



<u>Decision Ref:</u>	2021-0506
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Cards
<u>Conduct(s) complained of:</u>	Fees & charges applied Level of contact or communications re. Arrears Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

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

The Complainant holds a credit card with a bank (the “**Provider**”).

The Complainant’s Case

The Complainant has held a credit card facility with the Provider since **1 June 1990** which was closed on **27 March 2020**. The Complainant incurred credit card debt in the amount of €3,113.98 in 2017. The Complainant entered into a financial arrangement with the Provider on **10 June 2017** to resolve this debt. This financial arrangement was reviewable after twelve months and involved the Complainant making monthly repayments of €50.00 (fifty euros). In July 2019, the Complainant realised that the Provider had debited €1,613.98 from his deposit account and set it off against the credit card debt. The Complainant argues that he was not on notice of such payment and that the Provider did not contact him either prior to or after debiting this money from his account. The Complainant also complains about the customer service provided to him and asserts that on the **7 August 2018** the Provider’s telephone agent accused him of being dishonest. The Complainant also queries why when he was visiting the Provider branch on **25 April 2019** for a review of his overdraft facility, he was not informed of the impending debit to his account.

The Complainant contends that he is "very unhappy" about the unexpected debit of €1,613.98 from his deposit account and he states that this has left him with "financial uncertainty."

The Complainant submits that:

"I incurred a debt of €3113.98 on this card in 2017 that I was unable to pay due to being out of work at the time. I phoned [the Provider] Credit Card in order to come to an arrangement with them re repaying this debt. It was agreed on 10th June 2017 I repay €50/month. I continued to repay this amount when I noticed that my Deposit account was debited by €1613.98 in July 2019. I phoned my [local Provider branch] who informed it was in relation to a debt set-off. I explained that I had received no correspondence in relation to this transaction.... I am not happy with how [the Provider] handled this issue. I have found this experience with [the Provider] very stressful and I have had many sleepless nights over this... I believe [the Provider] acted in bad faith with me, a customer of over 30 years."

The Complainant submits, by letter addressed to the Provider and dated **25 September 2019**, that:

"I questioned why [Provider] Collection Unit withdrew €1613.98 from one of my deposit accounts to write off a debt that I was making repayments to. The Collection Unit wrote to me 12 weeks after they conducted this transaction, only after I brought it to my [local branch's] attention. Your representative [Provider Customer Service Agent 1] cited that letters had been issued but could not produce Proof of Postage but admitted I should have received a letter informing me of what the Collection Unit next move was. This did not happen, I highlighted that the only correspondence I received was after I made contact with my branch in July 2019. This makes a mockery of stating correspondence was issued when the Collection Unit admitted they didn't issue me a letter until, I informed them after they had conducted that transaction."

The Complainant states, by letter dated **25 September 2019** and addressed to the Provider, that:

"As pointed out, I would have completed a Statement of Means if I had received it, but I didn't. Your records will show Statement of Means and Standard Financial Statements completed in March 2015 (appendix 1) and June 2016 (appendix 2). I refer to your letter dated 23/July/2019 which your representatives [X and Y] 'apologize that this letter was not sent to you in an appropriate time frame.'

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I ask you would this letter have been sent to me if I had not brought it to your attention in the first place? My deposit account was accessed by you on the 02/May/2019 and €1613.98 withdrawn, that was 12 weeks before you wrote to me stating what you did.

As stated I did not receive correspondence from you, this letter dated 23/July/2019 proves my point. Did you correspond with any of your colleagues in [Provider local branch] during this time?"

The Complainant notes, by letter dated **3 March 2021** and addressed to the Provider, that:

"The issue I have with [the Provider] is in relation to communications, both their internal communications processes, systems and how they communicate with customers ... I have been a customer of [the Provider] since 1985; during that time they have sold me a number of products include [sic] my Mortgage, Current Account, Credit Card, SSIA and numerous Life Policies. During this time I communicated with [the Provider] in person, through their [Provider] Network and over the phone. Page 2, number 4 of [the Provider's] document confirms that I attended in person to [the Provider] [local branch] to discuss my overdraft in April 2019. [The Provider] also state in this paragraph that 'they would not as standard practice share that information with other departments.'"

The Complainant wants the Provider to reinstate funds in the amount of €1,613.98 back to his Deposit Account. The Complainant agrees to complete a Statement of Means "in order to repay the debt."

The Provider's Case

The Provider states that it had written to the Complainant on **4 January 2019** and **16 February 2019** and as it had not received a response or a completed Statement of Means and in these circumstances it proceeded to set-off the funds in the Complainant's deposit account against the outstanding credit card balance on **2 May 2019** in line with its **Terms and Conditions**. The Provider's letter of **16 October 2019** denies that the Complainant's integrity was questioned during the course of a telephone call with the Provider's customer service agent. The Provider accepts that the Complainant should have received a letter prior to **23 July 2019** with details of the debit to the Complainant's deposit account and offers the Complainant a goodwill gesture in respect of this.

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The Provider submits that:

“The Complainant entered into an agreement to pay €50 a month from 01 June 2017 for one year with a view to review after this 12 month period. At this time, the Complainant had accrued arrears on his account of €2,613.98...”

In total, 10 successful payments were made to the account during this period of time, details of each of these transactions are included and highlighted within the Complainant's credit card statements... Two scheduled agreed payments were missed during this period of time, specifically, the payment date of 01 November 2017 and the payment date of 01 March 2018.”

The Provider submits, in a letter dated **16 October 2019** and addressed to the Complainant, that:

“I do acknowledge the position that this has left you in, however, we did act correctly in accordance with our procedures and followed our terms and conditions.”

The Provider submits in its **Final Response Letter**, dated **13 August 2019**, that:

“Your Credit Card was cancelled on 12 August 2016 as the minimum payment required on the card had not been received for 4 months. As of this date, the balance owing on the card was €3,113,98dr. On 10 June 2017 it was agreed with our Customer Recoveries unit that you would make monthly repayments of €50 .00 to your credit card account for a period of 12 months. We wrote to you on 8 January 2018 as payments to your credit card ceased and demanded full payment of the outstanding balance. I acknowledge that your monthly payments of €50.00 recommenced in February 2018. On 4 January 2019 we reviewed your account and sent you a Statement of Means (SOM) form to be completed as the payments that we were receiving were not sufficient to address the outstanding balance. There was no response to this letter. We again wrote to you on 16 February 2019 asking you to contact us as a matter of urgency to discuss your account. As there was no response to these letters, on 2 May 2019 the [Provider] exercised its right of set-off as there were funds available in your deposit account ending -019 and the sum of €1,613.98 was transferred to your credit card account. This set-off of funds was actioned under the Terms and Conditions of the product... have enclosed a copy of the letters that were issued to you for ease of reference.

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On this basis, the [Provider] has correctly acted in accordance with our procedures and followed our terms and conditions. At the same time I respect this was important enough to you that you felt the need to tell us you were unhappy."

The Provider states that while it “*can empathise with the Complainant*” it maintains that it has acted at all times within the scope of its **Terms and Conditions**. The Provider states that “*a payment as gesture of goodwill of €350 is being offered in an effort to resolve this dispute.*”

The Complaint for Adjudication

The complaint is that the Provider:

1. Wrongly or unfairly debited €1,613.98 from the Complainant's Deposit account on **2 May 2019**; and
2. Failed to communicate its actions to the Complainant in a reasonable timeframe.

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.

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A Preliminary Decision was issued to the parties on 5 November 2021, 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 Complainant made a submission to this office under cover of his letter dated 15 November 2021 (received 25 November 2021), a copy of which was transmitted to the Provider for its consideration.

The Provider advised this office under cover of its email dated 8 December 2021 that it had no further submission to make.

The Complainant, in his post Preliminary Decision submission, references his integrity. For the avoidance of doubt, I would point that I did not question the Complainant's integrity. In that submission the Complainant also refers to the ownership of the Provider and matters related to tracker mortgages. These are not matters that I can take into account when adjudicating the Complainant's complaint.

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

The Provider relies on Clause 44 of its **Terms and Conditions** (effective from **13 January 2018**) which says:

"Without affecting any other right of set off which we may have, if you have a credit balance on any other account with us (whether due or not and in any currency), we may use this credit balance to satisfy any sum due on the Account. We may or may not give prior notification to you where this is done."

The Provider also relies on Clause 40 of its **Terms and Conditions** which says:

"40: The Cardholder must pay on demand, and in any case, on receiving the Statement: Any outstanding excess over the Credit limit; Any arrears; and the amount of any transaction made in breach of these conditions."

The Provider also highlights the section under "*General Terms And Conditions of Use*" of the **Terms and Conditions**, which says:

"The use of your card is governed by these general terms and conditions. When you use your Card you are deemed to have accepted these terms and condition."

The Provider submits, in a letter dated **16 October 2019** and addressed to the Complainant, that:

"I am aware that we already issued correspondence to you in relation to the above matter in our letter dated 13 August 2019 ... I am also enclosing copies of 2 letters that were issued to you before the set off of funds took place on 2 May 2019. The first letter was issued to you on 4 January 2019, this enclosed a Statement of Means (SOM) for you to complete and return to us. We did not receive any response to this letter. We again wrote to you on 16 February 2019 asking you to please contact us as a matter of urgency, again, there was no response to our correspondence.

As detailed in our final response letter dated 13 August 2019, as per the terms and conditions of our credit cards, the set off of funds was completed on 2 May 2019."

The Provider further contends that:

"The [Provider] is satisfied that the Complainant was advised in relation to the possibility of the [Provider] transferring funds from his deposit account to his credit card in the event of default. The [Provider] has outlined below the instances where this was communicated to the Complainant:

On 09 February 2015 a letter issued by the [Provider] to the Complainant regarding arrears on his credit card account. Within this letter it states;

'It is vital that we work together to resolve your outstanding arrears. Not taking action can have significant consequences:

Non-payment of any amount due on your card account is an event of default in respect of all other facilities with us. We may, without notice to you, set off the debit balance on your card account against any credit balances on any other accounts held by us in your name.'

...

The [Provider] confirms that this warning was also included in the arrears correspondence issued to the Complainant on, 08 April 2015, 07 July 2015, 08 September 2015, 10 March 2016, 09 May 2016 and 08 August 2016. ... Additionally, the right of set off is outlined in the general terms and conditions of use, specifically in the Bank's "Personal Credit Card" as of May 2018 see point 44 under Terms and Conditions of use."

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By letter dated **10 June 2017**, Provider wrote to the Complainant and outlined the financial agreement they had entered into as follows:

"the [Provider] will continue to accept your Monthly repayments of €50.00. This agreement is subject to a review in 12 months. As part of this review we may ask you to complete another statement of means form.

1. If any payments are missed, this repayment plan will automatically cancel and the entire debt will be payable immediately.

2. Your credit card is cancelled and as a result no further interest, fees or charges will be added to the outstanding balance from the date of cancellation.

3. Details about you and your borrowings, including any arrears and the fact that your credit card has been revoked may have been reported to credit reference agencies, which may include the Central Credit Register which is maintained and operated by the Central Bank of Ireland. This may impact your credit rating, which could make it more difficult to get credit in the future. If your financial circumstances change which affects your ability to meet this repayment plan please ensure that you contact us immediately on the number above so that we may discuss your options. Please note that this repayment plan does not replace your original credit card credit agreement with us and is made without prejudice to the terms of that original credit agreement."

I note the contents of all of the Visa Card statements submitted. I note that they reflect a regular €50.00 (fifty euro) monthly deduction and a one off €1,613.98 debit taken on **2 May 2019**. I note that a letter was issued to the Complainant on **18 August 2016, 6 March 2017, 8 January 2018**, which reads as follows:

"I refer to previous correspondence asking you to clear the arrears and excess balance on your credit card account. You have not cleared the arrears as requested, as a result your card has been permanently cancelled and your account has now been passed to this unit for collection.

On behalf of the [Provider] I now formally demand immediate payment of the total amount shown above.

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If you do not repay the full amount hereby demanded immediately, the [Provider] may without further notice to you take all or any of the following steps against you:

- *Refer the debt to a debt collection agency*
- *Issue legal proceedings against you for payment."*

I note that Clause 44 of the Provider's **Terms and Conditions** (effective from **13 January 2018**) says that *"if you have a credit balance on any other account with us (whether due or not and in any currency), we may use this credit balance to satisfy any sum due on the Account and also notes importantly that we may or may not give prior notification to you where this is done."*

I note in particular the times when the Provider communicated with the Complainant, outlining its right to set off unpaid balances on the credit card account, **9 February 2015, 8 April 2015, 7 July 2015, 8 September 2015, 10 March 2016, 9 May 2016 and 8 August 2016**. I note that on **18 August 2016, 6 March 2017 and 8 January 2018** the Provider wrote to the Complainant *"demanding immediate payment of the total amount."* I note that the Provider maintain that they wrote to the Complainant to give him advance warning of the set off on **4 January 2019** and on **16 February 2019**. I am satisfied on balance that these letters were sent to the Complainant.

The Complainant submits that:

"I reiterate that I did not receive any correspondence from [Provider] Credit Card Customer Recoveries on the 4th January 2019 (Statement of Means) or on the 16th February 2019 asking me to contact them.... I requested the postal records, log files of dates from telephone calls and emails when they tried to make contact with me. To date I have not received any evidence of postal records or these log files of telephone calls or emails, this suggests that [Provider] Credit Card Customer Recoveries made no attempt to make contact with me."

The Provider submits that:

"The [Provider] can confirm that it has a mobile phone number for the Complainant ending in 017 and has an email address for the Complainant on its internal records.

The Bank cannot see any evidence of the [Provider] trying to contact the Complainant during the period mentioned above via either of these two methods, during this particular period. However, the [Provider] confirms that it relied upon contacting the Complainant through its normal process of issuing regulatory letters to the Complainant's home address."

I accept therefore that no telephone calls were made from the Provider to the Complainant.

By letter, dated **26 September 2019**, the Complaint argues that:

"My deposit account was accessed by you on the 02/May/2019 and €1613.98 withdrawn, that was 12 weeks before you wrote to me stating what you did."

The Provider states that:

"The [Provider] acknowledges that the Complainant was not advised of the card cancellation until 18 August 2016 when he received a demand letter from credit card customer recoveries looking for repayment in full."

The Provider further submits that:

"The [Provider] did not issue any correspondence in relation to the balance of the Complainant's deposit account at the time of set-off being applied. The [Provider] is not obliged to inform the Complainant of a set off occurring from his deposit account to any of his other accounts that he may hold with the [Provider]... The [Provider] issued a total of seven separate letters to the Complainant notifying him of the risk of a potential set-off occurring if he did not address the underlying arrears on his credit card account."

I note the contents of a letter, dated **23 July 2019** from the Provider to the Complainant, which reads as follows:

"Firstly, I wish to apologise that this letter was not sent to you in an appropriate timeframe this was an error on my part. I refer to previous correspondence in relation to your obligation to the [Provider] on your credit card account in the sum of €1,663.98 which had been demanded from you but remained unpaid."

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*It is one of the Terms and Conditions of Use of your Credit Card that the Bank has the right to apply any monies standing to credit of any of your accounts in satisfaction of any sums due on the Card Account. Accordingly, in exercise of its rights under the Conditions of Use, the [Provider] had on the 2 May 2019 debited your account number ***019 with the amount of €1,613.98Dr in satisfaction of your indebtedness on your Card account.*

*As the credit card is now in credit, I have requested that the appropriate department action a refund to your current account ***002."*

I note that the [Provider] did not issue any correspondence in relation to the balance of the Complainant's deposit account at the time of set-off being applied and that compensation has been offered in respect of this omission.

The Complainant submits as follows:

"I have included correspondence received from [the Provider], in relation to a review of my overdraft facility, this was received on 21/March/2019 (appendix 3). I made an appointment in my branch [Provider local branch] where I completed my review on 25/April/2019. This was five working days before you accessed my deposit account in the same branch. Why was this pending transaction not brought up in my review?"

The Provider asserts that:

"The [Provider] confirms that the Complainant attended one of the [Provider's] branches in relation to his overdraft facility on 25 April 2019. While the staff member who was assisting the Complainant may have been aware of the Complainant's outstanding credit card debt, they would not be required to discuss this with the Complainant as credit card debt is managed separately by the [Provider's] Recoveries department. While the timing of the meeting is close to the date of the transaction occurring in relation to the set-off on 02 May 2019, this transaction was initiated by the [Provider's] Credit Card Recoveries team and they would not as standard practice share that information with other departments, or the [Provider's] branch network, prior to the event transacting on the Complainant's deposit account It would not be normal practice ahead of a meeting to review a customer's overdraft facility to search for correspondence on the [Provider's] systems in relation to correspondence issued regarding the status of the Complainant's credit card account.... The [Provider] can empathise with the Complainant that it would have been helpful had this meeting brought to his attention the missing letters of 04 January 2019 and 16th February 2019.

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The [Provider's] branch staff are not in a position to do an extensive search into a customer's credit card account, as these accounts are managed centrally by the [Provider's] Credit Card Recoveries Team."

I accept that a separate department of the Provider was not compelled to raise the impending debit to the Complainant's account when he was discussing his overdraft facility with them.

The Complainant notes, by letter dated **26 September 2019** and addressed to the Provider, that:

"Throughout my 34 years dealing with [the Provider] I always conducted my business with integrity and honesty. My experience with [the Provider] over the last eight weeks has left a very negative and quite honestly, a bitter taste.

My conversation with your representative [Provider Customer Service Agent 1] on the 07/August/2019 at 13:48 was one such example. During this conversation (recorded by [the Provider] & me) [Provider Customer Service Agent 1] accused me of lying and being dishonest by saying 'I am not really understanding how the letter of apology was received but you didn't receive any of the arrears letters.'

...

When I asked [Provider Customer Service Agent 1] for proof of postage his response was 'I don't work in the Post Office.'"

The Provider submits, in a letter dated **16 October 2019** and addressed to the Complainant, that:

"I have listened to the telephone conversation that you had with my colleague, [Provider customer service agent] which was taken over by her supervisor, [Provider customer service agent 1] on 7 August 2019. During this call you referenced the letter that was issued to you from our Customer Recoveries department on 23 July 2019. I can confirm that this letter was issued to apologise that we had not written to you to advise that we had debited your deposit account -019. The Issuing of our letter on 23 July 2019 did not have any influence or would not have prevented the set off of funds from your deposit account. However, as per our letter of 23 July 2019 a letter advising you that your account had been debited should have issued at the time of the transaction taking place. In relation to the call I found that [Provider Customer Service Agent 1] was respectful and courteous throughout the duration of the call and could not find any instance where he questioned your integrity."

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The Provider also submits that:

"The [Provider] relies upon An Post to deliver correspondence to the address marked upon our letters and that they reach their intended recipients. The [Provider] has no record of receiving any returned or undelivered post which it had issued to the Complainant.

In the absence of this, the [Provider] will act on the understanding that letters issued to a valid address have reached their intended recipient."

A recording of the telephone call in question has been furnished in evidence and I have considered this audio evidence thoroughly. The following telephone call took place between the Complainant and Provider Customer Service Agent 1 on **7 August 2019**.

Customer Service Agent 1: *"all letters are going out to the address that we have on file..."*

Complainant: *"have you proof of postage..."*

Customer Service Agent 1: *"have I proof of postage. I have proof on my systems just to show that a letter should have been sent out...unfortunately I don't work in the post office, we work in the arrears support unit, so when it comes to proof of postage..."*

I note that Customer Service Agent 1's tone in the above conversation is not sarcastic or rude, it is matter of fact. I am satisfied that there was nothing inappropriate about this telephone call.

Customer Service Agent 1: *"I am not really understanding how the letter of apology was received but you never received any of the arrears letters..."*

I find that the above question is a reasonable one which was asked in a straightforward manner by Customer Service Agent 1.

In terms of compensation offered, the Provider submits, in a letter dated **16 October 2019** and addressed to the Complainant, that:

"In acknowledgement of the aforementioned service failing I am arranging for a cheque in the amount of €100 as a goodwill gesture, to issue to you under separate cover."

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The Provider revised this figure to €350 “*in full and final settlement*” in “*an effort to resolve this matter for the Complainant.*”

In summary, I accept that the Provider acted in accordance with the contractual **Terms And Conditions** of the Complainant’s credit card when Provider had debited €1,613.98 from his deposit account and set it off against the credit card debt. I also accept that the Provider did not issue any correspondence in relation to the balance of the Complainant's deposit account at the time of set-off being applied.

However, I believe the Provider’s offer of €350 is reasonable compensation for this lapse.

For this reason, I do not 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 rejected.

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**

13 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.

