any surcharge interest and any debit interest.*

...

**9 Security Procedures**

9.1 *You must keep your Security Details safe and secure and take all reasonable precautions to prevent unauthorised or fraudulent use of them.*

9.2 *You must not disclose your Security Details to an unauthorised person or record your Security Details in any way which may result in them becoming known to an unauthorised person. ...*

...

9.4 *If You suspect someone knows your Security Details without your authority or there is unauthorised use of your Account You must contact us immediately ... If You fail to do so, You may be liable for unauthorised Transactions of up to €50 on your Account arising from the lost or stolen Security Details or where You have failed to keep your Security Details safe. If You acted fraudulently or intentionally, or with a gross lack of reasonable care failed to comply with your obligations in this paragraph or breached these Terms and Conditions, the limit of €50 will not apply and You may be liable for the full amount of the unauthorised Transaction on your Account.*

9.5 *You are not liable for any unauthorised Transactions made using your Security Details after You have notified us in accordance with Condition 9.4 of this Section A above unless You acted fraudulently.*

9.6 *See Condition 8 of Section E for details of your responsibility relating to your Security Details where You have a debit card on your Account.*

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...

**B. Payment Services (other than Debit Card conditions of use)**

...

**11 Unauthorised Transactions**

11.1 ... You will not be responsible for Transactions which You did not authorise or consent to in accordance with these Terms and Conditions.

11.2 On establishing that a Transaction has not been correctly authorised or consented to in accordance with these Terms and Conditions, We will refund You immediately by crediting your Account with the amount of the unauthorised Transaction and any interest lost or charges applied ... unless Condition 11.3 or 15 in this Section B apply.

11.3 You must notify us of any such unauthorised Transaction without undue delay on becoming aware of such unauthorised Transactions ...

...

**C. Additional Terms and Conditions for Current Accounts**

...

**2 Operations on the Account**

...

2.3 However, if at any time such transactions would result, without prior arrangement, in the Account being overdrawn or the overdraft limit being exceeded, We may exercise our sole discretion and without contacting You, allow an overdraft to be created or the borrowing limit to be exceeded ...

...

**E. Debit Card – Conditions of Use**

*These Conditions are to be read in conjunction with the Terms and Conditions for your Account, as varied from time to time, which form part of these Conditions.*

**IMPORTANT NOTICE**

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*If the card is lost or stolen, or You suspect that someone knows your Personal Identification Number (PIN), You must phone us on ... or contact your branch.*

...

## **2 The card**

...

### **2.2 You ... must do the following:**

...

*Keep the card secure at all times and do not allow any other person to use it.*

...

*Never write down the PIN in any way which could be understood by someone else.*

*Failure to follow the above procedures may affect your liability for unauthorised payments as set out in Condition 7.2.*

...

### **2.4 You ... must not use the card if to do so would overdraw the Account without our prior agreement, or would increase any borrowings on the Account to more than We have agreed.**

...

## **3 Transactions**

### **3.1 You must only use your card in accordance with these Terms and Conditions.**

...

## **7 Liability**

### **7.1 If the card is lost or stolen, or You suspect that someone knows the PIN, You must carry out the instructions set out in the Important Notice at the beginning of these Conditions.**

### **7.2 If the card is misused before You tell us of its loss or theft or that someone else knows the PIN in accordance with Condition 7.1 above, You will only have to pay up to €50 for any misuse, unless You have acted fraudulently or unless You intentionally or with a gross lack of reasonable care, failed to fulfil your obligations on Condition 7.1 and Condition 3.1. If You act fraudulently or intentionally or with a gross lack of reasonable care fail to fulfil your**

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*obligations under Condition 3.1 and 7.1, the above limit will not apply and You may be liable for all amounts which arise from any misuse.*

7.3 *You are not liable for any unauthorised transaction made using your card and/or PIN after You have notified us of the loss, theft, misappropriations or unauthorised use of your card in accordance with Condition 7.1 above and We will re-credit any such transaction made with your card after You have contacted us, unless you have acted fraudulently.*

...

## **10 Ending your right to use the card**

10.1 *We may suspend, withdraw or restrict the use of a card and PIN in the following circumstances:*

- (a) *if We suspect there may be an unauthorised or fraudulent use of your card;*
- (b) *if We suspect your card and/or PIN have been lost, stolen, copied, misappropriated or are being used by someone else; ...*

### **Call Recordings**

The Provider has furnished recordings of three telephone conversations which took place between the Complainant and its agents. I have listened carefully to, and considered the content of these calls.

It is important to point out that English is not the Complainant's native language. I believe this resulted in considerable communication challenges for the parties in dealing with the matters at the centre of this dispute. It is clear to me from the content of these calls that the parties were at cross-purposes and misunderstood each other at times.

In particular, I note there was considerable confusion in relation to the difference between closing the account and cancelling the card as the Complainant used the word "close" in respect of both.

I will now set out certain parts of these calls.

The first call took place on **27 May 2018**. When the Provider's agent asked how she can help, the Complainant states:

*"Lady from few days, I lost my card and I don't find it and I have the PIN together with my card and I wanted to tell you to close my card and tomorrow I have to go to my branch but from now I want to close because I don't find it."*

When asked for his sort code and account number, the Complainant answers: *"No it's lost with everything."*

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The Complainant advised the Provider's agent that he had two accounts with the Provider and indicated that he had the card and the sort code for the uncompromised account. At this point, the Provider's agent informed the Complainant that she may have located his account information. The Provider's agent asked if the Complainant wished to cancel the cards on both accounts to which the Complainant replied: "Only one I lost ... from 4 or 5 days."

The Complainant was subsequently able to locate a picture of his card and provide the agent with the last four digits on the card. The Provider's agent informed the Complainant that his card was fully cancelled and that she would order a new card and PIN for the Complainant. She also advised the Complainant that he should receive the card in three working days which would be followed by the PIN on the next working day.

The Complainant asked the Provider's agent if "I have to go to my branch tomorrow to talk to the lady there as well?" The Provider's agent clarified to the Complainant that there was no need to do this as she had done everything that needed to be done.

At the end of the call, the Complainant asked for the balance on his account. The Provider's agent advised the Complainant that there was £7.18 in the account which the Complainant acknowledged. The Provider's agent then asked the Complainant if that seemed okay to which the Complainant answered: "Yes, thank you."

The Complainant called the Provider on **6 July 2018** to inform the Provider's agent that he wished to make a complaint.

As part of the security questions, the Provider's agent asks the Complainant if he can confirm if he has an overdraft on the account. It becomes very clear that the Complainant is not familiar with the term and does not know what an overdraft is. The Provider's agent uses an alternative method to verify his identity.

During the call, the Complainant states:

*"I lost my card on 24 of May and I ring straight away on [inaudible] 27 I ring London to the fraud because I don't find my card. I go first time straight away to the branch in [location] to tell to the lady to close my account because my card I lost it and lady give it to me one number from [Provider] London. I ring straight away London ... and I give it to the lady what her ask me and after that she say to me I close your account now and I order for you new PIN and new card. Lady order for me new PIN and new card and that time say to me your account is closed and Monday morning on 28 somebody take out from my account nine thousand seven hundred and something fraud ...*

*I was straight away in the bank and I ask to the lady, manager lady Ann in [location]. Lady Ann what happened with my account. She say I don't know, you ring to the fraud*

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*and you talk to the fraud because I don't know nothing and I can't help you. OK, I was ring back to the fraud team in London and the guy who working there ask me two questions and after say to me OK I can't help you and close in my face, close the phone. Three times I ring back and I can't spoke with nobody ..."*

*And after that I spoke more one time with one lady from the fraud team and the lady say to me I don't care...*

The Complainant explains to the Provider's agent that having contacted the Fraud Team, they refused to help him. The Complainant states that he rang the Provider ten times in order to have his account closed. The Complainant states that he was advised by the agent he spoke to that it was not their problem and they hung up the phone. The Provider's agent logged a complaint for him at that stage and advised the Complainant that the complaint would be investigated and they would try to resolve the matter.

The Complainant then refers to the withdrawals from his account on **28 May 2018** stating: *"I ring on 26 or 27, I don't remember exactly, to close my account but nobody could do nothing."* The Provider's agent asked the Complainant was it that he tried to close his account after he saw the money come out of his account to which the Complainant replied: *"Yes, exactly."*

The Complainant also advised the Provider's agent that he reported the matter to An Garda Síochána and sought a letter from the Provider that he could present to the Gardaí and this Office.

I note that on this call of 6 July 2018, the Complainant states that he received a call from one of the Provider's agents in London where he was advised that he would have to repay the money that was overdrawn from his account. This Office does not appear to have been furnished with a recording of this call.

On **12 July 2018** an agent of the Provider called the Complainant to discuss his complaint regarding the fraud which he had reported as having taken place on his account and the fact that the Complainant was dissatisfied that no one was looking into it. The duration of this call was 44 minutes and there was considerable repetition and confusion between the Complainant and the Provider's agent during the call.

The Complainant said he spoke to one of the Provider's agents in London on **26 May 2018** and requested that she close his card but this was not done. The Complainant explained that he ordered a new card and PIN which he received on **29 May 2018**. The Complainant further explained that on **28 May 2018** fraudulent transactions were carried out on his account.

The Provider's agent asked the Complainant on two separate occasions in the early part of this call to confirm that he lost his card on **27 May**. The Complainant advised the Provider's agent that he lost his card on **26 May 2018** and not **27 May 2018**. He informed her that he tried to find his card but could not, so he contacted the Provider on **27 May 2018**. The Complainant said he went to one of the Provider's branches to enquire about the

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transactions on his card. At this point in the call, the Provider's agent sought to confirm which of the transactions the Complainant maintained were fraudulent. The Provider's agent advised that the transactions occurred on **24 May** and **26 May 2018**. The Complainant goes into some detail about his interactions with the staff in his local branch to try to establish what transactions had taken place on his account.

A discussion then ensued around the timing of various transactions, including transactions relating to the sale of a car and the conversion of Euros and Sterling. The Complainant indicated that he purchased sterling to the value of around €4,600.00 to €4,700.00 on **24 May 2018**. The Complainant stated that he lost his card on **26 May 2018** and did not authorise the transactions on **24 May** and **26 May 2018**.

The Provider's agent then advised the Complainant that the disputed transactions were chip and PIN verified, and asked if the Complainant had ever written down his PIN or if he divulged it to anybody. The Complainant said he did not.

The Complainant advised that his PIN was in his phone and following an enquiry from the Provider's agent, explained that there was a passcode attached to his phone and that no one knew his passcode. The Complainant explained that he did not know how his card was used or his PIN known to a third party.

In answer to a question regarding his PIN, the Complainant states, *"I'm a simple man, I don't know exactly what I have to do with the internet and you know...I don't know this problem with the internet, I don't know to working with the laptop..."*

The Provider's agent interjects, *"sorry what's that about a laptop? Sorry, I don't quite know what you mean, what do you mean by a laptop, what's a laptop got to do with this?"* The Complainant responds, *"I don't know to working to laptop or internet or that..."*

The Complainant explained that he went to his local branch on 27 May when he realised his card was missing and spoke to *"lady Anne"* in the Provider's branch and asked her what he had to do in respect of the fraud and that *"lady Anne"* gave him a number for London. The Complainant said he also went to An Garda Síochána but had no update from them.

The Provider's agent advised the Complainant that it would not be in a position to accept his claim of fraud as it had no explanation as to how the PIN was known to a third party when the unauthorised transactions took place. The Provider's agent asked if the Complainant made a €20.00 and €750.00 withdrawal from his account or if he made an ATM withdrawal. The Provider's agent also asked the Complainant how someone could have taken his card without his knowledge.

The Complainant suggests to the agent that if she could give him one address he will send *"every documentation what I have from the Garda from the [location] Bank"*. The agent responds, *"OK, OK but I work for [Provider] Bank, I am the Bank, so I don't need information*

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*from the Bank, I am the Bank. So, I'm saying from the Bank, I'm part of the Bank, I'm looking into this and we won't be able to accept your claim of fraud, I'm afraid because we have no explanation as to how your PIN number was known, when these transactions took place".*

The Complainant then reiterates when his card was lost and when he reported it. The Provider's agent repeated that it was unable to refund the fraudulent transaction and it was declining his claim. The Complainant was also informed that he would be liable for a debt of over €9,000.00 that had arisen on his account as a consequence of these transactions.

The Complainant asked why his account was not closed when he requested this be done: why was his account not closed on **27 May 2018**. The Provider's agent told the Complainant that his card was cancelled. The Complainant stated that his account was not closed until **29** or **30 May 2018**. He appears to be confusing the cancellation dates of the original card and the replacement card.

The Provider's agent explained to the Complainant that there was activity on the account before the card went missing or was reported missing. The Complainant stated that he used the card on **24 May 2018** and that he did not know what happened after that. The Provider's agent observed that this still did not explain how his card was taken or used.

A number of times during the conversation both the Complainant and the Provider's agent speak over each other making the conversation quite difficult. During one such interaction the Provider's agent states, *"I understand what you are saying... [interruption] you visited branch... [interruption] you've told me that you've spoken to the fraud department"*.

The Complainant informs the Provider's agent that on 28 May around 11am the staff of the Provider branch gave him a letter printed from the computer. The Provider's agent asked what was in this letter/printout. He was unable to explain what was in this document.

At the conclusion of the call the Provider's agent informed the Complainant *"I've done an investigation"* and went on to inform him that the Provider would be seeking to recover the money overdrawn on his account which was €9,695.89 at that stage.

I note the Provider's agent stated that she had undertaken an investigation of the matter. This was not evident from the call nor has the Provider furnished documentation to support this statement by this agent. It is noticeable that the agent declines the offer by the Complainant to send all documentation he had in relation to the matter to her. This is despite asking him what was in the printout/letter he stated he had received from the branch.

While the agent did ask questions of the Complainant much of the focus of this call related to informing the Complainant of the Provider's decision to reject his fraud claim and its intention to recover the money outstanding on the account.

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There were a number of areas of serious confusion during this call and throughout the Complainant's interactions with the Provider. These included:

- Confusion between the closure of his account and the "closure" or cancellation of his card;
- The difference between the dates the transactions were carried out (24 May) and the date they posted to, and appeared on his account (28 May);
- Confusion between the date on which the original card was cancelled (27 May) and the date on which the new card was cancelled (1 June).

I believe that if the Provider's agent had taken more care to understand what the Complainant was saying she might have been better able to clarify some of these issues.

### **System Records**

The Provider has furnished a number of printouts of its internal computer system demonstrating the manner in which it dealt with the cancellation and re-ordering of the Complainant's debit card. The first printout states in respect of the card ending 0980:

*"Card Status Update Details:*

<i>Current Status:</i>	<i>Lost</i>
<i>Last Update Date:</i>	<i>27May2018</i>
<i>Last Update Time:</i>	<i>23.51.28"</i>

The next printout shows that a new debit card ending 0492 was ordered on **29 May 2018** and despatched on **31 May 2018**. This card was cancelled on **1 June 2018**.

### **Fraud Related Notes**

The Provider has also furnished a copy of its notes in relation to the Complainant's fraud claim.

On **6 June 2018**, the following entry is made:

*"customer was reporting ATM transactions as fraud, gave customer dates and location to take to the police."*

On **12 July 2018**, the following entry is made:

*"complaint raised under ref ... - advised customer claim of fraud remains declined as usage was to post office and ATM on 24<sup>th</sup> and 26<sup>th</sup> May - declined due to card being*

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*in possession on those days and PIN verified with no explanation to PIN - letter sent to CH to advise.”*

### **Case Report**

The Provider's *Case Report* indicates that a complaint was logged on **6 July 2018**. The *Case Report* appears to have been updated following a conversation with the Complainant on **12 July 2018**.

The *Complaint Summary* states:

*“Case allocated to [Provider’s agent] pm the 12/7/18  
Called customer ... 12/7/18 @ 1:45 and customer confirmed the below to be his  
complaint which supersedes customers original complaint  
- unhappy that this claim has been declined*

#### **Comments**

*- claims post office usage from 24<sup>th</sup> as fraud and ATM usage on the 26<sup>th</sup>  
- advised he has a disability to do with his head but does not know what its called  
- states he lost his card the evening of the 26<sup>th</sup> and reported it lost on the 27<sup>th</sup>  
- nobody knows his PIN, PIN recorded in iPhone but has a passcode to it and he is still  
in possession of the phone*

*Vulnerability taken into consideration but no explanation as to how card was taken  
and PIN known - customer was able to have a full conversation with me and got very  
irate (slight language barrier). Claim of fraud declined and advised I would send FRL.”*

### **Account Correspondence**

The Complainant received a letter from the Provider's Account Closure Team dated **14 June 2018**. This letter states:

**“Formal notice of intention to file a default and to take account to recover the debt**

*We wrote to you to tell you that we were no longer providing you with banking  
facilities and that we would close your account(s) within seven days. We are closing  
your account at the end of today.*

*As there is still a balance outstanding on your account, we will continue to apply  
interest and the outstanding amount will increase. We are transferring your account  
to our Debt Recovery department who will now be responsible for recovering your  
debt.*

/Cont'd...



*We have attached a default notice. Unless you repay the debt in full within 28 days from when you receive this letter, we may share information about this debit with the Irish Credit Bureau. ...”*

A similarly worded letter also dated **14 June 2018** was sent to the Complainant by the Provider’s Fraud Operations department.

The Complainant received correspondence from the Provider dated **18 June 2018** to advise him that it would not be able to process a particular direct debit as this would have resulted in his account being overdrawn and that the Complainant *may* have been charged €12.70 for each unpaid item.

### ***Investigation and Final Response***

The Provider wrote to the Complainant on **12 July 2018** stating:

*“I am sorry you are unhappy with recent transactions on your account which you advised were not carried out by yourself.*

*I will investigate your complaint and be in touch again soon. I hope to be able to provide you with a full response at that time but if I need more time to investigate, I will tell you why and provide you with an update. ...”*

A Final Response Letter was issued to the Complainant dated **12 July 2018**. This letter states:

*“I am unable to uphold your complaint about your claim of fraud being declined. This is because the disputed usage was chip and PIN verified and undertaken using your genuine card.*

*During our phone call you state you found your card was missing on the evening of the 26<sup>th</sup> May 2018, you called the bank on the 27 May 2018 and your card ending 0980 was cancelled.*

*You also called to speak to the Fraud department to report multiple transactions as fraud and you were advised that you needed to speak to the Police.*

*When speaking with you today you advised that you had not undertaken the Post Office transactions on the 24 and 26 May 2018. You also advised that you had not undertaken the two ATM transactions on the 26 May 2018.*

*You also advised that you did not divulge your PIN to anyone, you advised your PIN was recorded in your iPhone which is protected by a passcode and are still in possession of your phone.*

*Due to the above I am unable to accept your claim of fraud and refund your claim. As it stands you are currently overdrawn on your account of €9695.89 to date which you are liable for. You may wish to contact our Collections department on ... to arrange a repayment plan.*

...

*I can confirm that you are unable to use this account for any further usage and the account is only open due to the debt that is on your account but please be assured that account cannot be used for customer use. ...”*

The Complainant maintains that when he became aware that his debit card was lost he went to his local branch where a member of staff gave him the number for the fraud team. He contacted the fraud team by phone and the Provider cancelled his card.

The Provider informed him at this stage that it was not necessary to close an account in order to protect it from unauthorised use in the event that a debit card is lost.

It is clear from the evidence outlined above, in particular the call recordings, that the Complainant has made confusing statements as to when he first became aware that his card was lost.

On the three calls for which recordings have been furnished in evidence, the Complainant states that he visited one of the Provider’s branches and spoke to a member of staff about his card being lost. He states that she gave him the number of the fraud department and told him to call the fraud department to have his card cancelled.

In challenging Complainant’s version of events the Provider states that during the call on **12 July 2018**, the Complainant changed the information regarding the date he visited the branch referring to **26 May 2018** and **27 May 2018** as the date which he visited the branch.

The Provider also draws attention to the fact that the Complainant stated that he went “straight home” and called London regarding his lost card. The Provider refers to the time of the call on **27 May 2018** being 11:43pm. This was significantly after branch opening hours.

Having listened carefully to the recordings of the three calls furnished by the Provider I do not believe this is a fair or reasonable characterisation of the conversations which took place. It is important to note that when the Provider called the Complainant on 12 July he was not at home. This was a 44-minute telephone conversation during which the Complainant became agitated at times and clearly misunderstood some of the questions.

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It is clear to me, from listening to the calls that the Complainant said he went to the Provider's branch when he realised his card was missing and was given the number of the fraud team to call. On the call with the Provider on 27 May, he asked if he should visit the branch the following day. He was told there was no need to. The Provider appears to have interpreted this question from the Complainant as an indication that he had not already visited the branch. I do not agree with this interpretation. He also stated that he visited the branch after he had cancelled his card. On this visit, he states that he was given a letter/print out from one of the Provider's staff whom he named as "lady Ann". He offered to send this document to the Provider's agent that he spoke to on 12 July.

I note the Provider also draws attention to the statement by the Complainant that he went "straight home" and called London regarding his lost card. The Provider refers to the time of the call on 27 May 2018 being 11:43pm. The Provider draws attention to the fact that this was significantly after branch opening hours. Indeed, I note, though this has not been raised by the Provider, that 27 May 2018 was a Sunday.

However, rather than raising possible inconsistencies or errors in what were lengthy and difficult telephone conversations, where the Complainant was not at home and did not have access to his records, I believe it would have been better for the Provider to establish the facts in relation to these matters.

If the Provider doubts the validity of the Complainant's claims regarding his visits to the branch it could have contacted its branch as part of its investigation into the matter. I note that the Complainant offered to send the documentation he states he received from Provider's branch, on one of these visits, to the agent who investigated the matter but she declined this offer. I have been provided with no evidence that the Provider contacted its branch staff or sought statements or records from them as part of its investigation. I believe any reasonable and thorough investigation of the complaint and the fraud reports would have done so.

I note the Provider's agent in her note of the call of **12 July 2018** states that the Complainant, "*advised he has a disability to do with his head but does not know what its called*". While this statement is accurate, I do not believe it is a fair or reasonable characterisation of the conversation. In the course of that lengthy call the Provider's agent asked the Complainant, "*out of interest*" what his disability was. He replied that it had to do with his head. He provided what appeared to be the name of the condition in his native language but said he could not remember what it was called in English. The Provider's agent then asked if he was taking medication. He stated he was.

She then asked the name of the medication. He said he could not remember the name of it but explained that he was not at home, at that time, but that he would be happy to go home and provide the agent with full details of the prescription. The agent declined stating that she did not want to put him to any more inconvenience.

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I also note in its response to this Office the Provider stated:

*“...two large lodgements to the Bank account on 24 May 2018, which totalled €9,579.84. It must be noted that the lodgements were outside the normal account operation pattern ...”*

I note in the recordings of the phone calls the Complainant, when referring to these transactions refers to purchasing sterling and the sale of a car. It would appear the Provider made no effort to establish the nature of these transactions. In those circumstances, it is not clear to me what the Provider's reference to *“outside the normal account operation pattern ...”* is intended to convey.

If these transactions are relevant to the Provider's investigation of this matter I see no reason why it could not have, at the very least, asked the Complainant for further details on these transactions.

The call which took place on **27 May 2018** demonstrates that the Provider's agent, once she was able to identify the Complainant's account and ascertain the card he wished to have cancelled, immediately cancelled the card and ordered a new card and PIN for the Complainant. The Provider's system notes, outlined above, further demonstrate this is what occurred. I also note that the Complainant has furnished a letter dated **29 May 2018** enclosing the PIN for the new card. Therefore, I accept that the Provider cancelled the Complainant's card in line with his instruction when it was made aware, on the call on **27 May 2018**, that the card was lost.

I also accept that the Complainant's instruction on **27 May 2018** was to cancel his debit card rather than close his account. In addition I accept the Provider's submission that an account does not need to be closed in the event a debit card is lost. However, and regrettably, it is clear from subsequent conversations that there was significant confusion on the Complainant's part relating to the dates of the cancellations of both of his cards and the closure of his accounts. I believe there were some opportunities when the Provider could have done more to assist his understanding of these separate actions.

The evidence suggests that the Complainant raised a claim in relation to the fraudulent transactions on **6 June 2018**. However, I note that I have been furnished with no evidence in respect of the manner in which this claim was raised. In the three call recordings that were submitted by the Provider there are various references by both parties to communications that appear to have taken place between the cancellation of the card on **27 May 2018** and the Complainant's call to the Provider to raise a complaint on **6 July**. I also note that in correspondence to the Complainant the Provider stated, *“You also called to speak to the Fraud department to report multiple transactions as fraud and you were advised that you needed to speak to the Police”*.

It is both disappointing and unacceptable that the Provider has furnished no records or evidence in relation to these interactions. This is particularly so given that the treatment that the Complainant asserts he received on some of these calls.

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A further complaint was made by the Complainant on **6 July 2018**. It appears that prior to the Final Response Letter being issued, the Complainant was advised that his fraud claim was being declined. However, due to the lack of evidence in respect of the fraud claim, I am unable to determine when this occurred. It appears to me from the content of the conversation that took place on **6 July 2018** that the Complainant was already aware of the Provider's decision to decline his fraud claim at that stage. However, the telephone call which took place on **12 July 2018** and the Case Summary on **12 July 2018** does not accord with this.

I am satisfied that the complaint call made on **6 July 2018** was an appeal of the Provider's decision to decline the Complainant's claim. The Provider issued a Final Response in respect of this appeal within four working days, on **12 July 2018**.

In my Preliminary Decision I stated that on the basis of the evidence or lack thereof, I am not satisfied that the Provider responded to the Complainant's fraud claim within a reasonable length of time. However, I am satisfied that the Complainant's subsequent complaint was responded to within a reasonable length of time.

The Provider, in its post Preliminary Decision submission, argues:

*"On the one hand you are saying acting within four working days is not responding within a reasonable length of time. Then, conversely on the other hand, you are saying that a delay of four to five days is not a significant delay. This appears to us to be two contradictory positions.*

*The contact number which the Complainant phoned was a 24/7 number. It's clear that the Complainant was aware of this as he phoned the number at 23:51pm on a Sunday night in anticipation the call would be answered. On the basis that this number was a 24/7 number, our position is that it took the Complainant practically four working days to contact us to report his card missing (24th, 25th, 26th and 27th May 2018). In line with your assertion on page 20 of the Preliminary Finding "within four working days" is too long for the Complainant to have contacted us and therefore we hold it to be undue delay and we disagree with your conclusion that the Complainant was compliant with Clause 7.1 (please see our earlier rationale above in this regard also)".*

I am not persuaded by the Provider's tit-for-tat argument that somehow the length of time taken for the Complainant to report the card stolen is of relevance or should impact or influence the time within which it should carry out its functions. Furthermore, I would point out that the 26th and 27th May 2018 were not working days in the ordinary meaning of the term working day.

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The Provider's decision regarding the Complainant's fraud claim and complaint regarding its declinature is contained in the Final Response Letter. The result of the Provider's decision is twofold. First, the Provider refused to refund to the Complainant the amounts withdrawn from his account from **24 May 2018** and secondly, the Provider is claiming that the Complainant is now liable to pay the overdrawn balance of €9,695.89 to the Provider.

#### Decision to refuse refund

In terms of the Provider's decision not to provide the Complainant with a refund, I am satisfied that the Provider is not necessarily obliged to refund the Complainant in respect of any monies withdrawn from his account prior to him notifying the Provider that his card was lost. Furthermore, it is only those transactions that occurred after notification that the Provider is obliged to refund (Section E, clause 7.3).

There is insufficient evidence to indicate that the Complainant did not authorise or consent to the transactions that occurred on this account on or after **24 May 2018**. Furthermore, the transactions that posted to the Complainant's account after he notified the Provider of the loss of his card on **27 May 2018** were in respect of transactions that were carried out on **24** and **26 May 2018** and there is no evidence to indicate that any unauthorised transactions were carried out and subsequently posted to the account after **27 May 2018**.

The Provider was unwilling to accept the Complainant's claim of fraud. It is quite clear from the evidence that the Complainant was not entirely clear as to when his card went missing.

In addition to this, the evidence also suggests that the Complainant did not notify the Provider of the fact that his card was lost as quickly as he should have. It is also suggested that he did not follow appropriate security protocol as mandated by the account terms and conditions in relation to his card.

Taking these factors into consideration, I am satisfied that the Provider was entitled to decline the Complainant's claim of fraud and to refuse to refund the unauthorised transactions.

#### Liability for overdrawn account

In the context of the Complainant's overdrawn account, the Provider is seeking to impose liability on the Complainant for this amount pursuant to Section E, clause 7.2 of the account terms and conditions. Clause 7.2 can be broken down as follows.

First, *"If the card is misused before You tell us of its loss or theft or that someone else knows the PIN in accordance with Condition 7.1 above, You will only have to pay up to €50 for any misuse ..."*

Second, *"... unless You have acted fraudulently or unless You intentionally or with a gross lack of reasonable care, failed to fulfil your obligations on Condition 7.1 and Condition 3.1. ..."*

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Third, *“... If You act fraudulently or intentionally or with a gross lack of reasonable care fail to fulfil your obligations under Condition 3.1 and 7.1, the above limit will not apply and You may be liable for all amounts which arise from any misuse.”*

I had detailed that in the context of the first part, when a card is lost or stolen, clause 7.1 requires the Complainant to carry out the instructions set out in the *Important Notice*. This notice states, as outlined above, that: *“If the card is lost or stolen, or You suspect that someone knows your Personal Identification Number (PIN), You must phone us on ... or contact your branch.”*

I stated in my Preliminary Decision that this notice does not impose any time limit within which the Complainant was obliged to notify the Provider of the loss of his card, nor does it stipulate that such notification must be immediate or without undue delay. I pointed out that the Complainant was simply required to phone the Provider or contact his branch. While there is uncertainty as to precisely when the Complainant lost his card, the Complainant’s notification to the Provider was no more than four to five days after it was lost and no more than three days after the first unauthorised transaction. In light of this, I am satisfied that the Provider was only entitled to impose a liability of up to €50 on the Complainant in respect of the misuse of his card.

In response the Provider, in its post Preliminary Decision submission, states :

*“knowing your card is lost or stolen creates a sense of urgency in responsible and reasonable customers. Whilst the Important Notice in our Terms and Conditions does not explicitly prescribe that a customer must contact us immediately in circumstances where they believe their card is missing we would argue that the potential consequences of having a mislaid card are so obviously serious that it is implicit that responsible/reasonable customers must contact us as soon as they are aware. In the absence of so doing, once on notice the card is missing, we would argue this to be a gross lack of reasonable care on a customer’s part as it creates time for a missing card to be used. In circumstances where the Complainant waited almost 4 working days to contact us we would argue this to be a gross lack or (sic) reasonable care”.*

The Provider then sets out the *“version of events”* given by the Complainant and how in its view either version amounts to a *“gross lack of reasonable care”* and should allow for clause 7.1 and 7.2 of the Personal Banking Terms and Conditions to be invoked.

- *“27 May 2018, the Complainant informed the telephone operator that he had lost his card and PIN and that he kept them together. If this version is accurate then it is clearly in breach of the terms and conditions of account operation and we would argue this to be a gross lack of reasonable care on the Complainant’s part.*

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- *12 July 2018 the Complainant said his PIN was stored on his phone which itself was protected by a passcode which only he knew. The Complainant did not report his phone ever having been missing. If this version (which contradicts the version of the 27 May 2018) is accurate then in the absence of a third party gaining access to the Complainant's phone AND phone passcode, we would argue that the only way the correct debitcard PIN could be accessed by a third party would be due to a gross lack of reasonable care on the Complainant's part"*

The content of clause 7.1 and 7.2 is:

*"7.1 If the card is lost or stolen, or You suspect that someone knows the PIN, You must carry out the instructions set out in the Important Notice at the beginning of these Conditions.*

*7.2 If the card is misused before You tell us of its loss or theft or that someone else knows the PIN in accordance with Condition 7.1 above, You will only have to pay up to €50 for any misuse, unless You have acted fraudulently or unless You intentionally or with a gross lack of reasonable care, failed to fulfil your obligations in Condition 7.1 and Condition 3.1. If You act fraudulently or intentionally or with a gross lack of reasonable care fail to fulfil your obligations under Conditions 3.1 and 7.1, the above limit will not apply and You may be liable for all amounts which arise from any misuse"*

*It is the Provider's argument that "If we align the Complainant's delay in contacting us in relation to his missing card, together with the two versions of events in relation to his PIN our position is that he has displayed a gross lack of reasonable care in both instances in breach of 7.2 which renders him liable for all amounts which arose from alleged misuse of his card".*

The Provider then notes the decision of a High Court case ICDL GCC Foundation FZ-LLC & Anor v European Computer Driving Licence Foundation Ltd [2011] IEHC 343 and its appeal to the Supreme Court detailing that "the decision was upheld with the Supreme Court agreeing that the concept of gross negligence involved "a significant degree of carelessness".

Therefore, it is the Provider's "position in relation to the Complainant's delay in contacting us in relation to his missing card, together with the two versions of events in relation to his PIN is that he has displayed a gross lack of reasonable care or "a significant degree of carelessness" in relation to both the security of his missing card and the security of his card's PIN in both instances. This is in breach of 7.2 which renders him liable for all amounts which arose from alleged misuse of his card".

Fundamentally, in the context of the second and third parts, the Provider is only entitled to impose full liability on the Complainant if he acted either *fraudulently, intentionally* or with a *gross lack of reasonable care* in fulfilling his obligations under clause 3.1 **and** 7.1.

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As noted above, I am satisfied that the Complainant complied with clause 7.1 and as such, the Provider has no entitlement to invoke clause 7.2. Furthermore, it is important to highlight that mere non-compliance with clause 3.1 and/or 7.1 is not sufficient to permit the Provider to invoke clause 7.2. As the wording of clause 7.2 makes clear, the threshold required to be met is quite high. Therefore, while certain inconsistencies and anomalies have been identified, I am not satisfied that the Provider has established or provided evidence, either in its original submissions or its post Preliminary Decision submission, that the Complainant has acted fraudulently, nor have I been provided with evidence that he has acted intentionally or with a gross lack of reasonable care in fulfilling his obligations under clause 3.1.

The Provider has identified two transactions which it asserts that the Complainant does not appear to be disputing. This appears to be based on the amount claimed by the Complainant in the Complaint Form and is not based on any explicit statement made by the Complainant.

It would appear that the information from the Complainant in relation to the transactions he believed to be fraudulent was acquired by the Provider during telephone calls that were at times confusing. Therefore, I do not accept the Provider's position and there is no evidence to indicate that the Complainant has not disputed the two transactions in question.

I find that the Provider was not entitled to rely on clause 7.2 and such reliance was without justification and oppressive. Accordingly, I find that the Provider was not entitled to hold the Complainant responsible for the overdrawn sum of €9,695.89 or impose any charges or apply any penalties or interest to the account as a result of it being overdrawn. I note the account is overdrawn but I am satisfied that the Complainant cannot or should not be held responsible for the overdrawn balance.

I am not satisfied that the Provider carried out an appropriate investigation to establish if the Complainant acted either fraudulently, intentionally or with a gross lack of reasonable care in fulfilling his obligations, or if it did, it has not provided sufficient evidence to this Office to support such a finding.

It has also been indicated in correspondence to the Complainant that the Provider would report this liability to the Irish Credit Bureau. In light of my findings in the previous paragraph, I do not accept that the Provider has any entitlement to do this and should ensure that no such reporting has occurred in respect of this amount.

In relation to whether or not the Provider refused the Complainant access to and the use of, his account following notification that his card was lost, in this respect I would note the provisions of section 2.11 of the **Consumer Protection Code 2012**, which states that a financial service provider:

*“without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services;”*

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The Provider explains that the Complainant's account remains open. However, as the correspondence outlined above makes clear, in particular the letters of **14 June 2018** and the Final Response Letter, the Provider no longer wished to provide banking facilities to the Complainant and the account was only open because there was, from the Provider's perspective, an outstanding debt on the account.

Therefore, the reality is that while the account is open, the Complainant does not have the use of the account or its facilities. This would explain why he was unable to use his replacement debit card.

The Provider's decision to discontinue to provide the Complainant with the use of his account arose from the Complainant's liability for the overdrawn balance. However, I have held that the Provider was not entitled to impose liability on the Complainant in respect of this. Accordingly, I am satisfied that the Provider has wrongfully and unreasonably refused the Complainant access to and the use of his account.

In my Preliminary Decision I indicated my intention to direct the Provider to rectify the reporting of the debt with the relevant credit agencies. The Provider, in its post Preliminary Decision submission, submits:

*"On the basis that we are satisfied that Clause 7.1 and 7.2 of our Personal Banking Terms and Conditions do correctly apply in the circumstances of this case (and as detailed above), permitting us to pursue the overdrawn balance, we have an obligation, once a debt of a certain level has accrued (€500 and over), to notify the relevant credit agency of same"*

In my Preliminary Decision I also indicated my intention to direct the Provider to pay €8,000 in compensation. The Provider, in its post Preliminary Decision submission, requested that I review my intention in this regard as it submits:

*"that the Complainant should be liable for the overdrawn account balance and we do not consider that any compensation payment is warranted. We have particular concern over the level of compensation noted in the adjudication which we find to be excessive and unwarranted based on the circumstances of this complaint"*

I do not agree with the Provider on either of these points and for the reasons set out in this Decision, I substantially uphold this complaint.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2) (b), (d) and (g)**.

I direct pursuant to **Section 60(4)(a) and (e)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Respondent Provider was not contractually entitled to hold

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the Complainant liable and/or responsible for the overdrawn balance on the account the subject of this complaint and that any such balance should be removed from his account.

I direct pursuant to **Section 60(4)(d)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Respondent Provider pay the sum of €8,000 to the Complainant. This sum is to be paid 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.

I further direct pursuant to **Section 60(4)(a)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Respondent Provider ensure that where any reporting has been made to any credit rating agency in respect of the account the subject matter of this complaint, to rectify such record.

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**

8 December 2021

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,

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**(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.**

