



<u>Decision Ref:</u>	2022-0076
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Cards
<u>Conduct(s) complained of:</u>	Disputed transactions
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to customer service and maladministration issues regarding a claim for an overcharged amount on a credit card transaction.

The Complainant's Case

The Complainant states that he made a purchase using his credit card at an outlet in early **January 2019** and the third-party merchant over charged him. The Complainant states that he notified the Provider by phone, email and post, however, it mislaid all correspondence and did not investigate his complaint. The Complainant states that he received "*multiple acknowledgements*" of his complaint however the Provider "*intentionally refused to maintain records from phone calls and mislaid postal/ email records*".

The Complainant stated at the time of his complaint to this Office (**July 2019**), that the most recent correspondence received from the Provider advised him that the matter had been passed to its complaints department, which was "*similar to over 30 previous interactions*" he previously had with the Provider.

In a later submission to this Office dated **17 December 2020**, the Complainant submitted an email chain between himself and the Provider dated **April 2020**. This submission refers to a phone conversation the Complainant had with an agent on **15 April 2020**, when it was indicated that his complaint had not been resolved because he had not submitted certain documentation.

The Complainant contends that this was incorrect and that the Provider "*admits that they had internal issues at their Dublin address in processing signed documents that were not being transferred to their UK based centre.*"

The Complainant also asserts that "*only some calls and account notes were logged or actioned*" by the Provider. The Complainant also states that an agent from the Provider's complaints team prematurely terminated a call when he was attempting to follow up on "*her standardised response*" to his complaint.

The Complainant wants the Provider to acknowledge its multiple errors, issue an apology and rectify the issue, including the payment of compensation "*for their unorthodox conduct*".

The Provider's Case

The Provider issued two final response letters dated **21 March 2019** and **29 April 2019** and states that it received an email from the Complainant dated **7 January 2019** stating that he had been over charged by €71.74 (seventy-one euro and seventy four cent) at a retail outlet on **5 January 2019**.

The Provider states this email was assigned to one of its agents to call the Complainant back, however following a clerical error, this call was never made and his issue was not properly escalated at that point.

The Provider states that the Complainant's issue relating to the overcharging was then escalated to its card services team on **22 February 2019** and following a review of a call with the Complainant, confusion arose with regard to the status of the disputed transaction. The Provider states that once the Complainant's dispute concerning the overcharging on his credit card was raised with the merchant third party, a temporary credit of €71.74 was applied to his credit card account on **22 February 2019** and a fraud declaration affidavit was issued to the Complainant to complete and return. The Provider states that the affidavit must be completed and returned, in order for the fraud investigation to progress. The Provider submits that by **March 2019** it had not been returned by the Complainant.

The Provider made reference to various emails it said it received from the Complainant dated **28 and 30 March 2019** and **1 April 2019**, stating it issued an email response to these on **8 April 2019**. The Provider submits that the Complainant's emails related to multiple calls the Complainant was receiving from the Provider between **March** and **April 2019** and the concerns he had, when it was apparent that the card security team could not determine who made the calls.

The Provider states, in the final response letter dated **29 April 2019**, that following a review of its records regarding outbound calls to the Complainant, it found that nobody from its customer services or card services team had attempted to call him, within this period. The Provider states, however, that members of its direct sales team attempted to contact the Complainant, prompted by a mortgage application that he had submitted online around this time. The Provider's direct sales team attempted to contact the Complainant twice on **30 March 2019** as well as on **2 April 2019** and **4 April 2019**.

The Provider states, as an update to the disputed transaction (as of **April 2019**) that the original fraud declaration affidavit was sent to the address held on its file on **22 February 2019**, following the application of the temporary credit for the overcharge that had occurred on his credit card. The Provider states that it requires the form to be completed, signed and returned by any customer who is disputing any transaction made on their credit card account. The Provider confirmed its thanks to the Complainant for completing the form and returning it.

The Complaint for Adjudication

The complaint is that the Provider failed to provide adequate customer service or adequately investigate an overcharge amount on the Complainant's credit card account which led to delays in processing the disputed payment.

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 **31 January 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

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Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

Communications between the parties

It is helpful to set out a timeline of key events in respect of the correspondence between the parties. The details below also include some comments which I consider it appropriate to make, regarding those communications.

- 7 January 2019** The Provider received an email from the Complainant with details of disputed payment, stating he was incorrectly charged €229.92 (two hundred and twenty-nine euro and ninety two cent), and hence was over-charged by €71.74. The disputed payment was to a third party merchant on **5 January 2019**.
- 8 January 2019** Email from Provider to Complainant which requested verbal contact regarding this disputed payment.
- 8 January 2019** Email from the Complainant to the Provider responding to the said request.
- 8 January 2019** Letter from the Complainant to the Provider regarding the disputed payment. I note that this letter was stamped by the Provider as being received on **9 January 2019**.
- 10-11 January 2019** Internal email chain between the Provider's card services team and the customer services team which stated the Provider was not responsible for the overcharge to the Complainant and that the Complainant would have to contact the third-party merchant to refund the amount.
- 23 January 2019** Telephone conversation between the Complainant and the Provider's customer service agent regarding an update of matters. During this call, the Complainant sought an update regarding the disputed payment. The Provider's customer service agent stated "*the transaction should have been flagged up*" on the Provider's system but was not. The Complainant then spoke to the Provider's card security team agent. During this call the Complainant stated that he had sent the required information regarding the details of the disputed claim to the Provider by way of post, two weeks earlier. The Provider's agent, after checking, ascertained that the Complainant had sent the letter to the Provider's head office. As a result, the Provider's agent stated he would chase down the letter, and once he had it, he would log the disputed payment on its system.

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- 23 January 2019** The Provider's card security card team agent then telephoned and discussed the issue with the Provider's customer service agent who stated that it received the letter at head office and would email the letter across to the card services team.
- 25 January 2019** Email from the Complainant to the Provider requesting update
- 28 January 2019** Email from the Provider to the Complainant noting update request.
- 20 February 2019** Email from the Complainant to the Provider requesting update.
- 21 February 2019** Email from the Provider to the Complainant which requested verbal contact.
- 21 February 2019** The Provider contacted the Complainant by telephone and left a voicemail when he did not answer.
- 21 February 2019** Email from the Complainant to the Provider requesting postal correspondence.
- 22 February 2019** Telephone call between the Complainant and the Provider's agent. The Complainant was returning a call after a voice message was left for him. The Provider's agent stated "*we are still waiting for the form*". When the Complainant stated that he was returning a call from agent "J", the Provider's agent stated that there was no J on the card services team. The Provider's agent credit card services then offered to contact the Provider's Dublin head office and "*chase up the matter*". The Complainant then sought to speak to the team manager from the Provider. After further discussion with the team manager, the Complainant was eventually put through to customer services in the Dublin head office.
- 22 February 2019** A Provider's agent, called M, spoke with the Complainant from the customer service team. M explained that J from the customer service card team was on a call and was unavailable. M also stated that "*I have no idea why the [credit card team] had passed you to me*". M then stated he would enquire further with the credit card team of the Provider.
- The Provider has since submitted to this Office that J was calling from the general customer services team, which led to the confusion.
- 22 February 2019** A Provider's agent from the credit card team then spoke with the Complainant. The said agent stated that the Provider was "*still chasing the form for you*" regarding the disputed amount. The Provider's operations manager, called "T", from the card services

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team then spoke with the Complainant, stating that the matter had been escalated to him. The Complainant was then asked once again to provide the information regarding the disputed transaction. I note that during this telephone call, the Provider's operations manager once again sought all the relevant information from the Complainant, at which point the Complainant stated he had concerns regarding his data because he had needed to repeat the information on numerous occasions. The Provider's agent stated that there was no dispute actually raised on the system, regarding any transaction.

The Complainant was then transferred to another Provider's agent. The said agent sought the information concerning the disputed payment, once again. Once he gave the details, the Provider's agent then stated that he would be required to complete a Declaration Form. The Provider's agent then stated that she would follow up the matter and *"I can guarantee you that the dispute was not raised previously"*.

The Complainant then spoke with the Provider's operations manager, T, once again, who stated that the emails were sent to the Provider's customer service team, and so he did not have the information to hand. However, he would look into it for the Complainant.

22 February 2019 The Provider has submitted a letter from this date which sets out the requirement that the declaration form be signed and returned in the *"self-addressed envelope"* enclosed with the letter.

22 February 2019 Email from Complainant to Provider expressing dissatisfaction with calls received and overall customer service. The Complainant stated that the agent from the Provider's card services team transferred him to the customer services team. However, the agent from the customer services team did not know why he had been transferred. He also stated that the operations manager of the Provider, T, stated there was no *"note/dispute on your system."* The Provider has submitted that a complaint was logged on this date also. He sought that the Provider process a formal complaint.

22 February 2019 The Provider has submitted (in a later letter of **21 March 2019**) that once a dispute was raised concerning the overcharging of Complainant's credit card by the third party merchant, a temporary credit for the amount of €71.74 was applied to the Complainant's card account on **22 February 2019**.

- 25 February 2019** The Provider has submitted a “*verbal complaint*” record which states that a complaint was made during a telephone call on **25 February 2019** regarding failure to provide a Declaration Form and failure to raise the dispute claim despite his **7 January 2019** email. I note there was no telephone call on **25 February 2019**, so it appears that this complaint was verbally made on **22 February 2019**.
- 28 February 2019** Complaint acknowledgement issued to Complainant by the Provider.
- 14 March 2019** Letter from Provider to Complainant requesting return of Declaration Form. The Complainant disputed that he received this letter.
- 21 March 2019** Complaint response issued by Provider.
- 25 March 2019** Email from Complainant to Provider.
- 28 March 2019** Declaration form received by the Provider.
- 28 March 2019** Email from Complainant to Provider.
- 30 March 2019** Letter issued from Provider to Complainant which noted closure of disputed transaction citing the Complainant’s apparent failure to submit a declaration form for the disputed transaction.
- 30 March 2019** Declaration form received by Provider's card servicing team.
- 30 March 2019** The Provider contacted the Complainant by way of telephone and left a voicemail when he did not answer.
- 30 March 2019** The Provider contacted the Complainant by way of telephone and left a voicemail when he did not answer.
- 30 March 2019** The Complainant telephoned the Provider, returning the call after the voice mail. The Provider’s agent was unable to inform the Complainant who had telephoned him.
- 30 March 2019** Email from Complainant to Provider regarding a voicemail he had received from the Provider. He stated that he spoke with multiple agents how did not know what the call was about and he “*was concerned for the safety of my accounts*”.
- 1 April 2019** Email from Complainant to Provider regarding the voicemail he had received from the Provider.

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- 2 April 2019** The Provider contacted the Complainant by way of telephone and left a voicemail when he did not answer.
- 4 April 2019** The Provider contacted the Complainant by way of telephone and left a voicemail when he did not answer.
- 4 April 2019** The Complainant telephoned the Provider, returning the call after the voice mail. The Provider's agent from the card services team then spoke with the Complainant. The Provider's agent from this department stated that the call was not from its team. The Complainant then spoke with the Provider's operations manager, T, from the card services team. The Complainant then raised a query as to why he was receiving these calls without having any information as to why he was being contacted or how he could return the call to the agent in question. The Provider's agent apologised for what had occurred and stated that he would ascertain why the Complainant had been called. He also promised that the Complainant would receive a call by "4pm the next day". The Complainant then provided his email address. I note that no call was made to the Complainant the next day.
- 8 April 2019** The Provider contacted the Complainant by telephone and left a voicemail when he did not answer. The Complainant then telephoned the Provider and spoke with an agent for the Provider's card services team. The Provider's agent made reference to letters it sent to the Complainant on **14 and 22 March 2019**. However the Complainant stated that he never received these letters, but only received a letter which was dated **27 March 2019**, and this was the first time he received a letter regarding the declaration form. The Complainant then queried with the Provider's agent from the card services team as to why the Provider's operations manager had not organised for a call back as promised on **4 April 2019**. The Provider's agent then stated that the operations manager in question was in a meeting but she would organise for him to contact the Complainant back. The Complainant then spoke with a Provider's agent regarding a mortgage facility. I note that this telephone conversation did not concern the card service issue or the complaint to this Office.
- 10 April 2019** Telephone call between the Complainant and the Provider's customer service agent. The Complainant stated that he wished to speak with the Provider's security team, as he had never received a call back regarding his issue. The Complainant also stated that the issue concerned various calls he had received from the Provider and the need to ascertain the origin of the calls for security reasons. The agent from the Provider's card services stated that no one from its team had contacted the Complainant.

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He stated he spoke with T who was the operations manager. The Complainant was then put through to the Provider card services agent, and stated he wished to be put through to security in Dublin as *"he was receiving mysterious calls."* The Complainant declined to speak with T, the operations manager, stating *"I don't want to speak to [T]"* and reiterated that he wished to be put through to *"security in Dublin"*. The Provider's agent stated she was unable to transfer him to the "security" and that he had been put through to her by the Provider customer service team. She then transferred the Complainant back to the customer service team.

The Provider's agent from the customer service team then stated that she would attempt to contact the security team. The Provider's agent also stated that there were not any notes on the file from T. After some attempts, the agent then stated that she tried to contact the security team, but was unsuccessful, and would *"get them to give you a call"*.

- 29 April 2019** Complaint response issued by the Provider to the Complainant.
- 7 June 2019** Telephone call between the Complainant and the Provider. The Complainant stated he wished to have an update regarding the disputed transaction from **January 2019**. During this telephone call, the Provider's agent stated that there were two disputes, one for €71.74 and another for €229.92. The Provider's agent stated that €71.74 was already refunded, and the other €229.92 was in process *"and you should already see it within 24 or 48 hours back into your account"*. It is noted that the Provider has submitted on **18 March 2021** to this Office the amount of €229.92 was incorrectly referred to by its agent and in fact that transaction had not been disputed by the Complainant. It has accepted that the agent was incorrect in noting the amount €229.92, however, it stated that a refund in this regard was processed.
- 7 June 2019** Email from Complainant to Provider regarding a full refund of the disputed amount.
- 7 June 2019** Email from Provider acknowledging Complainant's comments.
- 8 June 2019** Email from Complainant to Provider regarding complaint responses previously issued by the Provider stating *"I received no follow up to my complaint over many months, despite my calls and emails. Can you please check status of same. I appreciate staff may have intentionally failed to maintain / deleted records so this will make investigation difficult."*

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- 10 June 2019** The Provider has submitted that at this stage a further €71.74 was credited to the Complainant's card.
- 13 June 2019** Email from Complainant to the Provider requesting postal correspondence.
- 14 June 2019** Email from Provider to Complainant noting escalation to complaints team.
- 1 July 2019** Email from Complainant to Provider requesting update.
- 2 July 2019** Email from Provider to Complainant noting an escalation to complaints team.
- 4 July 2019** Email from Complainant to Provider noting matter had been escalated to this Office.
- 9 July 2019** Final response acknowledgement issued by the Provider.
- 30 July 2019** Final response letter issued by the Provider offering the Complainant €100, in recognition of his frustration with the level of service provided to him.
- 31 July 2019** Email from Complainant to Provider requesting data access request.
- 6 August 2019** Email Provider to Complainant providing location of data access request form online. This email also stated that because the final response had been issued, no further comments would be provided by the Provider.
- 7 August 2019** Letter from Provider to the Complainant which set out the matters included in the email of **6 August 2019**.
- 9 August 2019** Because the Complainant did not reject the settlement offer of €100 (one hundred euro), this was credited to his account by the Provider.
- 12 August 2019** The Provider contacted the Complainant by way of telephone and left a voicemail when he did not answer.
- 12 August 2019** The Complainant returned a call and spoke to a Provider's agent. The agent stated that she was returning the call of the Complainant. During the telephone conversation, the Provider's agent stated the final response letter had been issued "*and the matter had been investigated*". The Complainant stated that the Provider "*fraud section*" had never contacted him, despite multiple emails.

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I note that during this call, the Complainant was extremely rude to the agent and talked across her on numerous occasions. At one stage the Complainant raised his voice stating, *“Don’t sorry me, I’m not finished...do you not know the rules how to speak on the phone...when I finish speaking, I will allow you to speak”*. The Provider’s agent remained calm and professional throughout and at one stage asked that the Complainant afford her the same courtesy to speak. The Complainant again requested that *“someone from security call me back”*. The Provider’s agent stated that she was from the complaints section and stated that she could ask that her manager would contact him back.

- 13 August 2019** The Provider submits that it issued an *“ad hoc complaint response”* which stated that there would be no further comment as per its correspondence on **6 August 2019**.
- 13 August 2019** Email from the Complainant to the Provider which stated that he noted the Provider's agent was *“reluctant to actually follow up on security concerns”*. He stated that the final response letters issued by the Provider were, in his view, a *“standardised letter”*. And it appeared to him that staff were not interested in actually dealing to resolve system issues the Provider had. Accordingly the Complainant stated he would not be accepting the €100 offer which he stated was offered to hide the security concerns he had encountered. The Complainant also sought direct response from the head of security.
- 13 August 2019** Letter from Provider to the Complainant stated that it noted his dissatisfaction regarding his complaint and having reviewed the matter it again searched telephone records and said it was satisfied the only outbound calls made to him during **February** and **March 2019** were those listed in its previous responses of **21 March 2019** and **29 April 2019**. The Provider also noted the Complainant’s request to be contacted by a member of its fraud team, but stated it was unable to accede to this request.
- 14 August 2019** The Provider contacted the Complainant by telephone. The Provider’s agent stated that the Provider had no record of calls going out to the Complainant on the dates outlined in his emails. The Provider’s agent stated she could not provide him with contact details for the Provider’s fraud team. The Provider’s agent stated it was open to the Complainant to contact his telephone provider to ascertain the origin of the phone calls to his phone which he referred to, which were not from the Provider.

I note that Complainant was extremely rude during this telephone call, and at numerous stages did not allow the Provider's agent to speak. I also note that the Provider's agent remained calm and professional throughout the telephone call.

14 August 2019 Email from the Complainant to Provider following previous telephone call with complaints team manager. This email outlined the Complainant had contacted his telephone provider regarding the source of the inbound calls to his phone, however, the telephone provider would not provide such information to private customers. The Complainant stated that during the conversation with the Provider's agent, he had stated this information would be unavailable. He further submitted that this was a false statement on the part of the Provider, which is something he was surprised by. The Complainant also submitted that the Provider's systems were flawed and that the onus was on it to provide the information regarding the inbound calls and that the Provider's agent had *"confirmed he intentionally maintained no records of my interaction and requests"*.

26 August 2019 Email from the Complainant to the Provider which stated that his credit card statements dated **12 July** and **12 August 2019** indicated that the amount of €229.92 was in dispute. He stated that the bank had made multiple errors in following up on his complaint and the final response letters were standardised and did not address any of his concerns.

11 September 2019 Email from the Complainant to the Provider. The Provider has submitted that this email thread included email correspondence from the Complainant dated **26 August, 14 August** and **13 August 2019** which had been addressed to an invalid email address for the complaints team and the complaints team agents of the Provider.

20 September 2019 Email from the Complainant to the Provider.

24 September 2019 Telephone conversation between the Complainant and the Provider's agent. The Complainant made reference to a statement he had received which included a disputed amount.

There was a further telephone call on the same day between another agent of the Provider and the Complainant. The Complainant stated that it had been nearly nine months since the initial transaction took place in **January 2019** and it had still not been resolved. The Provider's agent stated the case had *"been escalated to the manager...and she would telephone him back tomorrow."*

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The Complainant stated that it had been already escalated months before that, and that he had raised the matter by way of post and email. The Provider's agent stated he was unable to deal with the matter as it was already escalated.

- 24 September 2019** Email from the Complainant to the Provider.
- 25 September 2019** €229.92 (two hundred and twenty nine euro and ninety two cent) credited to the Complainant's card.
- 25 September 2019** The Complainant contacted the Provider by way of telephone.
- 26 September 2019** Telephone conversation between the Complainant and the Provider's agent. The Provider's agent stated that the disputed amount transaction was "*written off*". She also stated that the delay was due to the delay in the process of raising a "charge back". However, she stated that the Provider's manager then decided to write off the transaction and therefore waive the charge back. The Complainant again queried why there was a delay in the process and stated that it was "*not satisfactory.*"
- 27 September 2019** Email from Complainant to the Provider.
- 8 October 2019** Email from the Complainant to the Provider.
- 15 April 2020** Telephone conversation between the Provider and the Complainant. The Complainant sought to raise a dispute regarding a new separate transaction due to the goods being damaged when received from another third party merchant. The Provider's agent stated that the form would be required to be sent via post. The Complainant again stated that he had issues with the Provider receiving his previous form in regard to the separate disputed transaction in **January 2019**. The Complainant stated that he wanted the dispute declaration form to be sent via email. The Provider's agent stated she put in a request that the said form would be sent via email, but could not confirm if that would be acceded to. The Provider's agent also stated that according to the Provider's records, the dispute declaration form had not been completed and returned by the Complainant in respect of the previous **January 2019** transaction. The Complainant sought the outcome of his complaint regarding the disputed amount from **January 2019**. I note that the Complainant spoke quite rudely during this phone call and failed to appreciate that the Provider's agent was doing her best to deal with the issue of the recent disputed payment claim.

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The Provider has submitted that its agent was confused, however, because the **January 2019** disputed transaction was brought up unexpectedly and she was not afforded an opportunity to review the matter in more detail.

I accept the Provider's submission and I am satisfied its agent had tried her best to deal with an unexpected complaint. In particular, the Complainant spoke rudely and made the telephone call very difficult for her to conduct a review of the matter.

- 15 April 2020** Email from the Complainant to the Provider. This email made reference to the telephone call made earlier that day. The Complainant submitted that the Provider's agent had claimed that he did not receive a form in respect of his previous **January 2019** disputed payment claim and stated that the Provider was aware of multiple items of correspondence regarding this. He also again raised the issue of the telephone calls which he stated were not recorded.
- 17 April 2020** Email from the Provider to the Complainant responding to his email.
- 17 April 2020** Email from the Complainant to the Provider requesting complaints to be logged.
- 22 April 2020** Telephone conversation between the Complainant and the Provider's agent. The Provider's agent stated that the Provider would not be able to send the dispute declaration form via email. The Provider's agent then transferred the Complainant to the fraud department (also referred to as the card security team) after his request. The Provider's agent from the card security team spoke with the Complainant and stated he would send out the dispute declaration form again.
- 23 April 2020** The Provider issued a complaint acknowledgement via email.
- 23 April 2020** Email from Complainant to the Provider requesting previous correspondence to be posted to him.
- 28 April 2020** The Provider issued a complaint response via email.
- 28 April 2020** Email from Complainant to the Provider requesting previous correspondence to be posted to him.
- 1 May 2020** Email from Complainant to the Provider noting previous complaint. The Complainant made reference to the letter which the Provider had copied to his previous email dated **27 April 2020**.

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The Complainant submitted that he never received this letter of **27 April** and stated *"I assume was manufactured by you is a false record given that is [sic] post dates the actual complaint letter."* The Complainant also made reference to a recent phone call concerning his **January 2019** disputed claim, which he stated that Provider's agent told him was not closed due to some issue on his part. He stated that this was wholly incorrect as the Provider's agent never advised him of any issue and he assumed it was all correctly refunded. Having again reviewed the **30 July 2019** final response letter, I am satisfied that the Provider's agent did not make any reference to the disputed payment claim being left open, due to any issues.

8 May 2020

The Provider issued a complaint acknowledgement via email.

29 May 2020

Letter from Provider to the Complainant which contained a 20 day complaint update.

17 June 2020

Final response letter issued to the Complainant. The Provider stated that because of COVID-19, it did not have the capacity to issue all of its correspondence by post so it relied on encrypted email as its main method of issuing the correspondence. As a result, it received an email from the Complainant stating that he could not access the encrypted email issued to him and after he requested that it be issued by post, the Provider did so. The Provider stated that following its investigation it issued its response to his complaint on **27 April 2020** by email along with the disputed payment forms.

The Provider stated it had received correspondence from the Complainant on **20 April 2020** requesting the documentation be posted which it did. The Provider also stated that the reason the letter dated **27 April 2020** had post-dated the complaint, was because it had been sent from the credit card services team to the complaints department because the current services team do not have the facility to email complainants directly, but the complaints team do. Accordingly I do not accept the Complainant's assertion that the **27 April 2020** letter was "manufactured" or is a false record.

The Provider stated that, though the disputed payment form was returned by the Complainant, there was outstanding information and it asked that the Complainant contact its card security team to discuss what was needed in this regard. The Provider stated that it had no further comment to make in respect of the **30 July 2019** final response letter.

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- 19 June 2020** Email from Complainant to the Provider. The Complainant again raised the issue why the Provider's agent during the **15 April 2020** telephone call had stated that the disputed claim form could not be sent by email. The Complainant also stated that he had not been made aware until the most recent correspondence that the Provider "*did receive my postal correspondence in **January 2020***". The Complainant again raised the issue of the **January 2019** disputed transaction.
- 26 June 2020** The Provider issued a complaint acknowledgement via email.
- 17 July 2020** Letter from the Provider to the Complainant which contained a 20 day complaint update.
- 24 July 2020** The Provider's final response letter issued for the complaint.
- 28 July 2020** Email from the Complainant to the Provider.
- 5 August 2020** Letter from the Provider to the Complainant which contained a 20 day complaint update.
- 25 August 2020** The Provider's final response letter issued for the complaint.
- 16 October 2020** Email from the Complainant to the Provider.
- 19 October 2020** Email from the Provider to the Complainant which contained copy of correspondence dated **25 August 2020**.

The Provider has submitted in its letter of **21 March 2019** that it received the Complainant's email of **7 January 2019**, stating that it was assigned to a Provider's representative to telephone and discuss the matter but "*Due to a clerical error, this call was not returned to you and the query was not escalated appropriately thereafter. We would like to sincerely apologise for this.*" The letter also stated that it had yet to receive the Complainant's declaration form. The letter included the details of the FSPO.

The Provider, in a later submission to this Office on **18 March 2021**, stated that the reference to "*Fraud Declaration Affidavit*" in its letter of **21 March 2019** "*may be misleading and we apologise if it has caused any confusion*" as that is the Provider's internal term for the form and the correct term when dealing with customers is a "Declaration Form". I am satisfied that this was an error on the part of the Provider.

I note that in an email dated **25 March 2019**, the Complainant stated to the Provider that he had never received the declaration form prior to the **21 March 2019** complaint response. Although the Provider has supplied a word document of the **22 February 2019** letter, with the Complainant's declaration form, this is not on headed paper and the Provider has not shown any evidence to demonstrate that it was actually sent.

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Accordingly, I accept that the Complainant was not sent the Declaration Form prior to **21 March 2019**.

The Complainant further raised this issue in an email dated **28 March 2019**, where he stated that he had received a letter dated "**14 March 2021**" from the Provider's card services team, which included the Declaration Form. However, he again stated that this date on the letter was incorrect. The Complainant further raised an issue with various phone calls he had received from the Provider, in an email dated **2 April 2019**.

I note that in the Provider's response to the complaint dated **29 April 2019**, it stated that the Declaration Form was sent out by letter on **22 February 2019**. As I have already stated, in the absence of evidence that this letter was delivered to the Complainant, I do not accept that this part of its complaint response was accurate. This complaint response letter also stated that the Provider attempted to contact the Complainant on **30 March 2019** at 11.23am and 12.46am, **2 April 2019** at 14.54pm and **4 April 2019** at 14.53pm. I have considered the content of the telephone calls that were made to the Complainant and I accept the Provider's explanation. During the voice messages left on the Complainant's phone, I note that the Provider's agents clearly identified themselves to be from the Provider and referred to as "business" contact. I also accept that during the telephone calls made on **2 and 4 April 2019**, the Provider's agents identified themselves by name.

The Provider has submitted, in a letter to this Office on **18 March 2021**, that following a telephone conversation with the Complainant on **7 June 2019**, it was determined by the Provider that a page from the declaration form had been mislaid internally and it was agreed to write off the disputed transaction and this was credited to the card on the **10 June 2019**. The Provider also stated that because its agent during the telephone call of **7 June 2019** had referred to the full amount of €229.92, this full amount was refunded. The Provider has also stated that its agent correctly stated that no disputed declaration form was received because she had mistakenly referred to the €229.92 as the disputed amount, but in fact it was only €71.74 which was disputed.

On **4 July 2029** the Complainant issued a complaint to this Office and submitted that the Provider refused to investigate the overcharging of his account in **January 2019**. He stated that he notified the Provider by email and post. He stated the Provider "*intentionally refused to maintain*" records from his phone and mislaid postal and email records. He stated at the time of the complaint to this Office, that he had been recently advised by a Provider's agent that the matter was passed to its complaints department.

The Provider issued a final response letter on **30 July 2019** in respect of the complaint made on **22 February 2019** which had been further followed up on **28 and 30 March 2019** and **1 April 2019**. The Provider stated that having reviewed the matter it was satisfied that its previous correspondence dated **21 March 2019** and **29 April 2019** addressed the issues raised and in this respect it considered those letters its final responses on the matters.

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The Provider acknowledged the Complainant's frustration with the level of service he had received and offered him a customer care award of €100 in full and final settlement of the matter (which I note was paid to the Complainant's account in August 2019, as he had not advised that the Provider's offer was rejected).

On **28 April 2020** the Provider issued its complaint response by email. The Provider stated that it could confirm that it received an answer from the Complainant in **January 2020** regarding a transaction made using his credit card and it attempted to contact him on **29 January 2020** in order to discuss the matter, as the exact payment details were not laid out. It stated that, following an email from the Complainant, it again attempted to contact him by telephone on **25 February 2020**. Regarding the Complainant's previous complaints it stated that it had no further comment to make in addition to its final response of **30 July 2019**.

In its final response letter dated **24 July 2020**, the Provider stated that the Provider's agent during a telephone call on **15 April 2020** was correct in stating that it's not the Provider's process to issue documents by email however because the complaint specifically mentioned the concerns the Complainant held regarding postage of documents, it made a one time exception to email these documents on the basis of his complaint. The Provider stated that the Provider's agent was following the correct process and was not providing false information. The letter also stated that the Provider attempted to contact the Complainant regarding his **29 January 2020** letter, by way of telephone call on **25 February 2020**. The Provider stated that its policies do not require a written request to be issued by post as telephone contact is deemed sufficient.

The letter also stated the following regarding the **January 2019** disputed transaction.

"... we note you state on 15th April 2020 the agent you spoke to informed you that your case with [third party merchant] was not closed. We can confirm, on review of the call that the agent informed you that we attempted to contact you regarding this, and received a form from you. However, the transaction details were not included in this and the time frame for raising the dispute had passed. The agent confirmed that they would refer this to the complaints department for review. We can confirm this was reviewed and as outlined previously, this matter is closed and we have issued our final response on that matter."

In an email dated **28 July 2020** the Complainant responded by querying if the Provider's difficulties with internal and external post had been addressed. He also queried why only certain items could be emailed to him. In respect of the **January 2019** disputed transaction, he stated that the Provider was now for the first time in **July 2020**, claiming that there was an issue with the form. He stated the Provider had full details of the disputed amount through various correspondence by email phone and post. He stated that the Provider admitted that it mislaid related items of correspondence at its Dublin office. The Complainant sought that the Provider clarify the situation and queried why it closed the matter when it was asked to review. He also made reference to certain items being refused, in his data access request.

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On **25 August 2020** the Provider issued a final response letter to the Complainant. The Provider stated that there were no postal issues internally with the Provider. It stated that it wished to correspond with the Complainant by email, as this was requested by him due to his concerns regarding the postage of documents. However, because he was unable to open the encrypted mails, its correspondence was subsequently posted out. The Provider stated that it attempted to contact him twice on **29 January 2020** and **25 February 2020** regarding queries on the disputed transactions, adding that once it had attempted to make contact, it would consider that the responsibility lay with a customer raising the dispute, to follow up on those call attempts, as it could not escalate the dispute without the information required. Regarding the **January 2019** disputed transaction, the Provider stated the transaction details were not included in the document returned at the time, and the time frame for raising the dispute had passed. The matter was reviewed by the Provider's complaints department at the time of the complaint and the matter was closed after it issued a final response letter.

On **18 March 2021**, the Provider made submissions to this Office. It stated it reviewed the telephone call between its agent and the Complainant on **22 February 2019** and stated:

"it is clear there was confusion and we agree that the initial agent could have taken earlier action to check with the other areas within the Provider to determine of the caller was from another department."

I note that the Provider explained in its submission, that its Agent "J", was calling from its customer service team regarding the disputed payment. However, when the Complainant returned the call after J left a voice message, the Provider acknowledged that *"the Complainant was passed between the Customer Services Team and the Card Services Team and his experience was poor"*. The Provider submitted that by way of explanation, the Complainant was passed *"to the Customer Services Team in an attempt to alleviate the concerns that the calls were not genuine."* It also acknowledged *"the Complainant's frustration at being required to provide details of the disputed transaction and that the Complainant was of the impression that he had already provided these details during previous calls."*

In my opinion, the evidence available shows that there has been very poor communication between the various departments and agents of the Provider who were often unable to disclose relevant information to the Complainant during the numerous phone calls. The Provider also failed to return calls on two occasions on **4 April 2019** and **January 2019** and overall in my opinion, it did not process the Complainant's instructions regarding the disputed transaction, properly or promptly. I am also satisfied that there was poor customer service on the part of the Provider in the circumstances.

Article 93 (b) of the 2018 **Payment Services Regulations** states that a payment service user, who in this case is the Complainant, must *"notify the payment service provider concerned, or an entity specified by the latter for that purpose, without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument."*

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I note that the letter from the Complainant seeking the refund was first received by the Provider on **9 January 2019**, very promptly after the transaction of 5 January 2019, had taken place. The Declaration Form was received by the Provider on **28 March 2018**.

Article 95 states that:

“(1) A payment service user is entitled to rectification of an unauthorised or incorrectly executed payment transaction from a payment service provider only where the payment service user notifies the payment service provider without undue delay on becoming aware of any such transaction giving rise to a claim, including a claim under Regulation 112, and no later than 13 months after the debit date.”

Article 69 (3) of the 2018 Reg states *“(3) A payment service provider shall, where applicable, make available to a payment service user in an easily accessible manner any other relevant information specified in Regulation 76”*.

Article 101 of the 2018 Reg states that:

*“(1) A payer may request a refund under Regulation 100 up to 8 weeks from the date on which the funds concerned were debit.
(2) Within 10 business days of receiving a request for a refund, a payment service provider shall either refund the full amount of the payment transaction or provide reasons for refusing the refund and indicate the bodies to which the payer may refer the matter in accordance with Regulations 121, 124 and 125 if the payer does not accept the reasons provided.”*

I further note under Article 65 of the 2018 Reg which states *“Where in proceedings in relation to these Regulations a dispute arises as to whether or not the information requirements set out in this Part have been complied with, the burden of proof rests with the payment service provider.”*

I note that the letter from the Complainant seeking the refund was first received by the Provider on **9 January 2019** (the Complainant also emailed it on **7 January 2019**). The Provider stated in an internal email on **10 January 2019** that a call back would be required with the Complainant regarding the refund. I note, however, that the declaration form was only provided to the Complainant when the Provider sent him a letter regarding his complaint on **21 March 2019**. This Declaration Form was received by the Provider a week later, on **28 March 2019**.

If the Provider's notification procedure required the Declaration Form in which to start the disputed payment process, the Provider failed to provide such a form in any sort of expeditious manner.

In addition, I note the Provider only first refunded the €71.74 on **22 February 2019**, which was well in excess of the 10 business days set out in Article 101 of the 2018 Reg. I am satisfied the Provider did not comply with Article 101 as a result.

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I note that the Provider has submitted that during the **12 and 14 August 2019** phone calls, it was difficult to *“conduct meaningful conversations with the Complainant”*. It also submitted that regarding the telephone calls generally, it wished for it to be noted *“that the Complainant’s manner made it difficult to conduct productive conversations on many occasions.”* Having carefully reviewed the content of the calls, I accept the Provider’s submission and I also do not accept that the Provider’s agent terminated a telephone call.

Although I understand the Complainant’s frustration with the Provider’s poor customer service when updating him as to the status of his concerns, he often spoke rudely and did not allow the Provider’s agents time to respond. He was particularly discourteous during the phone calls on **12 and 14 August 2019** and I note that the Provider’s agents were commendable in maintaining an even-mannered and professional tone throughout. I note that on **4 April 2021** the Complainant submitted to this Office that a Provider’s agent was *“abusive on the phone”*. Having reviewed the telephone calls, I do not accept the Complainant’s assertion in that regard.

The Complainant has stated that the Provider *“intentionally refused to maintain”* records. Although I am satisfied that the Provider made errors at times and failed to provide proper customer service, I do not accept that it *“intentionally refused to maintain”* records, The Complainant has also failed to submit any evidence to support this assertion.

The Provider has submitted that:

“Having reviewed the complaint responses issued to date we are satisfied that we have acknowledged the Complainant’s frustrations with the service he received and offered apologies in our correspondences dated the 21st March 2019, 29th April and 30th July 2019 We wish to renew our sincere apologies in this regard.

We also wish to highlight that in recognition of the Complainant’s experience, a customer care award of €100.00 was offered as detailed in our correspondence dated the 30th July 2019. This amount was credited to the Complainant’s [Provider] Current Account on the 9th August 2019. This is in addition to the refunds of €71.74, the Complainant has received €401.66 over and above the disputed transaction amount.”

I note that the Complainant has received €401.66 (four hundred and one euro and sixty six cent) over and above the disputed transaction amount of €71.74. I consider this to be a reasonable sum of compensation for the Complainant, taking account of the evidence available in this matter. I also note that the Provider has made a full apology for what was a significant failure in the service made available to the Complainant in respect of what should have been a straightforward issue of disputing an item of over-charging to his account. One can well understand the Complainant’s frustration with the issues caused by the Provider’s poor customer service, but the situation was certainly not helped by the Complainant’s own discourteousness during his telephone dealings with some of the Provider’s staff.

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The complaint which is the subject of this investigation is that the Provider failed to provide adequate customer service or adequately investigate an overcharge amount on the Complainant's credit card account which led to delays in processing the disputed payment. For the reasons set out in this Decision, noting that the Provider accepted its short-comings and paid €401.66 in compensation to the Complainant, I do not consider it necessary or appropriate to uphold this complaint or to make any further direction for additional compensation to the Complainant.

The Complainant indeed has not sought additional compensation. Instead, he has sought for this Office to "*clarify that such an issue could not arise in the future*". This investigation however does not address any potential future issues that may or may not arise. In the event of any similar issues in the future, it would of course be open to the Complainant to raise that matter and resolve it directly with the Provider, and if not resolved it would of course be open to the Complainant to pursue a complaint to this Office.

The Complainant has also commented "*about a regulated bank having robust systems in place to correct errors*". This is a more general matter, separate from the particular complaint which was made to this Office, and this is something that the Complainant may wish to raise with the Central Bank of Ireland, as the regulator of financial service providers.

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.



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

2 March 2022

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.