



<u>Decision Ref:</u>	2022-0012
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Cards
<u>Conduct(s) complained of:</u>	Failure to process instructions
<u>Outcome:</u>	Partially upheld

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

This complaint concerns a credit card account held by the Complainant with the Provider.

The Complainant's Case

The Complainant submits that on **9 May 2016** she cleared all monies due on her credit card with the Provider and requested that the account be closed. The Complainant submits that two years later she sought a mortgage loan from a number of institutions and her application was declined. She contends that she discovered that this was due to her Irish Credit Bureau (**'ICB'**) record. The Complainant states that the Provider had not acted on her instruction to close the credit card account and had sent a submission to the ICB to record her credit card's status as "K" which indicated that it had been revoked.

The Complainant states that she *"wrote a letter of complaint [to the Provider] on the 1 August 2018 and to date we have received no satisfactory reply from the Provide...despite the passing of over ten months, [the Provider] has yet to confirm that their investigation has been completed to confirm their findings"*.

The Complainant states that due to this error she has been negatively prejudiced because of her ICB record when trying to secure a mortgage loan with her husband.

In a letter from solicitors for the Complainant dated **1 August 2018**, it is stated that the Complainant has been delayed a period of two years in getting a mortgage and the costs of materials and labour have risen significantly during that time and believes that the cost to the Complainant is in the region of €30,000 as a result of this delay. The Complainant's solicitor also states that the Complainant and her husband have had to live in rented accommodation due to the delay in having their mortgage approved and this has resulted in a cost of €10,000 rental payments.

The Complainant wrote a letter to this Office dated **15 March 2019** stating that she had no option but to make a complaint given the delay from the Provider in dealing with her complaint. She said that she had written a letter of complaint to the Provider on **1 August 2018** and had not received a response other than a monthly generic letter informing her that her complaint was being corrected.

The Complainant wrote a further letter to this Office on **23 May 2019** stating that there was still no progress from the Provider in respect of this matter.

The Complainant made further submissions to the Provider on **17 September 2020**. The Complainant provided some background to the matter. Of note, the Complainant stated that the Provider was able to close two mortgage accounts and a commercial loan account without written instructions. Furthermore, the Complainant notes that when the credit card issue was eventually discovered in **2018**, the credit card account was closed pursuant to a telephone conversation and no reference at that time was made to the request having to be in writing. The Complainant points out that the historical record in relation to such arrears can be viewed with the ICB for a period of 5 years, however, the Complainant submits that regardless of this, in **2018** when the Provider closed the credit card account, the Complainant was able to immediately secure a mortgage. The Complainant states that her borrowings are now at least €60,000- €70,000 more than was originally required in **2016**. The Complainant seeks the minutes of the meeting between the Complainant and the Provider on **9 May 2016**.

By way of email dated **4 November 2020**, the Complainant made further submissions to this Office. She queried why the Provider is not able to make the minutes of **9 May 2016** available when other records from the same time period are available and highlights the fact that the Provider has furnished other records and evidence from that exact date.

The Complainant wants the Provider to pay her compensation in the amount of €40,000 “in relation to the error and negligence” of the Provider, “which has caused stress and delay to [the Complainant and her husband] in relation to obtaining a mortgage to construct their principal private residence”.

The Provider’s Case

The Provider wrote to the Complainant on **15 February 2018** confirming that it had closed the Complainant’s credit card account “following your recent request”.

The Provider in its Final Response Letter dated **14 April 2018** states:

“I contacted our visa department and outlined your intention to close the account on 9th May 2016 rather than just clear the balance and can now confirm that our Visa department have agreed to back date the closures date to the 9th May 2016 and that will be reflected in any further ICB’s”.

The Provider made submissions to this Office dated **7 August 2020**. It stated therein that the Complainant attended her local branch on **9 May 2016** and lodged funds to clear the outstanding balance on the credit card account ending 9689. The Provider states that while the balance was cleared, the card still remained active and states that there is no correspondence from the Complainant dated **May 2016** requesting that the visa credit card account should be closed. The Provider states that the terms and conditions of the Complainant’s credit card require that notice of closure is provided in writing and the card is returned to the Provider (having been cut in two).

The Provider submits that on **8 February 2018**, the Complainant contacted the Provider and requested a letter from the Provider confirming that the credit card account had been cleared and closed. The Provider states that it then closed the account on **15 February 2018**.

The Provider states that the Complainant’s credit card began to accrue an arrears balance in early **2014** and continued to accrue arrears in **2014** and **2015**. As a result of these arrears, the Provider states that the Complainant’s credit card facility was revoked in **December 2015**. The Provider submits that in accordance with standard practice, when a credit card is in arrears it will be reported with a “K” profile to the ICB. It stated that this is clearly outlined in the credit card terms and conditions. It notes that had the account been closed on **9 May 2016**, the report of the ICB would still have confirmed the card as “credit revoked” because the account had been in arrears from early **2014** to **9 May 2016**.

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Therefore, the Provider submits that the ICB record would be maintained until 2021 whether or not the account was closed in **2016**.

The Provider stated that it issued letters to the Complainant informing her that her credit card was in arrears between **2012 – 2016** and these letters stated that her ICB profile may be affected and this in turn may affect her future ability to borrow.

The Provider states that *“in summary, the Complainant’s credit card was revoked correctly in 2015 as she did not pay the balance due which resulted in the account going into an arrears situation. The revoking of the card was completed correct. Regardless of any error made by the Bank in 2016, the revoked card would remain on the Complainant’s ICB profile for a period of 5 years. The card was not closed as the Complainant states it should have been, in **May 2016**, however, the Complainant had not been operating the card within the account terms and conditions prior to **May 2016** and her ICB record was already negative as a result.”*

In response to the allegation of delay in dealing with the complaint, the Provider furnished its responses to the complaint on **26 October 2018** and **20 August 2019** but offered little in the way of a substantive reply.

The Provider made a further submission to this Office by way of letter dated **1 October 2020**. The Provider states herein that due to the passage of time, it is not in a position to provide clarification with regards what issues may have been discussed at the meeting between the parties on **9 May 2016**.

The Provider made further submissions to this Office dated **23 November 2020**. The Provider states that the reason some records from **2016** are available and others are not, is because the available records are financial transactions which the Provider has to keep for a period of six years. Details of a credit card application, on the other hand, are only available for a 12 month period.

The Provider has made an offer of €5,000 to the Complainant in recognition of the delay/misunderstanding in closing the account and as a gesture of goodwill.

The Complaint for Adjudication

The complaint is that the Provider failed to cancel/close the Complainant’s credit card as instructed in **May 2016** and that the Provider delayed in dealing with the Complainant’s complaint.

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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 29 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 parties made further submissions, copies of which were exchanged between the parties.

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

Clause 22 of the Terms and Conditions of the credit card account is relevant herein:

"22 Expiry

(A) This Agreement shall continue until ended by either you or us. You may at any time end this Agreement by giving notice in writing to us and discharging all amounts outstanding on the Account...

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and by returning to us all Cards issued on the Account cancelled by being cut in two through the signature box, magnetic strip and Chip.”

I note that the Provider accepts that the credit card account was not closed in **May 2016** but states that this was because the Provider did not receive any written correspondence from the Complainant requesting that the account be closed at this time.

While I acknowledge that clause 22 of the Terms and Conditions of the credit card account stipulates that cancellation must be made further to provision of written request, I note that this was not explained to the Complainant by the Provider when the Complainant orally requested that the account be cancelled in **May 2016**. I also note that the Provider was able to close two mortgage accounts and a commercial loan account without written instructions in **May 2016** and furthermore, when the credit card issue eventually came to light in **February 2018**, the credit card account was closed pursuant to a telephone conversation and no reference at that time was made to the request having to be in writing. Therefore, I believe it is unreasonable of the Provider to attempt to rely on strict adherence to the stipulation that cancellation can only be implemented on foot of a written request when it has not demanded compliance with this requirement respect of other requests for cancellation and most particularly when it did not bring this requirement adequately to the Complainant’s attention in **May 2016** when she orally requested that the credit card account be cancelled.

In respect of the Consumer Protection Code 2012 (as amended) (**‘the CPC 2012 (as amended)’**), I note that the Provider did not process the Complainant’s request to cancel the credit card account in **May 2016** and therefore breached provision 3.3 which states that *“A regulated entity must ensure that all instructions from or on behalf of a consumer are processed properly and promptly”*. I also note that provision 2.6 states that a regulated entity must *“make full disclosure of all relevant information...in a way that seeks to inform customers”*. The Provider has breached provision 2.6 of the CPC 2012 (as amended) by not informing the Complainant that she was required to put her request in writing further to her oral request, in order to cancel her credit card.

Notwithstanding the fact that I accept that regardless of any error made by the Provider the information that the Complainant had a credit card revoked would have remained on the Complainant’s ICB record for a period of 5 years, I note that the Complainant was not able to obtain a mortgage until after the account was cancelled and this was backdated to **9 May 2016**. I note the Complainant asserts that this was extremely stressful for her as well as damaging to her in terms of monetary increases in the price of houses during the nearly two year period of time during which she states she could not obtain a mortgage.

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I have not been provided with evidence to confirm that the Complainant was denied a mortgage because of the conduct of the Provider or that the increased costs she incurred were a direct consequence of the Provider's conduct.

However, it is very evident that the Provider's conduct in not closing the Complainant's credit card account when instructed to do so, caused her significant inconvenience.

In respect of the complaint of delay in processing the Complainant's complaint, I note that the Complainant called the Provider seeking a letter confirming that the credit card account was closed on **8 February 2018** and this prompted the Provider to close the account on **15 February 2018**. This was a swift closure of the account by the Provider as it is clear it only realised its error when it was brought to its attention by the Complainant in **February 2018**.

In my Preliminary Decision I stated:

*The Complainant first made a complaint to the Provider by way of letter dated **1 August 2018**. A standard 40 day letter was issued by the Provider on **27 September 2018** and this was followed up by the Complainant on **10 October 2018**. The Provider issued a Final Response Letter on **26 October 2018** in the matter. While the Complainant sent further correspondence to the Provider on **22 January 2019** and **26 March 2019**, I note that the Provider's **26 October 2018** letter was clear that it was the Provider's Final Response to the matter and the Complainant should refer the matter to this Office if she had further issues. Provision 2.8 of the CPC 2012 (as amended) requires that the Provider "handles complaints speedily".*

Provision 10.9 of the CPC 2012 (as amended) requires that the Provider acknowledges each complaint on paper within "five business days of the complaint being received". There is no evidence that the Provider acknowledged receipt of the Complainant's complaint within five business days of the complaint being received and as it took the Provider 2 months and 3 weeks to issue a Final Response Letter to the Complaint, I do not accept the Provider handled the complaint lodged by the Complainant "speedily" or in accordance with both provision 2.8 and 10.9 of the CPC 2012 (as amended).

In its post Preliminary Decision submission dated 15 December 2021 the Provider states:

"The Bank wishes to make a submission as an additional point of fact to confirm that in accordance with Provision 10.9 of the CPC 2012, the Bank did acknowledge the Complainant's complaint within the required timeframe.

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I have attached a copy of the 5 day acknowledgement letter together with a screen shot taken from the Bank's Complaints Management System confirming the letter was issued by post within the required timeframe. You will see the relevant complaint ID 190444 along with details of the date the complaint was lodged with the Bank, 2 August 2018, and the date the 5 day acknowledgment letter was issued by the Bank, 9 August 2018. The deadline for issuance of the 5 day acknowledgment letter was Thursday, 9 August noting that Monday 6 August was a bank holiday.

It is dear, as evidenced, that the Bank In fact complied with Provision 10.9 of the CPC 2012 and on this basis we ask that you re-consider this aspect of your Preliminary Decision.”

The Provider also apologised for not including this evidence with its response to the complaint furnished to this Office in August 2020.

Based on the evidence now available to me I accept that the Provider did issue an acknowledgement in accordance with the requirements of the CPC.

In all the circumstances of this complaint, I do not consider the Provider’s offer of €5,000 to be sufficient. Neither do I believe the €40,000 sought by the Complainant to be appropriate.

In my Preliminary Decision I indicated my intention to partially uphold the complaint and direct the Provider to pay €9,000 compensation. The Complainant’s legal representative in a post Preliminary Decision submission state:

“We note your recommendation that a compensatory payment to our client is made for the sum of €9,000.

We have taken our clients instructions and my client has confirmed that provided our reasonable legal costs are also discharged by [the Provider], that she will be in a position to accept that payment of €9,000.

Therefore, when making the order and referring the matter to [the Provider] you might please bare in mind our clients’ instructions.”

This Office does not award legal costs. Where a party chooses to be represented by a third party in dealing with this Office any costs associated with such representation are a matter for the party concerned.

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As a consequence of the delay in closing the Complainant's credit card account, and the inconvenience imposed on the Complainant as a result of this, I partially uphold this complaint and direct that compensation of €9,000 be paid to the Complainant by the Provider.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2) (b)** for the Provider's unreasonable conduct.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €9,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



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FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

7 January 2022

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Pursuant to *Section 62 of the Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,
and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

