



<b><u>Decision Ref:</u></b>	2018-0068
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Current Account
<b><u>Conduct(s) complained of:</u></b>	Excessive request for authentication of identification Dissatisfaction with customer service
<b><u>Outcome:</u></b>	Rejected

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

### **Background**

This complaint concerns the Provider's conduct in making a copy of the Complainant's driver's licence when he sought to make a cash withdrawal from his account.

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

The Complainant holds an Account with the Provider. In October 2016 the Complainant sought to make an in branch withdrawal of €40,000 from his account. During the course of this transaction, the Provider required the Complainant to produce proof of identification, which the Complainant did by producing his driver's licence. The Provider made a copy of his licence and effected the transaction.

The Complainant states that the Provider's conduct in taking a copy of his licence was unreasonable, unjust, oppressive and/or discriminatory in its application to him. He states that the Provider's retention of a copy of his licence constitutes a breach of his civil rights.

The complaint is that the Provider has wrongfully retained a copy of the Complainant's driver's licence.

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

The Provider states that it has a duty to verify a customer's identity, it discharges this duty by asking a customer to present photo identification when making a withdrawal in branch,

and part of this verification procedure includes the retention of evidence of the photographic identification presented.

### **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 20 August 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 terms and conditions applicable to the Complainant's account contain the following provisions, relevant to this complaint:

*"5.1 Before you can open an Account and at any time while you continue to hold and operate the Account, to ensure compliance with our obligations in relation to anti-money laundering, fraud prevention and the prevention of the financing of terrorism and to comply with taxation requirements you will be required to produce to us satisfactory evidence of your identity, current permanent address, the source of funds which make up any Lodgement and your Personal Public Service (PPS) number or for non-residents your Tax Identification Number."*

*"29.1 In order to supply (and to continue to supply) you with products and services, [the Provider] will require information from you. Your*

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*Information, including your personal data, consists of the details provided in the account application, together with any other information that is furnished to us in connection with this Account, any loan, guarantee, other account(s), products, or services that you may request and/or we may provide you from time to time, information obtained from third parties, through our website, [the Provider's] Mobile Banking App, or social media sites and your transaction data ("Information"). The information that you supply will be held on a relevant filing system which maybe a computer database, or any other data base/system."*

Clause 29.2 sets out the purposes for which the Complainant's data will be retained and processed, and includes *"To verify the information and otherwise meet our legal and compliance regulations, which include those relating to the prevention of money laundering, financing of terrorism and fraud..."*

Clause 61 provides that the Provider *"may take such measures as are reasonably necessary in order to verify your identity and for veracity of any instruction prior to the execution of your instruction."*

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. 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).

A provider is required to satisfy itself of a customer's identity when providing a service; there can be no dispute about that. This principle operates entirely to the benefit of customers by hindering criminality and fraud.

A €40,000 withdrawal is an unusual transaction, as day to day in branch withdrawals go. A provider could reasonably be criticised for treating a €40,000 withdrawal in the same way it might treat a €40 one or for providing €40,000 in cash from a customer's account without

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verifying and recording the identity of the person seeking to make such a withdrawal. Furthermore, a provider could reasonably be criticised if, after carrying out the transaction, it had not retained an audit trail (including the steps taken to identify the customer and the documents relied upon).

In operating his account the Complainant is bound by its terms and conditions. It has already been noted that the requirement to identify a customer cannot be disputed.

In relation to its retention of a copy of his driver's licence, this is simple prudence on the part of the Provider, and the Complainant had specifically consented to same by virtue of the operation of clause 29 of the said account terms and conditions.

The Complainant also takes issue with the Provider's agent informing him that previous transactions effected by post would also have required proof of identity. He states that the inference here is that he was lying.

This was addressed in the following submissions furnished on behalf of the Provider:

*"We acknowledge that prior to the withdrawal request in October 2016 the Complainant had posted withdrawal requests directly to [the Provider]. In such instances it is not possible to obtain photographic identification and as an alternative the customer was contacted by telephone on a recorded line with security questions completed in order to validate his request prior to withdrawal being processed."*

This is a reasonable explanation for the prior withdrawals. The procedure of calling up a customer to verify the transaction is likely what the Provider's agent was referring to when she told the Complainant that proof of identity would have to be shown even for a remote transaction (or whatever analogous words she used). Verification occurs in different ways depending on the medium through which a transaction is being carried out. This does not amount in any way to an inference that the Complainant was lying.

A provider would, in my view, be in dereliction of its duties if it did not (a) verify a customer's identity and (b) retain an audit trail in respect of a €40,000 withdrawal from a customer account.

For the reasons set out above, I do not uphold the complaints that (a) the Provider had no right to copy his driver's licence and (b) such actions constitute an infringement of his civil rights.

## **Conclusion**

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 caused to the Complainant (if any) is outweighed by the obligation of providers to ensure compliance with any and all measures designed to prevent fraud, money laundering and funding of criminality.

I have not been provided with any evidence upon which to find that the Provider's conduct has been unreasonable, unjust, oppressive and/or discriminatory in its application to the Complainant.

On that basis, 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**

19 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.**