



<b><u>Decision Ref:</u></b>	2018-0066
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Accounts
<b><u>Conduct(s) complained of:</u></b>	Dissatisfaction with customer service Complaint handling (Consumer Protection Code)
<b><u>Outcome:</u></b>	Rejected

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

#### **Background**

This complaint concerns the purported application of the Provider's obligations under, amongst other legal requirements, the Criminal Justice (Money Laundering and Terrorism Finance) Act, 2010, as amended by Part 2 of the Criminal Justice Act 2013 ("the Act"), to the Complainant's account.

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

The Complainant opened a "Share account" with the Provider in 1986. In September 2016 the Provider wrote to the Complainant notifying him that it required identification and residential address documentation from him, pursuant to its obligations under the Act.

The Complainant feels the said Act does not apply to his account, but if the Provider deems that they do he feels that it must outline to him the basis of that assessment. He believes the Provider is simply hiding behind an assertion of "commercial sensitivity" in that regard. He has provided copies of his identification documentation and believes the Provider does not require any further documentation of clarification from him. He does not believe the Provider has carried out a risk analysis.

The Provider has blocked the Complainant's account and now requires him to submit a claim form to recover the blocked funds.

The complaint is that the Provider has unreasonably and/or unfairly required the Complainant to submit information and documentation that it does not require, and has unreasonably and/or unfairly blocked his account.

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

The Provider states that in order to comply with its obligations under the Act it requires identification and residential address information, and that the Complainant has not provided this in a suitable form. It states that it has blocked his account in accordance with its obligations under the Act, and provided him with adequate notice.

### **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 30 July 2018, 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.

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

The Complainant opened an account with the Provider on the 21<sup>st</sup> of January 1986. It is not entirely clear what information was required from the Complainant in 1986 in order to open the account in the first place, but it is fair to say that the regulatory landscape has changed considerably in the 30 years between that account being opened and the start of this dispute.

The Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010, came into force on the 15<sup>th</sup> of July 2010.

Its long title contains the following information:

*“AN ACT TO PROVIDE FOR OFFENCES OF, AND RELATED TO, MONEY LAUNDERING IN AND OUTSIDE THE STATE; TO GIVE EFFECT TO DIRECTIVE 2005/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 26 OCTOBER 2005 ON THE PREVENTION OF THE USE OF THE FINANCIAL SYSTEM FOR THE PURPOSE OF MONEY LAUNDERING AND TERRORIST FINANCING [...] AND TO PROVIDE FOR RELATED MATTERS.”*

The Act requires certain measures to be put in place by financial service providers, such as the Provider. Those measures are designed to hinder and ideally prevent money laundering and the funding of terrorism and other illegal activities. It is one piece of sweeping worldwide measures which have been implemented over the last two decades to curb the funding of criminality.

Section 33 of the Act essentially requires the Provider to obtain *“documents or information that [the Provider] has reasonable grounds to believe can be relied upon to confirm the identity of the customer”* prior to providing a service to that person (or prior to continuing to provide that service, if the service was being provided before the enactment of the Act).

Following publication of the Central Bank of Ireland’s 2015 *“Report on Anti-Money Laundering/Countering the Financing of Terrorism and Financial Sections Compliance in the Irish Banking Sector”*, the Provider reviewed its existing procedures for compliance with its obligations under the Act. The Provider reviewed the documentation and information it then held to verify the identity of all existing account holders and beneficiaries.

At this point it should be noted that the Provider is required to satisfy itself of a customer’s true identity and address; there can be no dispute about that. It would be unreasonable to expect the Provider to tailor the information it requires on a case by case basis. Given the number of customers who hold accounts, and the overarching purpose of the requirements (i.e. to prevent funding of criminality/international terrorism), it is not unreasonable for a financial institution to adopt a policy whereby it requires the same information and documentation from every customer.

Having carried out a review on the 26<sup>th</sup> of September 2016, the Provider wrote to the Complainant in the following terms:

***“Re: updated documentation required.***

*All banks, including [the Provider] are required by law to obtain documentary evidence to confirm a customer’s identity and their residential address. In order to comply with this requirement, we must ask you to provide the relevant documentation, as set out on the reverse of this page.*

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*The documentation may be provided to us in any one of the following two ways, whichever you consider most convenient.*

**Option 1** *Post copies of the documentation to [the Provider] using the enclosed prepaid envelope (Please note that the pre-paid envelope can only be used within the Republic of Ireland). Please enclose this letter with all the documents.*

**Or**

**Option 2** *Call into your local [Provider] branch with the original documentation.*

*Please note that where we cannot obtain the necessary documentation from a customer, we are required by law to cease providing services and ultimately, to discontinue the business relationship which would mean having to close accounts. In order to avoid this unfortunate scenario, we would greatly appreciate your co-operation with this request.*

*Thank you for your attention to this matter.*

*Your sincerely,"*

In a large prominent box on the right hand side of this letter the following notice stated:

*"Please give this letter your urgent attention. Unfortunately if we do not receive the proof of identity and address required, we are required to close your account which may cause you inconvenience".*

The Provider required a photo ID, and a proof of address. The acceptable items are set out on the reverse of the page: a *current valid* passport, EU driver's licence, or EU national ID card (as a photo ID); and the letter itself, a utility bill, an account statement, correspondence from revenue, or certain "other" types of correspondence sent within the previous six months to the Complainant's current address (as proof of address).

In my view there is nothing at all unusual or remarkable about the documents sought. In essence, the Provider can satisfy itself of a residential address by seeing that formal correspondence that has been sent to that address has been received by the customer. A formal photo ID matches a face to the name.

The Complainant furnished documentation in an attempt to comply with this request. The Provider states that when it reviewed this documentation the copy driver licence provided did not show an expiry date and as such it could not be accepted. I have been provided with a copy of what the Complainant provided – it is the photograph page of the three folding page driver's licence. The expiry date is not contained in the section provided. I also note

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that the address on the driver's licence does not match the address on the account statement provided.

The Complainant believes that the Provider does not need a copy of his driver's licence which displays the expiry date. He suggests that the expiry date should be self-evident, given that a driver's licence is valid for ten years, and the issue date is visible on the copy he provided.

The Provider notes that some licences can issue for a period of less than ten years, and describes the copy provided to it as a "partial copy" and thus not acceptable. In the context of verifying an identity in order to comply with anti-terrorism and money laundering regulatory obligations, the Provider is entitled, indeed required, to exercise an appropriate level of inquiry.

The Provider wrote a letter to the Complainant on the 2<sup>nd</sup> of November 2016, the relevant portions of which read as follows:

*"Thank you for sending in documentation in response to our letter, unfortunately we do require a more clearly visible copy of the photographic identification. Once we receive this, we will then be in a position to update your records.*

*... Please provide alternative documentation to us within the next 10 days...*

*We apologise for any inconvenience this may cause you. We appreciate your assistance in this matter."*

One can see how receiving a letter like this might come as a surprise to any customer. However, there is nothing intimidating or threatening in the language. The letter seeks documentation in order for it to comply with its legal obligations – to suggest that it implies that the Complainant is involved in money laundering or terrorism is not a fair characterisation of its language or tone.

The Complainant notes, correctly, that this letter does not specify that the reason documentation needs to be resubmitted is because the expiry date is not shown on the copy licence furnished. In an ideal world, the Provider would have identified the missing expiry date as being the precise reason that further documentation was required. This is, however, clarified in the Final Response Letter, and I therefore consider it to have been satisfactorily resolved and clarified prior to the Complainant submitting his complaint to this Office.

Call recordings between the Complainant and the Provider have been provided in evidence.

On the 11<sup>th</sup> of November 2016, after receiving the above letter, the Complainant contacted the Provider by telephone.

During this call the Complainant asked to be put through to the document verification unit, but was informed that that unit did not take customer calls. The Provider's agent stated that

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he would be in a position to assist with the query, however the Complainant was reluctant to provide the details that the Provider's agent required in order to verify his identity "securely". Eventually, the Complainant became frustrated with the agent as he required the Complainant to provide information which the Complainant had already provided earlier in the call (albeit not in the context of "secure" identification). While it may have been somewhat exasperating to be asked the same question more than once, the agent clearly needed to access the specific account details to deal with the query. Without this he would not be in a position to tell the Complainant what documentation or information was still required. The Complainant calls the agent "silly" and the agent then finds a more senior agent to speak with the Complainant.

The more senior agent listens to the Complainant's complaint. This is a polite exchange. The Complainant states that he holds a very small amount of money in the account, he has not carried out any transactions on it for a number of years, and has not recently sought to make any amendment to his details. On that basis, he cannot see why he has been required to provide documentation under the auspices of the Act. While the agent states that it is due to a Central Bank directive, the Complainant notes that this is not what the letter says. He demands to be told the precise basis and/or justification for his account being chosen as one which requires documentation to be provided. He states that if the Provider is simply doing this to every customer, it is wasting a lot of money out of what he describes as laziness. He also describes the letters as being "extremely threatening", and later again describes the letter as a "threat". He asks what risk analysis has been carried out which identified his account as one that poses a risk for money laundering / terrorist financing. The agent logs his complaint and explains the complaint procedure to him. The call then ends.

Having read the letters I do not consider that they could reasonably be described as "*extremely threatening*", "*threatening*", or "*a threat*".

By letter dated the 17<sup>th</sup> of November 2016 the Provider acknowledged receipt of the complaint and confirmed it would investigate the matter.

On the 2<sup>nd</sup> of December 2016 the Provider issued its Final Response Letter. It states that it is required to confirm the identity of all customers. It also requires this information in order to identify and verify a customer's identity and address, and keep that information up to date.

The Complainant does not accept that the Act requires the Provider to do this, for his account.

The Final Response Letter again reminds the Complainant that he is required to furnish the requested documentation or it will be legally obliged to terminate the banking relationship.

On the 24<sup>th</sup> of March 2017 the Provider issues a letter to the Complainant in similar terms to the September 2016 letter, albeit with a more urgent layout of bold and underlined passages emphasising that it will cease to provide services if the requisite documentation is not received within 60 days. It notes that "*Any account(s) will be closed without giving you further notice.*".

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In its submissions to this Office in response to this complaint, the Provider has furnished a description of the measures it takes to ensure it is compliant with its obligations under the Act. It refers to guidelines on the Act, and also notes that these obligations are also provided for in its account terms and conditions. It accepts that it did not provide this level of detail in the Final Response Letter but notes the provisions of the Consumer Protection Code which require it to communicate with customers in “plain English”.

The Complainant had initially criticised the Provider for failing to provide a proper explanation for requiring the documentation sought. Subsequently in his response to the detailed submissions provided by the Provider, he complains that the explanation provided is “very confusing”.

A key portion of those submissions is set out hereunder:

*“The test for “reasonable grounds to doubt the veracity or adequacy of documents” is an objective test. In other words, it is not the subjective opinion of the designated person which is important, rather it is a question of whether there are, on objective consideration, grounds to doubt the veracity or adequacy of CDD [customer due diligence] information. Designated persons should also bear in mind that other CDD measures may also be applicable in respect of existing customers, for example, section 37 of the Act. Other CDD measures will always be applicable in respect of existing customers, for example, the ongoing monitoring requirement contained in section 35(3) of the Act.”*

If a financial service provider is not satisfied that it has adequate customer due diligence information, it is entitled, and indeed required, to request the relevant documentation. I also note the Provider’s terms and conditions permit it to require such information.

The Provider has declined to furnish details of its applicable due diligence and know your customer procedures on the basis that it is commercially sensitive information. The Complainant takes issue with this reason, and feels he is entitled to know this information.

I accept that this information is sensitive (whether commercially or otherwise) as it is used to “filter” accounts that could be vulnerable to use for criminality. The Complainant’s insistence that the Provider is required to demonstrate grounds for believing that his account poses a risk under the Act is an inaccurate interpretation of the Provider’s obligations under the Act and its entitlement to take the steps it considers necessary to ensure its compliance with the Act.

There is no suggestion whatsoever in any of the evidence I have been provided with that the Provider believes the Complainant to be involved in any illegal activity. The Provider is implementing what it has presumably deemed to be an effective way to comply with its regulatory requirements – by seeking adequate information confirming every customer’s identity and address, if they do not already hold such information on file.

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During January/February 2018 a block was placed on the Complainant's account by the Provider, by virtue of his failure to provide the documentation the Provider has required from him, and specified since December 2016.

It is regrettable that the Provider took this measure. However, it is a measure that it was entitled to take, given the clear warnings given to the Complainant by letters since September 2016. It was not required to give him any further notice after its letter of the 24<sup>th</sup> of March 2017, which gave the Complainant 60 days to furnish a copy of a photo ID which the Provider deemed acceptable. This course of action is provided for and permitted under the terms and conditions which govern the Complainant's relationship with the Provider – the fundamental framework of the bank/customer relationship. The Provider has furnished information on how to claim the monies standing to the credit of this account.





## **Conclusion**

Since December 2016 the Complainant has been fully aware that that the Provider required a full and complete copy of his driver's licence (or another acceptable photo ID as specified in correspondence), failing which it would take steps to close/block the account. The Complainant has, for whatever reason, not provided a suitable copy of the necessary document.

The overarching objective of the procedures and the legislation is to protect all customers and the general public from the effects of criminality.

The inconvenience undoubtedly caused to the Complainant, as well as any other customer who received similar correspondence, is as a consequence of compliance with any and all measures designed to prevent money laundering and funding of criminality.

For the reasons outlined above, I do not uphold this complaint.

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.**

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

10 September 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) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.**