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| <u>Decision Ref:</u> | 2020-0175 |
| <u>Sector:</u> | Banking |
| <u>Product / Service:</u> | Credit Cards |
| <u>Conduct(s) complained of:</u> | Accessibility issues Delayed or inadequate communication Refusals (banking) |
| <u>Outcome:</u> | Substantially upheld |

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

On 27 July 2017, the Complainant attempted to purchase three international flights by using her credit card on a travel website. The payment was declined, and the Complainant contacted the Provider, a bank, against which this complaint is made, by telephone. However, the Complainant's account was blocked and the transaction failed.

The Complainant had to ask a relative to book the same flights, which had subsequently increased in price.

The Complainant's Case

The Complainant asserts that she has never been informed of why the payment was declined by the Provider. The Complainant asserts that she asked for reasons, but that they have not been provided. The Complainant states that she made a phone call to the Provider in which she answered the security questions required, but that the Provider still would not answer her queries.

The Complainant states that the attempted purchase was made at 22.21 on **27 July 2017** and that the declined payment notice from the travel website was sent to her at 22.29. The Complainant asserts that the phone call between her and the Provider, a recording of which was submitted in evidence occurred after the times set out above.

On foot of the declined payment, the Complainant states that she then checked her online banking and could not access her account.

The Complainant states that she is at a financial loss due to the payment being declined. The Complainant states that the difference between the price she intended to purchase the flights at and the price at which she ultimately had to purchase them was €906.00. In this regard, the Complainant submitted a bank statement showing a transfer of €1,278.14 to the ultimate purchaser and a withdrawal of €640.00 which the Complainant states was also given to the ultimate purchaser.

In a letter dated **5 November 2018** the Complainant states:

The Provider cannot give any reason for my card being declined which I find most unsatisfactory, again it may be a blip in IT or something sinister in [the] system."

The Complainant states that on the following day, **28 July 2017**, she called the Provider but the reason for the decline could not be given to her. On that same day (28 July) she states that she called to a branch of the Provider where she was informed that she would have to contact the credit card department of the Provider. She states that she again phoned the credit card department but did not receive any clarification. On **31 July 2017**, the Complainant attended the same branch with her driver's licence and passport, but was again told to contact the credit card department. The Complainant also asserts that she contacted the local branch by phone on countless occasions seeking a particular representative, but that the particular staff member was unavailable.

The Provider's Case

The Provider asserts that the phone call on **27 July 2017** took place at approximately 18:00 and that it, therefore, occurred before the particular declined payment email or the particular attempt by the Complainant to purchase the flights which occurred at around 22:00. The Provider asserts that the Complainant must have separately attempted to purchase the flights at some point before 18:00 and to have then called the Provider. Due to a failure, by the Complainant, to answer security questions, the Provider states that it placed a security status on the account, which prevented payments being made. It states that the Complainant's account was blocked due to her failure to correctly answer the security questions. The Provider states that it cannot be held responsible for the failure by the Complainant to properly answer the security questions.

With respect to the financial loss, the Provider does not accept that it is responsible for the Complainant paying an increased sum for the flights, as it states that the security status was validly placed on the account.

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In relation to the subsequent treatment, the Provider states that it advised the Complainant on the phone call to attend at a relevant branch in order to clear the security status.

The Provider states that its records indicate that subsequent interaction was only made on **21 August 2017** when the complaint handling centre of the Provider referred the Complainant back to the branch in question, as there was no formal receipt of the identity documentation of the Complainant.

In its response to this office, the Provider has stated:

“The Bank’s records show, that despite the above information being provided to the Complainant [that she would need to produce identification in a branch of the Provider], she did not provide such information to a branch of [the Provider].”

The Provider in its response to the Summary of Complaint and request for evidence issued by this office offered the Complainant a “goodwill gesture” of €250, which the Complainant refused.

The Complaint for Adjudication

The complaint for adjudication is that the Provider wrongfully declined a payment attempted by the Complainant using her credit card on **27 July 2017**, failed to give a valid reason for the decline/block placed on the card, and that the Provider’s conduct in addressing the Complainant’s grievance was unreasonable.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider’s response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

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A Preliminary Decision was issued to the parties on 29 April 2020, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

With respect to the declined payment on the travel website, I note that there is considerable conflict between the versions of events as set out by the parties, particularly in relation to the timing of the phone call between the parties on **27 July 2017**. For this reason, I sought additional submissions and evidence from the parties in relation to the timing of the disputed call, as I believe this is important in determining the matter.

I note the Provider states in a submission to this office:

*“The Bank wishes to stress that the telephone call recording is key to the sequence of events on **27 July 2017** and ultimately to the assessment of the complaint regarding the declined Card transaction under dispute.”*

Both parties rely heavily on the timing and content of this call. While the timing of the call is disputed and difficult to reconcile, the content of the recording is not disputed.

The Provider states that the telephone call was received from the Complainant’s registered work number at 18:00:24 on **Thursday 27 July 2017**. The Provider has furnished two slightly different versions of screenshots from its system with details of the duration of the call (just over five minutes) and the number it is purported to have been made from. The source number for the calls is given by the Provider as [the Complainant’s employer’s telephone number]. It is not in dispute that the number recorded by the Provider is the number for the Complainant’s place of employment. However, the Complainant asserts that she did not make the call at the time or from the number recorded by the Provider.

A recording of the telephone call has been provided in evidence. I have listened to and considered the content of that call. It would appear, from the content of that telephone call between the Complainant and the Provider’s agent, that the Complainant’s credit card transaction was declined before she actually failed to answer all the security questions or complete the security process. Yet the Provider states in its response to the Complainant and this office that “a security status” was placed on the account because the Complainant failed to answer the security questions.

The Provider does not offer any explanation for the declination of the transaction.

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It states:

“The bank is unable to confirm why the credit card transaction was originally declined, as this declined transaction, as alleged by the Complainant, is not recorded on the bank’s system.”

The Complainant clearly called the Provider because she was experiencing difficulty with her card and it is clear from the content of the call that her transaction for the purchase of the flights was declined before she had the opportunity to complete the security process.

The Provider has offered no rationale as to why her card was declined or blocked before the security process was complete. It would appear that information is not recorded regarding this, or alternatively it has not been furnished by the Provider, either to the Complainant or this office.

The Provider states that there are no notes on its systems to indicate there was a declined transaction. This version of events as presented by the Provider is difficult to comprehend because the credit card had been declined before the Complainant failed to correctly answer the final question. This conflicts with the Provider’s statements that, *“Due to the fact that the Complainant did not successfully pass the security questions, a block was placed on her Credit Card account”*. Furthermore, if there was a block on the card prior to 18:00, I would expect that the Provider, as the issuing bank, should be aware of the block.

It is Provider’s case that the Complainant *“must have”* used her credit card before 18:00 and encountered an issue which led to the call being made at 18:00. No record of any notification from the travel company, or any other entity, such as the one furnished at 22:49, has been offered by either party to the complaint as evidence for a prior attempt to book flights or of the card being declined for any other transaction. Nor has the Provider offered any evidence of a declined transaction. The Complainant asserts that she did not have any other transaction declined.

In its response to this office in relation to this particular matter the Provider states:

“Unfortunately, the Bank is unable to definitely confirm why the Credit Card transaction was originally declined, as this declined transaction, as alleged by the Complainant, is not recorded on the Bank’s system. The Bank can advise that if an unusual or suspicious transaction or a transaction which is deemed out of the norm for the customer account is flagged with our department, then the transaction is investigated by the relevant team. If the customer cannot be contacted by telephone, then a letter is issued to the customer immediately. This letter will outline the issue to the customer, and provide the team’s contact number for the customer to call. When the customer calls the team, the relevant security questions are asked. Once the security questions have been correctly answered, the transaction is discussed and verified, or otherwise, by the customer. Having said that, there are no notes on the Bank’s systems to indicate that there was a declined transaction to [travel website], or other retailer/website, prior to 18:00pm on 27 July 2017 on the Complainant’s Credit Card ending...”

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I appreciate that this may be what the Provider usually does but clearly none of this is relevant to this complaint. In order for the Provider's version to be sustainable, there would have to have been an unrecorded issue with the Complainant's credit card before 18:00. According to the Provider the call happened at 18:00, the Complainant fails the security checks and was told several times she will have to attend her branch. While the Complainant does not expressly acknowledge that instruction, she did subsequently attend her branch. The Provider's version of events is that the Complainant, some four hours later, then tries again to use the card, to book the flights from the travel company in the knowledge that it had been blocked at 18:00 or before.

To support its version of events the Provider has furnished the screenshots of the record of the incoming call and relies on the fact that there is no record on its system of the original alleged declined transaction to the travel company. The Provider has produced no evidence to support this statement. I note the Complainant has made no such suggestion, either in the phone call on the day, or since: on the contrary she denies, vigorously, any such previous attempt to use the card had been declined.

It is disappointing that the Provider would make such an assumption and statement that another transaction, of which it has no record, *must have resulted* in the declinature of the credit card without providing any evidence to support it. In my view, either there was a previous declined transaction in which case I would expect it to be recorded especially if it resulted in the card being blocked, or there was no previous transaction which calls into question why the card would have been blocked before the Complainant failed to answer the final security question rather than in the manner the Provider asserts.

The Provider accepts that the travel company declined the card at 22:29, at around the time the Complainant states the key telephone call was made, but does not explain why that would be the case other than to suggest the Complainant tried to use the card after it she had been informed it had been blocked.

The Complainant denies that the call was made at 18:00. She is also adamant that she had not made any previous attempts to book the flights before 18:00 which could have resulted in issues with her card.

She states the call took place after 22:00 when she had attempted to book her flights. In support of her case, she has furnished a letter from the CEO of her employer, a public body, stating that she was on leave during the period in question. The Complainant argues that, therefore, she could not have made the call from her place of employment. She states that she was on holidays, at a named location in Ireland, a considerable distance from her home and workplace. While it is of course possible that the Complainant could have travelled from the considerable distance across the country to her place of work in order to make a call at 18:00, the Complainant has stated she was on leave and has provided a copy of credit card receipts which place her in a considerable distance away on the previous day, **26 July 2017**.

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The initial acceptance email from the travel company is timed at 22:21 and confirms the booking stating, *'thank you for booking with.....'* However at 22:29 the travel company informs the Complainant her card has been declined. The Complainant states this is *'proof that her call was made at roughly the same time, that is, 'around ten o'clock'*.

If the Provider's version of events is correct, the travel company would have had to reject the payment some four hours after she failed the security checks or that the Complainant had tried again to make the payment after she was informed by the Provider that her card was blocked.

I would expect the Provider to have produced a record of any failed attempt at using the card it suggests happened. No evidence of any attempts to use the blocked card have been furnished to this office.

I will now set out the content, as transcribed by this office, of the phone call which the Complainant states took place sometime around 22:00 on **27 July 2017** and the Provider states took place at 18:00:24 on **27 July 2017**.

C = Complainant and P = Provider's Agent

Through to [name] in Fraud Prevention.

C [Complainant's name]. I have been trying to book flights for my sons and I put in all my card details and it's come up we cannot complete your purchase and I need to speak to you. I am afraid I am going to lose these flights because they are a good price. Can anyone know what's the problem?

P Need to run you through security first of all. SECURITY CHECKS.

C The transaction has been declined. Oh my God, I don't believe this. It's [address].

P SECURITY CHECKS CONTINUE

C I used card yesterday: [holiday location]. I cannot get through to do this transaction, is that what you're telling me, is it? I have lost this transaction now even though I have had the card for 35 years?

P It's not to do with how many years you have had it.

C So what is the problem?

P I really can't comment: you have not passed security yet.

C I'll have to look up my account. I don't know off the back of my hand.

P Last three digits off the back of the card?

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P Name of the secondary card holder?

C Only myself

P Unfortunately some of the information you have given me does not match what we have got on the system so you will need to visit your nearest branch with two forms of ID, one photographic and one with proof of address. Once you are in branch we will be able to get that resolved.

C Hold on a minute now. What wrong information have I given you?

P I can't divulge that unless you are in branch

C This is incredible. You are saying I gave you wrong information. This is my card which I have had for 35 years. I have worked in a bank. I was [role] in a bank. I want to get flights for my sons home from [foreign destination]. I really am in tears here. What is the problem that my card won't work?

P I can't comment

C I have plenty of money in my account, my current account number....

P I don't need your current account.

C What wrong information could I have given you? I can't recall all the details sometimes seventeen hundred a month sometimes four hundred; you automatically debit my current account and I don't have to worry.

P I cannot comment on what questions you failed. Unfortunately **you can't use the card because you have failed security.** Unless you are in a branch....

C So I cannot use the card. So if I try to get these flights done tonight I am not going to be able to use my card: is that what you are saying to me?

P Not tonight unless you are in branch

C What is the problem? I'll have to know what the problem is.

P I can't comment unless you are in branch, I am sorry about that.

C So, in other words, **I can't use my card because of what?**

P **Because you have failed security.**

C But the transaction was denied on the payment confirmation: why would that be?

P I cannot tell you because you have failed security. You have to visit branch.

C I will tell you one thing; I am going to leave [Provider]. I can't handle this. I have never done anything wrong in my life. I am asking to get three flights for my sons. I have a card here. I put in all the details for the flight because they were good value and now it comes up and says the transaction has been denied. What is the problem? I used my card yesterday.

P As I have said multiple times, you have failed security, there is nothing more I can do for you.

C What security did I fail?

P I can't comment unless you are in branch

C HANGS UP

[My emphasis added]

The Complainant's and Provider's versions of events are incompatible. The Provider has not furnished evidence for the card being declined or blocked before the call it states took place at 18:00 or any reason for the card to have been declined before 18:00 or at any time before the call was made at whatever time it was made. While the Provider has produced two slightly different versions of its call log indicating that the call took place around 18:00 from the Complainant's employer's telephone number, I note it has not produced any contemporaneous notes, which would normally be made in such circumstances.

The Provider has not furnished any evidence to show any attempts to use the card. The lack of system notes recording the interaction on the call and disputed timing and disputed number from which the call was made is a serious concern. The Complainant states she made the call from her own mobile phone but she states that, as her phone operates on a "pay as you go" basis, rather than a billing system, her phone provider does not keep records beyond two years she is unable to furnish a copy of her telephone account. She did, however furnish copies of her employer's telephone account and I note there does not appear to be a call to the Provider listed at the time and date recorded in the Provider's log on that telephone account.

The Complainant has produced evidence from her employer to suggest she did not make the call from the given number and also that she was away on leave. The emails from the travel company times at 22:21 and 22:49 support the Complainant's version that she had called 'around 10pm' to try to have the Provider rectify the issue.

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In order for the Provider's version of events to be correct, the Complainant's card would have had to be declined prior to 18:00, then, knowing the card to have been declined, the Complainant, an experienced bank official, and former employee of the Provider, would have had to try again to effect the same transaction, using the card she knew had already been declined, and that she had been informed on a call four hours earlier had been blocked. Furthermore, as stated above, the Provider has no record of these various attempted transactions.

I am particularly concerned that in response to the question by the Complainant *"I can't use my card because of what?"* the Provider's agent informed the Complainant that her card was blocked, *"because you have failed security"*. Irrespective of what time the call took place, this is patently wrong. The Complainant was having difficulty using her card. That was the reason that she called the Provider. It is patently clear from the transcript of the phone call that the transaction had been declined and the credit card blocked even before the security question process was complete.

The Provider has not given either the Complainant or this office any credible explanation why the card was declined or blocked. The Provider in response to the Complainant and this office has offered suppositions and suggested certain things *must have* happened. I arrive at my decisions based on evidence and cannot accept such suppositions.

I will now deal with the conduct of the Provider subsequent to the blocking of the credit card. The Provider's agent was clear in the phone call on **27 July 2017** that the account was blocked and that the Complainant was obliged to attend the branch with identification to have it unblocked. The Complainant did attend a branch of the Provider with identification on **31 July 2017**. The Complainant states that she spoke with a representative of the Provider who said that the Complainant should instead contact credit card services of the Provider. Having been specifically told by the Provider that she had to attend the branch, she did so, only to be told when she did so, that she should instead contact the credit card section. The Provider states that on **21 August 2017** it received contact due to the branch referring the Complainant to the complaint handling centre, but that the complaint handling centre referred the Complainant back to the branch due to the identity documentation not having been submitted. This is particularly unreasonable and poor service in light of the Complainant stating that she attended the branch on **31 July 2017** with the necessary identification. Furthermore, the Provider accepts that the Complainant wrote to it in **August 2017**, but that it does not have any record of this correspondence. The Provider does not dispute, however, that the Complainant did attempt to make contact and apologises for not responding.

For the reasons outlined above, I substantially uphold this complaint and direct the Provider to pay a sum of €2,500 to the Complainant for the inconvenience caused.

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Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2) (b), (f) and (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 €2,500, 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.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

21 May 2020

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,

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and

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

