



<b><u>Decision Ref:</u></b>	2019-0311
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Credit Cards
<b><u>Conduct(s) complained of:</u></b>	Failure to process instructions in a timely manner Delayed or inadequate communication Failure to provide accurate account/balance information Failure to provide correct information
<b><u>Outcome:</u></b>	Upheld

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

**Background**

The complaint relates to the Complainant's credit card account held with the Provider.

**The Complainant's Case**

The Complainant submits that he phoned his credit card company to cancel his credit card after becoming aware of unauthorised payments made on it, in **mid-April 2017**. The Complainant submits that 16 unauthorised transactions totalling €3,782.56 were made on the card. A refund was initially declined by the Provider in respect of these transactions before eventually being granted. However, due to the mechanism employed by the Provider in addressing the request for a refund, reduced payments were sought from the Complainant (in the absence of any such instruction from him) in respect of his credit card liability over a period of four months, before a very large payment was then sought, and rejected, in the fifth month.

In a letter to the Provider dated **1 September 2017**, the Complainant states that the "*credit card has fallen behind in payments, I signed a direct debit to have the amounts due on the credit card taken from my current account*". In its Final Response Letter to the Complainant

on **25 September 2017**, the Provider explained its process in relation to the disputed transactions stating “[w]hen a transaction is placed into the dispute system, this removes the transaction from the amount due by direct debit until the matter is resolved, and interest is not applied to the disputed amount”.

The Provider submitted that, due to an administration error, the transactions were not removed from the dispute system at that time, resulting in the direct debit amounts due for repayment being reduced by €3,782.56 each month. The Provider states that “[i]n May and June 2017, the amount due was lower than the amount in dispute, therefore no direct debit was processed. In July 2017, your direct debit processed for €141.59”. The transactions were only removed from the dispute system on 10 August 2017 and the Complainant’s direct debit then processed for the full outstanding balance of €4,923.64 which was refused, due to insufficient funds on 25 August 2017.

The Complainant submits that he had to cash a pension policy to discharge the payment. The Complainant also highlights the time lost and inconvenience caused to him. In his original complaint, the Complainant sought compensation in the amount of €2,500.00 in respect of the foregoing. Following the Provider’s response to this office (detailed below) the Complainant revised his claim to seek payment in the total amount of €8,588.04 together with an assurance that his credit history is not affected.

### **The Complaint for Adjudication**

The complaint is that the Provider incorrectly administered the Complainant’s credit card account.

### **The Provider’s Case**

In its response to this Office received under the cover of letter dated **18 December 2018**, the Provider stated as follows:

*The Bank acknowledges the errors that have occurred in this dispute, and the inconvenience experienced by the Complainant as a result of same. The Bank would like to apologise to the Complainant for these errors and would like to offer the Complainant a goodwill gesture payment in the sum of €4,282.27, which is made up as follows:-*

- *€1,782.27 in relation to the total tax liability incurred by the Complainant on cashing in his pension (made up of €1,485.23 in Tax + €297.04 in USC) and*
- *€1,500.00 in relation to the error that occurred over a period of three months, from May to July 2017, as a result of the Bank not collecting the correct Direct Debit payment, and the Bank’s error in not issuing a letter to notify the Complainant of its error regarding the removal of the transactions from the dispute system, and*

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- *€1,000.00 payment to acknowledge and apologise for the Bank's errors, the inconvenience experienced by the Complainant as a result of same.*

### **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 7 August 2019, 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.

Following the consideration of an additional submission from the Complainant, the final determination of this office is set out below. In considering the substance of the complaint, it is useful to set out a brief chronology of events.

### **Chronology**

25 March 2017	The Complainant phoned the Provider indicating that he had made a <i>"stupid mistake"</i> insofar as, in an effort to purchase share trading software, he had given <i>"his card details to a crowd in America which I have now found out are fraudulent"</i> . The Provider explained that because the Complainant had actually provided the card details willingly, the Provider would not characterise the transaction as fraudulent. The Complainant instructed the Provider to block the card. The Provider advised that a total of 16 transactions of €236.41 each had already been processed. This aggregated to a total amount of €3,782.56. The Complainant requested that these transactions be
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	cancelled but was advised that this was not possible in circumstances where the Complainant had provided the card details willingly.
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March 2017	The Complainant phoned the Provider indicating that he was seeking the refund of the amounts withdrawn from his account. The Provider reiterated that, as the Complainant had provided his card details, the Provider <i>"would not be able to report it as fraud"</i> . The Provider advised that it would remain an option for the Complainant to <i>"dispute the transaction"</i> .
28 March 2017	Letter from the Complainant to the Provider stating that at the time Complainant phoned the Provider on 25 March 2017, the card had been <i>"scammed 6 times"</i> and suggesting that the card was 'scammed' a further 10 times after the call. This seems to have been an incorrect statement insofar as the Complainant had been advised on 25 March 2017 that the 16 transactions had already been processed at that time. The letter communicated the Complainant's wish <i>"to dispute"</i> the transactions and to receive a refund of the monies.
5 April 2017	The Complainant phoned the Provider to enquire whether any of the funds had been refunded by the American merchant and was advised that no refund had been made. The Provider again reiterated that, as the Complainant had provided his card details, the Provider <i>"cannot state that it is fraudulent"</i> . The Provider advised that it would remain an option for the Complainant to <i>"dispute the charges"</i> but the Provider expressed doubt as to whether same would be successful. The Provider advised the Complainant on the process to initiate such a dispute.
18 April 2017	The 16 transactions were placed in a <i>"dispute queue"</i> and subsequently referred to the card fraud team. The Provider maintains that the card fraud team <i>"refunded the Complainant the full amount for the sixteen transactions"</i> on this day. A credit card statement dated 21 May 2017 appears to support this proposition. However, the Provider goes on to state that <i>"[a]t that time, fifteen of the transactions were not removed from the dispute queue in error"</i> . The Provider went on to explain the ramifications of this:  <i>"When a transaction is placed into this the dispute queue, the transaction is excluded from the amount due for a settlement from a customer's Credit Card bill whilst the investigation is ongoing. This meant that although the transactions were reversed they continued to appear in the dispute queue and the amount owing by the Complainant each month was reduced by this value."</i>
24 April 2017	Credit Card Bill noting balance of €4,791.30 but seeking a minimum payment of €1,245.15 only in circumstances where liability was reduced by €3,546.15 due to the 15 transactions in the dispute queue.

25 April 2017	Letter from the Complainant to the Provider claiming that at the time of reporting the matter, three of the transaction only had been processed and that a further 13 transactions occurred thereafter <i>"despite my instructions"</i> . This seems to have been an incorrect statement insofar as the Complainant had been advised on 25 March 2017 that the 16 transactions had already been processed. The letter sought a refund of the monies. The letter renders it clear that the Complainant was unaware that the 16 transactions had already been refunded.
21 May 2017	Credit Card Bill noting balance of €851.50 (the impugned transactions had been refunded in the period to which this bill related) but seeking no payment in circumstances where liability was reduced by €3,546.15 due to the 15 transactions remaining in the dispute queue.
22 June 2017	Credit Card Bill noting balance of €2,555.69 but seeking no payment in circumstances where liability was reduced by €3,546.15 due to the 15 transactions remaining in the dispute queue.
21 July 2017	Credit Card Bill noting balance of €3,687.74 but seeking a minimum payment of €141.59 only in circumstances where liability was reduced by €3,546.15 due to the 15 transactions remaining in the dispute queue.
10 August 2017	The 15 transactions were removed from the dispute queue which resulted in the amount owing by the Complainant for this month increasing by €3,546.15 (15 x €236.41).
22 August 2017	Credit Card Bill noting balance of €4,923.64 and seeking payment in the full amount circumstances where the 15 transactions had been removed from the dispute queue.
25 August 2017	Letter from the Provider to the Complainant noting that direct debit payment of €4,923.64 had failed.
31 August 2017	The Complainant phoned the Provider having received the letter of 25 August 2017 complaining as to why a minimum amount only had been sought for payment in respect of his credit card liability in the bills from April – July in circumstances where he had given no such instruction and in circumstances where this action had given rise to an unexpectedly large request for payment in August.
<b>25 September 2017</b>	The Provider's <b>Final Response Letter</b> in which an accurate explanation was given by the Provider together with an apology and in which the Provider indicated that it had credited the Complainant's account with €50 <i>"as a gesture of goodwill"</i> , by way of compensation.
6 November 2017	Letter from the Complainant to the Provider declining the <i>"paltry offer"</i> of €50 and indicating his wish to be refunded the <i>"tax liability"</i> .
<b>29 November 2017</b>	The Provider's <b>second Final Response Letter</b> notifying the Complainant that a further €300 had been refunded to his account <i>"in light of the inconvenience caused"</i> .
18 December 2017	Letter from the Complainant to the Provider reiterating his view as to his entitlement to a refund of the <i>"tax liability"</i>

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<b>03 January 2018</b>	The Provider's <b>third Final Response Letter</b> standing over the letter of 29 November 2017 and indicating that the Provider was " <i>not in a position to refund the total amount</i> " requested.
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### Analysis

The Provider in this matter, having initially disputed that the Complainant would be entitled to any refund in respect of certain 'scam' transactions, refunded the Complainant in full in respect of these transactions on 18 April 2017. The Provider does not seek to look behind that decision and accordingly it forms no part of the adjudication of this complaint, to analyse the merits or otherwise of the decision to refund. Rather, this complaint concerns the Provider's protocol employed, once that decision to refund was made.

In this regard, the Provider has accepted its failings. The chronology set out above draws heavily on the material furnished to this office by the Provider and clarifies what in fact occurred in the lead up to this complaint and how this was the result of an error on the part of the Provider. In short, the Provider made an error in failing to remove 15 of the impugned transactions from the "*dispute queue*" following the refund of all 16 of the transactions on 18 April 2017. This resulted in an artificial reduction of the Complainant's monthly credit card liability for a period of 4 months, during which period, no payment at all was sought in 2 of the months and a small payment only (€141.59) was sought in a third month. This was despite the Complainant continuing to incur his usual monthly expenditures on the credit card. The result of the foregoing was that, when the error was rectified (ie when the 15 impugned transactions were removed from the "*dispute queue*") the Complainant was suddenly faced with a bill very substantially larger than he would normally face and it is not surprising that the direct debit seeking the full very large amount, was returned unpaid.

The Complainant was rightly aggrieved at this, given that he had provided no instruction regarding any reduction to 'minimum' payments (his standing instruction was that 100% payments should be taken) and given also, that he had received no explanation or notification from the Provider regarding the removal of the scam transactions from the "*dispute queue*" and the implications of this. Notwithstanding that the total figure sought for payment in August 2017 from the Complainant was properly incurred by him, the Complainant was entirely justified in feeling aggrieved that his liability had not been reduced incrementally and regularly in the usual fashion with the result that, in effect, demand for payment was made of him in August for three months of expenditure.

The Provider eventually explained the error and apologised in its Final Response Letter of 25 September 2017 and I am satisfied that the explanation and the apology were appropriate. I will now turn to the compensation offered both initially and subsequently.

The compensation offered initially by the Provider in **September 2017** was the sum of €50. The Complainant viewed this offer as "*paltry*" and it would be difficult to disagree with him in that regard. In my opinion, compensation of €50 was grossly inadequate given the impact had on the Complainant who had to cash in a pension policy to meet the August 2017 bill. The additional €300 offered in **November 2017** by the Provider represented the Provider's position until after the formal investigation of this complaint was commenced.

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By way of response to the formal investigation, the revised offer advanced by the Provider in **December 2018** (as quoted in its entirety above) proposed compensation under three headings. The figures proposed by the Provider in respect of *“total tax liability”* and in respect of *“the error that occurred over a period of three months”* have been accepted by the Complainant. The relevant figures are €1,782.27 and €1,500.00 respectively. However, with regard to compensation for inconvenience, whereas the Provider has proposed €1,000.00, the Complainant seeks €5,000.00.

At the outset, it is worth noting that the Complainant originally sought compensation in his complaint form to this office, in the total amount of €2,500.00. At the time of issuing the Preliminary Decision, I took the view that the figures advanced by the Provider as suggested compensation, were appropriate and fair in the circumstances. I noted that the Provider had borne 100% of the loss incurred by the Complainant in encashing his pension plan and this was appropriate. The Complainant had no other quantifiable financial loss in circumstances where the credit card bill ultimately faced by him was for items charged which were properly incurred by him. From a review of the credit card bills, there does not appear to have been, for example, any interest charged on the account over the relevant period, in respect of which the Complainant might otherwise have been entitled to a refund. Additionally, the Provider had confirmed that €35 in account fees (i.e. a total of five €7 ‘unpaid fees’ or ‘late payment fees’) had already been refunded.

Accordingly, over and above the 100% redress for quantifiable losses, the Provider had essentially offered €2,500 compensation for its failings, having elected to divide this figure into two specific subsections. I was satisfied that, in the circumstances, the total figure was adequate compensation for the *“inconvenience”* and *“time lost”* and *“life disruptions”* cited by the Complainant particularly as the €2,500 offered was in addition to the €50 refunded as notified in the correspondence of 25 September 2017 and in addition to the €300 refunded as notified in the correspondence of 29 November 2017.

The Complainant also sought an assurance that his credit history had not been affected. He was presented with the unexpectedly high credit card bill on 22 August 2017 which resulted in a failed payment on 25 August 2017. The Complainant encashed his pension on 31 August 2017 to meet the repayments and certain payments were made thereafter, however, there was a further failed payment on 28 September 2017.

When the Preliminary Decision was issued therefore, I was satisfied that, insofar as there may have been any negative reporting regarding the 25 August 2017 failed payment, or the 28 September 2017 failed payment, the Provider should take action to correct the reporting of any negative indicator to the ICB or the CCR arising from the difficulties in August and September 2017 and I indicated that it would be helpful in this regard if the Provider would immediately clarify the position to the Complainant in that respect. [A third failed payment in January 2018 appeared to be unconnected.]

Subsequently, on 27 August 2019 the Provider acknowledged that the information given in its letter of 7 February 2019 to the effect that there had been no negative impact on the Complainants’ credit history for the period between April and December 2017, had in fact been incorrect and it apologised in that regard. It explained that this error was being

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followed up at a senior level and it had commenced an internal review to establish how the incorrect information had been initially reported and it had also arranged to remove those negative records which occurred as a result of the dispute.

The Provider also advised that as a result of this error regarding the incorrect information which it had furnished regarding the Complainants ICB and CCR record, it wished to increase the goodwill gesture element of the offer previously made to the Complainants in its submission dated 18 December 2018, to a figure of €3,000 by way of an apology for this error, making the sum now offered to the Complainants a total of €6,282.27.

The Provider also confirmed that having checked the Complainants' ICB record it could confirm that although the account had been reporting as being in arrears for November 2017 and January 2018, this had now been rectified by the Provider and any negative record that occurred as a result of this dispute had been removed. The Provider also confirmed that the Complainants' Central Credit Register (CCR) record had been amended from the Provider's position and this had been notified to the CCR on 27 August 2019. The Provider confirmed that the CCR amends its records within a period of 5 working days.

It is disappointing that, in circumstances where the Provider long since acknowledged its failings to the Complainant, and also responded to the formal investigation of this complaint which was commenced in October 2018, by making a fair and appropriate compensatory proposal to the Complainant by way of acknowledgment of those errors, it nevertheless overlooked the impact of these events on the Complainants' credit history and this negative impact has only been corrected as of August 2019.

The Complainant on 10 August 2019 indicated a willingness to accept the Provider's offer *"on the basis that my credit and that will not be prejudiced in future dealings with the bank"*. It is clear that arising from the actions taken by the Provider since the Preliminary Decision issued, that the Complainants' record with the ICB and CCR have now been corrected, but only in very recent times.

I note that by letter dated 3 September 2019, the Complainant indicated a willingness to accept the Provider's increased offer totalling €6,282.27. In circumstances however, where the steps required to rectify the conduct complained of have only recently been taken by the Provider, I consider it appropriate to 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 upheld, on the grounds prescribed in **Section 60(2) (g)**.
- 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 €6,282.27 to an account of the Complainant's choosing, within a period of 35 days of the nomination of account

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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.

MARYROSE MCGOVERN  
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

17 September 2019

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.