



<b><u>Decision Ref:</u></b>	2018-0015
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Cheques
<b><u>Conduct(s) complained of:</u></b>	Failure to process instructions in a timely manner
<b><u>Outcome:</u></b>	Partially upheld

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

#### **Background**

The Complainant opened a Business Current Account with the Bank on 24<sup>th</sup> February 2012, in respect of her farm business. The Complainant's complaint relates to the subsequent withdrawal by the Bank, in July 2013, of a same day clearance facility on her account. The Complainant states she received no notification of this save for a letter dated 9<sup>th</sup> July 2013, which advised that from 10<sup>th</sup> July 2013 she could no longer draw against uncleared credits.

The Complainant states that this has caused upset to her and her business and that she should have been provided with notice of the withdrawal of these facilities and an explanation as to why it occurred.

#### **The Complainant's Case**

The Complainant submits that although she did not request a "cleared effects" facility on her account, when she started operating the account, she found that this was a facility that was available.

The Complainant says that she was lodging cheques and transferring monies between her accounts and to accounts of other people she did business with. The Complainant contends that for no reason whatsoever, and with no prior communication from the Bank, the facility of same day clearance of cheques/cleared effects on her Farm Account was withdrawn.

She submits that on **09<sup>th</sup> of July 2013** a cheque drawn on her account was presented by her husband for payment/cashing at a Bank Branch and was refused, with the presenter advised to Refer to Drawer.

The Complainant submits that she contacted the Bank and spoke with her Branch Manager. The Complainant says that the Manager told her that the facility was withdrawn and that "*[she] should never have had the facility in the first place*". The Complainant believes that this illustrates a "downright arrogance" on the part of the Bank. The Complainant says that during this call, the Branch Manager also informed her that she had sent a letter to the Complainant informing her that that the facility was being withdrawn.

The Complainant says that she subsequently received a letter dated the **09<sup>th</sup> July 2013** saying that her facility was being withdrawn from the **10<sup>th</sup> July 2013** and that from this date the Complainant could no longer draw against uncleared credits. The Complainant says that this letter was not received by her until a few days after the 09<sup>th</sup> July 2013.

The first aspect of the Complainant's complaint is that the Bank did not provide her with reasonable notice that the facility was to be withdrawn, or any reasons as to why.

The second aspect of the Complainant's complaint is that the letter which the Bank issued, dated 09<sup>th</sup> July could not, she submits, have been written on the 09<sup>th</sup> July, as contended by the Bank, and that the account balance which was quoted on the letter could only have been calculated after the lodgement of a cheque on the 10<sup>th</sup> July, to the account.

The letter dated the 09<sup>th</sup> July 2013, stated the following details:

Uncleared Balance	€995.68 CR
Cleared Balance	€18504.32 DR
Sanctioned Limit	Nil

The Complainant says that she lodged a cheque on the 9<sup>th</sup> July 2013 for €11,750. The Complainant submits that the above Uncleared and Cleared Balances appear to be the wrong way around and she further queries how there could have been an Uncleared Balance of €18,504.32, if the letter was indeed written on the 9<sup>th</sup> July 2013 and contends that the Uncleared Balance should have read €10,754.32 (being €11,750, less the cleared balance of €995.68)

The Complainant submits that in order to get a Balance of €18,504.32, a cheque which was lodged on the **10<sup>th</sup> July 2013**, in the sum of €7,750 would have to be added onto the amount of €10,754.32. The Complainant submits that if the Branch Manager had written her letter on the 09<sup>th</sup> July 2013 she could not have known that there was going to be a lodgement of €7,750 made, the following day, the 10<sup>th</sup> July 2013.

The Complainant says that to her, this proves that the letter supposedly written on the 09<sup>th</sup> July 2013 could not possibly have been written on that day and she submits that she did not receive the letter informing her the her facility was being withdrawn until a few days after the 09<sup>th</sup> July 2013.

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The final aspect of the Complainant's complaint is that she did not receive certain letters from the Bank, during the period when her complaint to the Bank was under consideration.

### **The Provider's Case**

With regard to the first aspect of the Complainant's complaint – the withdrawal of the Complainant's facility to draw against uncleared effects, the Bank submits that since the Complainant opened a Business Account on 24 February 2012, no overdraft facility has applied to the account.

It submits that there were no transactions effected on the account until February 2013 and that there was minimal activity until 29<sup>th</sup> April 2013 (€800 lodgement in February 2013, €750 in March 2013, €900 in April 2013 to meet a monthly direct debit.)

The Bank says that lodgement amounts then increased to €13,115, in May 2013, to €19,000 in June 2013, and to €48,013 between 2<sup>nd</sup> July 2013 and 9<sup>th</sup> July 2013. The Bank submits that on reviewing these transactions, it found that the majority of lodgements consisted of cheques drawn on the Complainant's husband's accounts. The Bank says that there were 26 lodgements made to the bank account between 29<sup>th</sup> April and 9<sup>th</sup> July 2013 inclusive. Of these 26 lodgements, 5 involved cheques drawn on Bank Accounts other than the accounts of the Complainant's husband.

The Bank says that on the same day as the lodgements were made, the funds were subsequently transferred electronically to either the Personal Bank Account in the name of the Complainant, or to the Personal Bank Account in the name of the Complainant's husband.

The Bank submits that on 09<sup>th</sup> July 2013 a letter was issued to the Complainant, advising her that she could no longer draw against uncleared lodgements, effective from 10<sup>th</sup> July 2013.

The Bank says that it was entitled to take the action which it did and says that it was taken on foot of the Terms and Conditions which applied to the Complainant's Current Account. It points to section 5.5 of these terms and conditions, which provides:

*"You should ensure that at all times the available cleared balance on your Account is sufficient to meet all payments, or, if an overdraft facility has been agreed on your Account, that payments do not cause the cleared balance to exceed the authorised overdraft limit. Your "cleared balance" is the amount in your Account that you can draw against without incurring interest on uncleared balances, see Condition 11.5. Unless otherwise agreed by us, you may not make payments from your Account in reliance on the balance in another account. "*

The Bank also seeks to rely on Section 5.7 of the terms and conditions, which states:

*"If we pay an item drawn on your Account which would create an unauthorised debit*

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*Balance, or increase the debit balance to an amount in excess of the authorised overdraft limit, this will not commit us to paying any further items to such an amount in the future, no matter how frequently we do it."*

It also points to Section 11.6 of the Terms and Conditions:

*"When you lodge Collectible Items to your Account, the amount of the lodgement is shown on your Account on the day of the lodgement, however, at that time we may not have received value for them. We call such items 'uncleared effects' until we have received value. We may at our discretion allow you to draw against 'uncleared effects' but reserve the right to withhold funds until the Collectible Items have been cleared for availability of funds. If you draw against 'uncleared effects' you may be liable for interest (and surcharge interest, if applicable)".*

The Bank submits that, on this basis, it was entitled to take the action that it did in relation to the Complainant's ability to draw against uncleared effects.

In relation to the Complainant's second head of complaint, i.e., that the balance quoted in the Bank's letter dated the 09<sup>th</sup> July, suggested that the letter was not, in fact, written on the 09<sup>th</sup> July, the Bank acknowledges that this letter, contained a typing error when the Cleared Balance was quoted and says that it apologises for this error. It says that the amount of €18,504.32 debit was incorrectly quoted as the Cleared Balance. It submits that the balance of €995.68 is the Cleared balance applying to the account on the 09<sup>th</sup> July 2013.

In relation to the final aspect of the Complainant's complaint, that certain letters were not received by her (during the period of time which her complaint was under consideration by the Bank) the Bank has submitted as follows:

The Bank says that the Complainant's original complaint letter was received by its Customer Recoveries Unit on 15<sup>th</sup> April 2015.

It submits that the complaint was referred to the relevant branch for investigation on 16<sup>th</sup> April 2015 and that an acknowledgement letter issued to Complainant on 20<sup>th</sup> April 2015.

It submits that holding letters issued on 11<sup>th</sup> May 2015, 8<sup>th</sup> June 2015, 6<sup>th</sup> July 2015, 31<sup>st</sup> July 2015, 31<sup>st</sup> August 2015, 25<sup>th</sup> September 2015, and 27<sup>th</sup> October 2015.

It submits that a Final response letter issued on 16<sup>th</sup> December 2015 with further clarification issued on 6<sup>th</sup> January 2016.

The Bank acknowledges that the length of time taken to investigate the complaint was protracted and it accepts the matter was not dealt with in a timely manner but it says that the Complainant was kept aware of progress. It submits that, while the complaint is that Complainant did not receive correspondence, it is satisfied that its complaint handling procedures were followed and that all letters issued to the Complainant's correct address.

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## **Decision**

During the investigation of this complaint by the Financial Services Ombudsman's Bureau, 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.

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 was 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 was also satisfied that the submissions and evidence furnished were sufficient to enable a determination to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Finding was issued to the parties on 29<sup>th</sup> November 2017, outlining the preliminary determination of the Financial Services Ombudsman 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 Finding would be issued to the parties, on the same terms as the Preliminary Finding, in order to conclude the matter.

Following the commencement of the ***Financial Services and Pensions Ombudsman Act 2017***, on 1 January 2018, the final determination of this office is now issued to the parties, by way of this Legally Binding Decision of the Financial Services and Pensions Ombudsman.

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

The Complainant's first complaint is that the Bank should not have withdrawn its practice of allowing payment of items against uncleared effects without giving notice, and without providing a reason as to why it was withdrawing the facility.

The Complainant submits that on 09<sup>th</sup> of July 2013, a cheque which was presented for payment/cashing was refused and the presenter was told to Refer to Drawer.

The Complainant submits that she spoke with the Branch Manager and was told that the facility allowing payment of items against uncleared effects was withdrawn and that "[she] should never have had the facility in the first place".

I will look firstly at the Complainant's complaint that the Bank should not have withdrawn its practice of allowing payment of items against uncleared effects without giving notice

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and whether they have acted wrongfully in this regard before examining the issue of the letter dated 09<sup>th</sup> July 2013.

**1. Removal of Facility from Account**

The Complainant submits that her issue lies, not with the facility being removed, but rather, with the fact that she was not informed before it was removed or provided with any reasons as to why this occurred.

I will now look at the entitlement of the Bank, if any, to do as it did and whether it had an obligation to provide notice of the withdrawal of these facilities.

In order to do this, it is necessary to examine the terms and conditions relating to the account in question, as these govern the operation of the account.

The terms governing the Complainant's account, in July 2013, were the "*Terms and Conditions For Current Accounts and Demand Deposit Accounts*", dated 03<sup>rd</sup> January 2012.

Section 5 sets out "*General provisions relating to payments from your account*".

**5.5** *You should ensure that at all times the available cleared balance on your Account is sufficient to meet all payments, or, if an overdraft facility has been agreed on your Account, that payments do not cause the cleared balance to exceed the authorised overdraft limit. Your "cleared balance" is the amount in your Account that you can draw against without incurring interest on uncleared balances, see Condition 11.5. Unless otherwise agreed by us, you may not make payments from your Account in reliance on the balance in another account.*

**5.6** *Where the available cleared balance on your Account is insufficient or you exceed your authorised overdraft limit but we nonetheless allow the payment, you will be liable to pay referral charges, debit interest and surcharge interest. If we do not allow the payment, you will be liable to pay unpaid item charges on items returned. For details of these charges and how to mitigate against them, please refer to our Fees Booklets which are available at any of our branches and online at [www.\[Bank\].ie](http://www.[Bank].ie). For details of debit interest and surcharge interest see Condition 11.*

**5.7** *If we pay an item drawn on your Account which would create an unauthorised debit balance, or increase the debit balance to an amount in excess of the authorised overdraft limit, this will not commit us to paying any further items to such an amount in the future, no matter how frequently we do it.*

Section 11.6 is headed "*Interest on Uncleared Balances*":

**11.6** *When you lodge Collectible Items to your Account, the amount of the lodgement is shown on your Account on the day of the lodgement, however, at that time we may not have received value for them. We call such items 'uncleared effects' until we have received value. We may at our discretion allow you to draw against 'uncleared effects' but reserve*

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*the right to withhold funds until the Collectible Items have been cleared for availability of funds. If you draw against 'uncleared effects' you may be liable for interest (and surcharge interest, if applicable).*

These terms reserve the Bank's right in its discretion to pay an item drawn on an Account which would create an unauthorised debit balance, or increase the debit balance to an amount in excess of the authorised overdraft limit, but it is expressly stated in the terms and conditions that such acts will not commit it to paying any further items to such an amount in the future, no matter how frequently it does it. This in effect means that there is no obligation upon the Bank to continue this practice and it retains a discretion to allow a customer to draw against 'uncleared effects' but reserves the right to withhold funds until lodgements have been cleared for availability of funds.

On the basis of the terms and conditions of the Complainant's account, the Bank was entitled to withdraw the facility at its discretion and the Bank is not thereby expressly required to provide notice. Neither do the terms and conditions require that an explanation be provided for the removal of such a facility.

I do not find that the Bank was obliged to provide any reasons to the Complainant as to why the discretionary facility was being removed. However, I consider that as a matter of good practice, in order to allow the Complainant put her affairs in order, some form of reasonable notice regarding the removal of the facility, was appropriate. The Bank purports to have issued such a letter on the 09<sup>th</sup> July 2013, informing the Complainant of this change in her ability to draw against 'uncleared effects'. This letter comprises a further aspect of the Complainant's complaint, due to concerns about when it, in fact, issued from the Bank.

## **2. Letter of 09<sup>th</sup> July 2013**

The Complainant says that she received a letter dated the **09<sup>th</sup> July 2013** saying that her facility was being withdrawn from the **10<sup>th</sup> July 2013** but the Complainant says that this letter was not, in fact, received by her until a few days after the 09<sup>th</sup> July 2013.

This letter, dated the 09th July 2013, stated as follows:

<i>Uncleared Balance</i>	<i>EUR995.68</i>	<i>CR</i>
<i>Cleared Balance</i>	<i>EUR18504.32</i>	<i>DR</i>
<i>Sanctioned Limit</i>	<i>Nil</i>	

*Dear [Complainant]*

*When you lodge cheques and other items subject to collection to your account, they are uncleared until their banks pay them.*

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*Please note that with effect from 10/07/2013 you can no longer draw against uncleared credits. After this date please ensure that you have cleared funds in your account to cover all debit items, or we may return them unpaid without informing you."*

The Complainant has submitted that only by taking into account a lodgement of €7,750 which occurred on 10th July 2013, could the balance of €18,504.32 have been arrived at, and that this could only have been possible from the 10th July 2013. The Complainant has submitted that it was, therefore, not possible for the letter in question to have been written on the 09th July, 2013. The Complainant says that she did not receive the letter saying her facility was being withdrawn until a few days after the 09th July 2013.

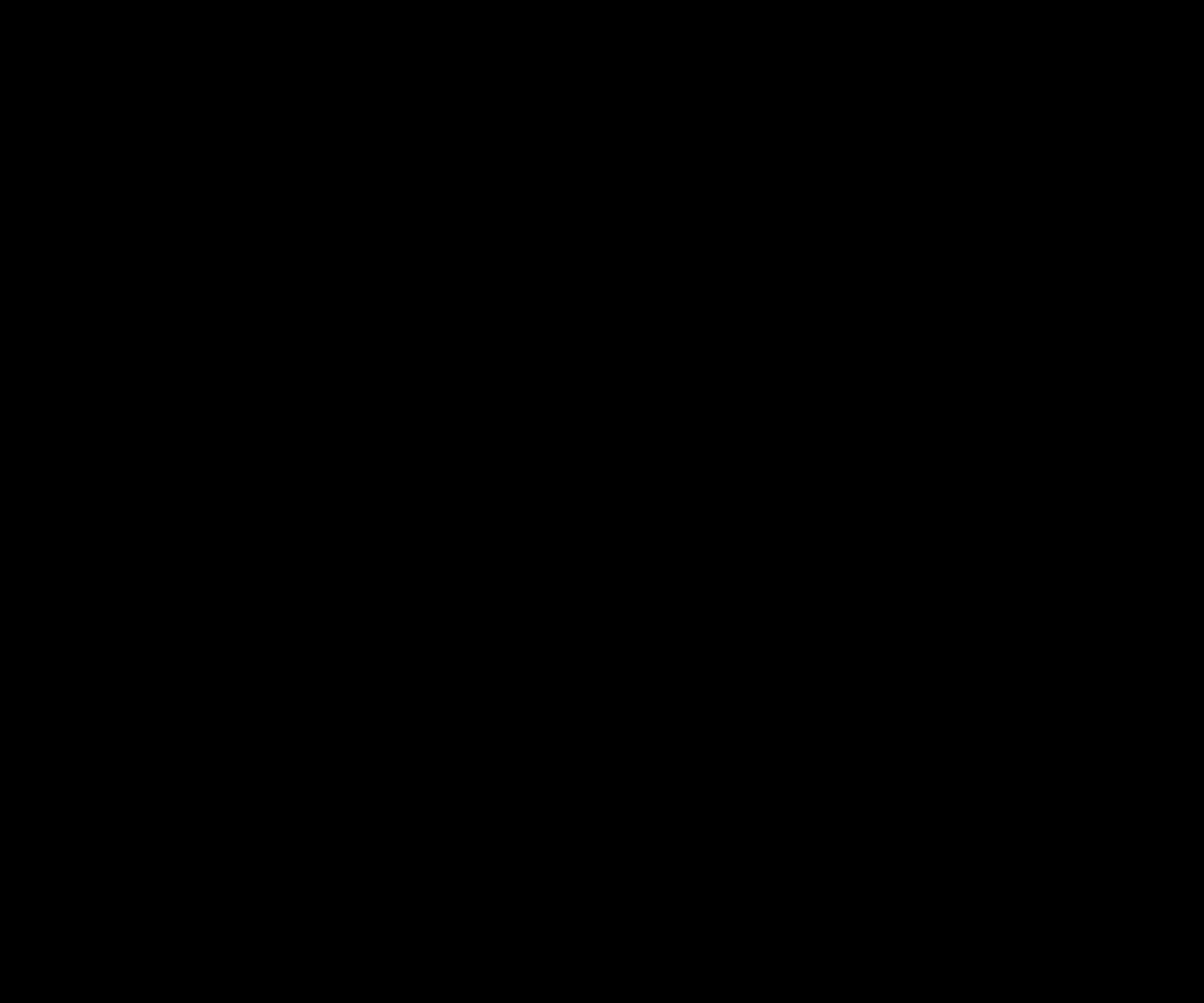
By letter dated 05th October 2017 this Office wrote to the Provider asking how the figure of €18,504.32 DR, as stated within the letter to the Complainant of the 09th July 2013, was calculated.

The Bank responded, by email dated 19th October 2017, and stated that the reason that the cleared balance was incorrectly quoted as €18,504.32 debit was "*completely due to human error*". The Bank said that the letter which issued to the Complainant on the 09th July 2013 should have quoted the cleared and uncleared balance as at close of business on 08th July 2013. The Bank stated that the correct Cleared Balance on the 08th July 2013 was €21,036.68 debit and furnished screenshots indicating the cleared and uncleared balances for the 09th and 10th July 2013, as set out below:





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The Complainant responded to this submission of the Bank, on 25<sup>th</sup> October 2017, by querying how, if the correct balance should have been €21,036.68 DR, did the figure of €18,504 DR come to appear on the face of the letter which was “*supposedly written on the 9th July 2013*” and she has contended that “*there is only one way that this could happen the letter was not written on the 09<sup>th</sup> July but in the days after that when the lodgement of 7,750 Euro was included in the balance to give the 18,504.32 DR Euro figure.*”

The Bank responded, in turn, by apologising for the typo that had resulted in the incorrect balance of €18,504.32 debit being quoted in the Bank’s letter of 09<sup>th</sup> July 2013, and reiterated that this was simply as a result of human error. It submitted that it could not provide any further explanation as to how this figure of €18,504.32 debit was quoted on the letter dated 09<sup>th</sup> July 2013 other than to confirm it was inserted incorrectly.

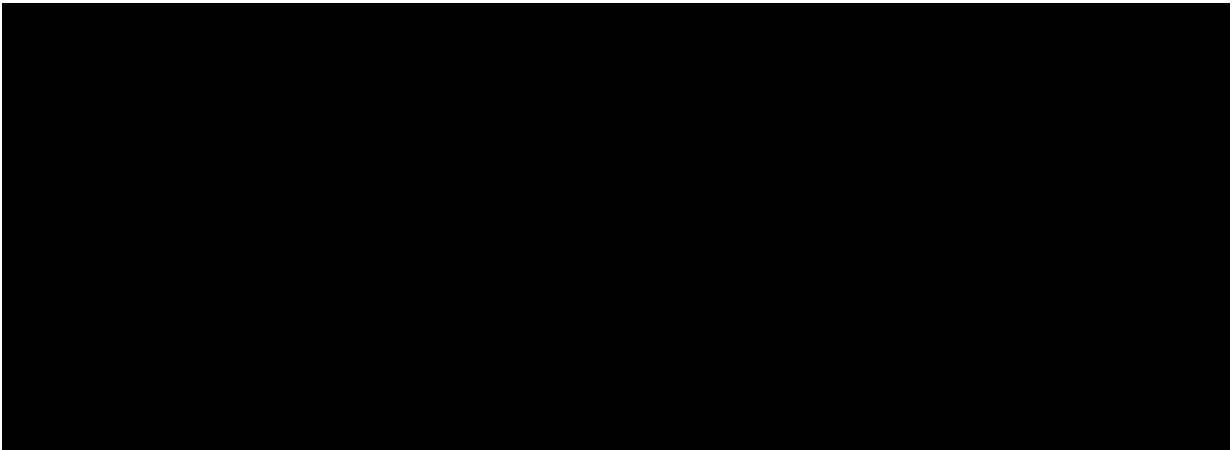
The Bank submitted that there is no calculation before or after the lodgement of €7,750 was made, which would leave the account balance at €18,504.32 debit and that it was completely incorrect to include this figure within the letter as it was in no way relevant to the Complainant’s account. On the basis that there was a typing error in its letter of 09<sup>th</sup> July 2013, the Bank offered the Complainant a sum of €500.00, as a gesture of goodwill, by letter dated 01<sup>st</sup> November 2015.

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The Complainant did not accept this and responded by querying how an apparently *“random figure was picked out of the air and inserted into a letter dated the 9th July 2013”* which *“just happened to be exactly to the cent the figure on the Account when cheques lodged were sent back as unpaid.”* The Complainant furnished a copy of her Account statement for the relevant dates which, she submits, shows the €18,504.32dr figure and suggests that *“on the 9th July 2013 the Account was €995.68cr, the two cheques of €11,750 and €7,750 were both returned unpaid so you had €995.68 less €11,750 and €7,750 which gives you €18,504.32dr.”*

From examining the Complainant’s Bank Statement for the relevant period, it is difficult to agree with the Bank’s position that there are no possible calculations, before or after the lodgement of €7,750, which would leave the account balance at €18,504.32 debit.

It is clear from the Complainant’s Bank account that it was indeed possible to arrive at this figure, when the cheques which were lodged on the 09<sup>th</sup> and 10<sup>th</sup> July, subsequently returned unpaid are taken into account. I have included an excerpt from the Complainant’s Bank Account, below:



The Bank maintains that this was simply a typo. Whilst, it is not possible to say on the basis of all of the evidence before me, with any certainty that this was anything other than a typo, I accept that it does seem extraordinarily co-incidental, and unlikely, that the figure of €18,504.32dr which was incorrectly cited as a Balance on the letter of the 09<sup>th</sup> July, was also the precise balance which appears on the Complainant’s account when certain cheques lodged, on the 09<sup>th</sup> and 10<sup>th</sup> July 2013, were returned unpaid.

The purpose of this letter was to advise the Complainant that, with effect from what purported to be the following day, the 10<sup>th</sup> July 2013, she could no longer draw against uncleared credits. As identified above, on the basis of the terms and conditions of the Complainant’s account, the Bank was entitled to withdraw the facility at its discretion. I am nevertheless satisfied that the Bank should have provided reasonable notice to the Complainant that this facility was being removed. Although the terms and conditions are silent as to any notice requirement

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on such a discretionary facility, and do not impose an obligation on the Bank in this regard, I am satisfied that the dictates of fairness and reasonableness mean that the Bank should have provided some form of reasonable notice to the Complainant, in order to allow her an

opportunity to acclimatise to the removal of this facility, in the conduct of her banking practices.

I am further satisfied that there was inaccurate information provided in respect of the Balance showing on the letter.

The Bank has acknowledged that the account balance information provided on the face of the letter was incorrect. In this regard, I note that the Consumer Protection Code, 2012 provides that:

*2.1 Acts honestly, fairly and professionally in the best interests of its **customers** and the integrity of the market;*

*2.2 Acts with due skill, care and diligence in the best interests of its **customers**;*

*4.1 A **regulated entity** must ensure that all information it provides to a **consumer** is clear, accurate, up to date, and written in plain English. **Key information** must be brought to the attention of the **consumer**. The method of presentation must not disguise, diminish or obscure important information.*

I am satisfied that the Bank's actions were such as gave rise to a breach of the above provisions of the Consumer Protection Code.

### **3. Missing letters**

The final aspect of the Complainant's complaint relates to the fact that whilst her complaint was under consideration by the Bank she did not receive communications from the Bank during the period July 2015 to December 2015.

The Complainant submits that she submitted a letter of complaint to the Bank, on the **14<sup>th</sup> April 2015**.

The Complainant submits that she received a reply to her letter, from the Assistant Manager of the Bank's Fermoy Branch on or about the **20<sup>th</sup> April 2015**, acknowledging receipt of her complaint of the 15<sup>th</sup> April 2015 and stating that the matter would be investigated.

The Complainant submits that on the **15<sup>th</sup> May 2015** she received correspondence from the Assistant Manager dated the **11<sup>th</sup> May 2015**, confirming that the investigation into her complaint was ongoing and that she would be in contact again in two weeks, with an update.

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The Complainant submits that her husband, who was her representative, having authority to act on her behalf in this matter, rang the Bank on or about the **08<sup>th</sup>** or the **09<sup>th</sup> June 2015**, and asked to speak to the Assistant Manager, because no correspondence had been received since the letter of the **11<sup>th</sup> May 2015**.

The Complainant submits that on the **09<sup>th</sup> June 2015**, she received correspondence from the Assistant Manager, dated the **08<sup>th</sup> June 2015**, confirming again that the investigation into her complaint was ongoing, and that they would be in a position to resolve the complaint within four weeks of the date of that letter.

The next correspondence the Complainant says that she received was dated the **06<sup>th</sup> July 2015**. The letter stated that the investigation was ongoing and that the matter had been referred to their legal department, but it was anticipated that the complaint would be resolved within **14 days** of the date of the letter.

The Complainants submits that there was a lack of correspondence from the **06<sup>th</sup> July 2015** until the Final Response letter from the Regional Director, on the **16<sup>th</sup> December 2015**.

The Complainant submits that on the **10<sup>th</sup> November 2015** her husband rang the Bank's Head Office, when, the Complainant submits, it was admitted to him on the phone that no correspondence had issued since the letter on the **06<sup>th</sup> July 2015**, and that in accordance with the banks own protocol they should have received correspondence.

The Complainant submits that a message was left on her husband's phone that same evening by the Assistant Manager of the Fermoy Branch, apologising for there not having been any contact for a number of months and that a letter would issue within a week, confirming the outcome. The Complainant says that approximately 10 days later, having received no correspondence, the Complainant's husband rang the Fermoy Branch again and failed to speak to speak with the Assistant Manager who later rang and left a message saying that a letter would issue in a few days. The Complainant says that, again, this letter did not arrive and he rang two different Bank Agents, before the letter finally arrived on or about the **19<sup>th</sup> December 2015**.

It has not been possible to listen to the recordings of these calls as the Bank has advised that it does not record incoming or outgoing calls for branches.

The Bank denies that it ever said that no correspondence had issued since 06<sup>th</sup> July and it is the Bank's position that holding letters issued to the Complainant on **31<sup>st</sup> July 2015, 31<sup>st</sup> August 2015, 25<sup>th</sup> September 2015 and 27<sup>th</sup> October 2015**, and it has furnished copies of same to this Office.

The Complainant submits that the Final Response Letter, dated 16<sup>th</sup> December 2015, was sent by the Bank's Regional Director. The Complainant says that the letter indicated that he was satisfied that the proper procedures and protocols had been followed by the Bank with regard to her Account and apologised for the delay in issuing a reply.

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The Complainant says that upon receipt of this letter, her husband rang the phone number provided on the **22nd December 2015** and received correspondence following on from this on the **06th January 2016**.

The Complainant submits that there was a lack of correspondence from the 06th July 2015 until the Final Response letter from the Regional Director, on the 16th December 2015 and that although the Bank has said that letters issued, she submits that she did not receive any of these letters, which she describes as being unusual, as she had received all previous letters from the Bank.

Having examined all of the evidence before me, I accept that the Complainant's position, that she did not receive these letters, and that this is why the Bank was contacted on the 10th of November 2015. I also appreciate that not receiving these letters was unusual, and remains unexplained, in circumstances where she had received all previous letters from the Bank. However, on the basis of the evidence before me, which is what I must have regard to in coming to a determination, it seems that additional letters may have been issued to her, by the Bank, although it is not clear why the Complainant failed to receive these letters, as they were correctly addressed.

I do note, however, that the timeline provided within these letters for the resolution of the complaint, is less than satisfactory. The letter of 06<sup>th</sup> July 2015 confirmed that the investigation was ongoing and that the Bank had referred the matter to its Legal Department. It advised the Complainant that it anticipated it would be in a position to resolve the complaint within a period of 14 days of the date of the letter.

However, the next letter, dated 31<sup>st</sup> July 2015, provides for an anticipated timeline of 3 weeks for the resolution of the complaint. One month later, the letter of 31<sup>st</sup> August 2015 states a period of 4 weeks in this regard. The letter of the 25<sup>th</sup> September 2015 advises a 4 further weeks. The letter of the 27<sup>th</sup> October states a further 5 weeks.

It is not clear what gave rise to such a lengthy delay in providing a substantive response to the Complainant's complaint, which was ultimately issued on 16<sup>th</sup> December 2015, some 8 months after the complaint had been submitted, and no explanation has been furnished by the Provider in this regard.

I note that the Bank has acknowledged that time taken to investigate the complaint was protracted and it accepts that the matter was not dealt with in a timely manner but it states that the Complainant was kept aware of progress by way of letters updating her. Nonetheless, the Consumer Protection Code provides at section 2.8, that the Bank must ensure that it "*corrects errors and handles **complaints** speedily, efficiently and fairly*". I do not find, from examining the evidence before me that the Bank has complied with this Provision in its dealings with the Complainant's complaint.

Overall, I find the Complainant was provided with misleading and confusing information within the letter of the 09<sup>th</sup> July 2013 and that during the course of its investigation the Bank failed to handle the Complainant's complaint in an efficient manner, providing

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contradictory timelines and taking just over 8 months to provide a substantive response to the Complainant.

The Bank has recently offered a €500 goodwill gesture in recognition of its error on the face of the letter dated 09<sup>th</sup> July, however this offer does not make reference to, nor take into account, its failure to effectively and efficiently investigate and deal with the Complainant's complaint. I am satisfied that the amount of €500 is a sufficient amount of compensation in all of the circumstances, although that proposal was only put in recent times. Accordingly, I consider that it is appropriate to substantially uphold the complainant's complaint and I direct that the Bank make a compensatory payment of €500.00 to an account of the Complainant's choosing within a period of 35 days of the Complainant's notification of account details to the Bank.

### **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)(c) and (g)**.

Pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct that the Respondent Provider make a compensatory payment of €500.00 to an account of the Complainant's choosing within a period of 35 days of the Complainant's notification of account details to the Provider.

Pursuant to **Section 60(6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I 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**, where the amount is not paid within 35 days of the Complainant's notification of account details to the Provider.

Pursuant to **Section 60(8)** of the **Financial Services and Pensions Ombudsman Act 2017**, the Respondent Provider is now required, not later than 14 days after the period specified above for the implementation of the direction pursuant to Section 60(4), to notify this office in writing of the action taken or proposed to be taken in consequence of the said direction outlined above.

**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 ADJUDICATION AND LEGAL SERVICES**

10 January 2018

**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) in accordance with the Data Protection Acts 1988 and 2003.**