



<u>Decision Ref:</u>	2018-0090
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Opening/Closing Accounts
<u>Conduct(s) complained of:</u>	Failure to process instructions
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint was referred to this office by a Limited Company (“the Complainant Company”). One of the Complainant Company’s Directors (“Director A”) is representing the Complainant Company.

The complaint is that the Bank incorrectly and unreasonably (i) blocked the Complainant Company’s Account upon a communication from a Director (“Director B”) in June 2010, and (ii) did so on an unilateral basis without the consent of the Board of the Complainant Company.

The Complainant’s Case

The Complainant Company’s complaint against the Bank is that on the 30th June 2010 the Bank received a letter from Director B, then a Director of the Complainant Company, seeking to change the operation of the Complainant Company’s Bank Account without either the knowledge or agreement of the Board of that Company.

The Complainant states that this letter to the Bank by Director B was in itself, in conflict with the existing Board Resolution on the operation of the Company account. The Complainant states that this letter was also in conflict with the existing bank mandate covering the operation of the account.

The Complainant submits that Director B was in breach of his fiduciary duties to the Company and that the letter was in fact illegal under the Companies Act.

The Complainant says that without any prior notice to either the Company Secretary or the Board of the Complainant Company, the Bank immediately “ruled” the Account. The Complainant’s position is that the effect of the Bank’s action was immediately catastrophic for the Company, as follows:

- All cheques that were issued to creditors were returned unpaid.
- Wages cheques issued to staff were returned unpaid.
- Direct debits for plant and equipment leases were stopped.
- Company credit card was cancelled.
- Direct debits for repayment of grants to a County Enterprise Board were stopped.
- Payments to employees’ pension funds were stopped.
- Employees holiday entitlements were not paid
- Employees redundancy payments could not be made.

It is argued by the Complainant Company that the Company was prevented from trading overnight by the Bank.

The Complainant Company’s representative, Director A argues that he was personally instantly left without the means to earn a living and support his family and that both himself and his wife had in the previous months injected €59k+ into the Company by way of a Director’s loan to overcome cash flow problems. It is argued that Director A’s money which was his entire savings for an education fund for his children, could not be refunded to him.

It is argued by the Complainant Company that Director A had given personal guarantees on behalf of the Company on loans and leases from both the Provider Bank and another Bank. The Complainant states that because of the actions of the Bank these loans / leases could not be repaid and Director A was made personally liable to repay this money.

It is argued by the Complainant Company that the action of the Bank has caused irreparable damage to Director A’ reputation as a business person.

The Complainant states that irrespective of any disagreements between the Directors, the Bank clearly did not have the authority to change the operation of the account under the mandate that was in force at the time.

The Complainant states that the compensation that is due will be fully vouched by an accountant. The Complainant states that the Company has not traded since 2010 and is now hopelessly insolvent.

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The Provider's Case

It is the Bank's case that the account became inoperable in or around late June 2010 as a result of the receipt of conflicting instructions from the directors and principals in the Company. The Bank states it did not close the bank account of the Complainant Company until July 2016 following payment out of the account in January 2016 of the amount standing to the credit of the account of €82,385 to Director A, (the director who now brings this complaint on behalf of the Company).

Evidence

Application for opening / continuing accounts of Corporate or Unincorporated Bodies

"3. Names of person(s) authorised to carry out transactions and give instructions as per Resolution overleaf plus a sample of their signature(s). [Director A and Director B are named and their signatures are then set out]

"4. How many of these signatures are required for the carrying out of a transaction and giving of an instruction. "Any ONE of the above signatures" was selected.

5. Confirmation

The account holder named above shall be bound by and requires the Bank to act on the instructions contained in the Resolution overleaf which I certify to be a true copy of the original Resolution duly passed at a meeting of the Board of Directors / Committee / Council of the said account holder on the 05/02/2010"

This was signed by Director A and Director B and it is dated 05/02/2010.

Resolution attached to Mandate

"Resolved that:

- 1) [The Bank] is hereby requested to open and / or continue one or more accounts, in the name of the Customer at the branch detailed overleaf.*
- 2) The Bank is hereby authorised to honour and negotiate all cheques and other negotiable instruments drawn, made, endorsed or accepted on behalf of the Customer and to act on all instructions relating to the accounts, affairs or transactions of the Customer, including instructions to close any of the accounts, notwithstanding that such action may lead to borrowing or cause any of the accounts to be overdrawn or any overdraft to be increased provided that they are signed on behalf of the Customer in accordance with the instructions set out overleaf.*
- 3) The Bank be supplied with a list of the officials authorised to sign as per the signing instructions set out overleaf, together with their specimen signatures and the Bank be given notice in writing, signed by the then Secretary and any one of the Authorised*

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Signatories (set out overleaf), of any change which may occur from time to time in the list of Authorised Signatories and of any changes which may occur from time to time in the directors of the Company”.

- 4) ..
- 5) ..
- 6) ..
- 7) ..

The Resolution shall be communicated to the Bank and shall remain in full force until an amending Resolution shall be passed by the Customer and a copy thereof certified by the chairperson of the Meeting, shall be communicated to the Bank”

I will now set out the timeline of events in relation to the specific issues raised in the complaint.

05 February 2010 - A Bank Mandate for the Company account ("the Complainant Company") was signed by two directors of the Complainant Company Director A & Director B. This mandate provided that any one of the signatures of the directors was required for carrying out a transaction and giving an instruction to the Bank on the account.

29 June 2010 - Letter from Director B of the Complainant Company to the Bank's branch requesting the mandate for Complainant Company's account be revised with immediate effect. The revision required the following:

“I wish to revise the mandate for the above named company with immediate effect. The account number is ...

ALL the directors signatures must now be present on all transactions, other than lodgement's, and in particular My signature must be on all transactions. All direct debits are to be cancelled / stopped as these payments will now be made by cheque from the office of the company. The facility for making payments on-line is to be withdrawn / removed, all invoices will be paid from the office of the company. The on-line facility for checking the balance should remain”.

30 June 2010 - Three individual letters issued from the Business Manager of the Bank branch, Ms T to the Complainant Company and the two directors of the Complainant Company, regarding the instructions received from the directors. Ms T advised that "the account in question has been blocked to all debit transactions pending receipt of a new mandate agreeable to all parties and that all items presented for payment will be returned unpaid marked: *“Refer to Drawer No Mandate held”*.

01 July 2010 - A written request was received from Director A to remove the overdraft of €40,000 on the Company account and that all security connected with same be released.

01 July 2010 - Letter from the Bank Branch Manager, Mr E to Director A, setting out funds which were transferred into the Company account between February 2010 and May 2010.

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01 July 2010 - Letter from a firm of Solicitors on behalf of Director A to the Bank branch enclosing a copy of a bank mandate and a copy of a High Court Order dated 01 December 2009 in High Court proceedings issued between the Complainant Company and Director A & B. This Order restrained Director B from carrying out certain actions until after the 7 December 2009. This High Court Order predated the mandate signed by Directors A & B on the 05 February 2010.

05 July 2010 - Three Letters issued from Ms T of Bank branch to firm of Solicitors acting on behalf of Director A, The Secretary of the Complainant Company and Director B advising:

"As the Bank has received conflicting instructions in relation to the operation of the above account from [Director A] and [Director B] it now deems the account mandate dated 5 February 2010 inoperable".

Ms T further advised that the above account would remain blocked pending receipt of a new mandate agreeable to Director A and Director B. It further advised that if a new mandate was not furnished within fourteen days from the date of the letter, the Bank was no longer prepared to offer banking facilities and it was the Bank's intention to close the account.

05 July 2010 - Letter from firm of Solicitors acting on behalf of Director B requesting status of the Company account and requesting a Bank mandate be set up as already instructed by him. This is "in circumstances of the current relationship between [Director B and Director A], both parties are required to sign all cheques".

05 & 06 July 2010 – E-mails between Ms T of Bank branch and Director A, advising that: "If [Director B] agreeable to the existing mandate staying in place the block on the current account can be removed".

06 July 2010 - Letter from Ms T of Bank branch to Director B' Solicitors enclosing a copy of letter dated 30 June and 05 July to Director B.

08 July 2010 - Letter from Director B to Bank branch requesting: *"to be informed of all alterations to the accounts/account management/mandates/etc and no alterations to our accounts are to take place without written approval from me"*. Director B also sought a balance on accounts.

12 July 2010 - Two letters issued from Mr D of Bank branch to Director B confirming the accounts held at the branch and the account number for the Complainant Company account.

25 October 2010 - Letter from Director B to Bank branch enquiring if the Bank held any other accounts in the name of the Company.

27 October 2010 - Letter from Mr W of Bank branch to Director B confirming that Complainant Company only held one account with the Bank.

10 November 2010 - Letter from Director B requesting a copy of the mandate from Director A and enclosing a copy of a letter from Mr K to Director B dated 09 November 2010.

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11 November 2010 - Letter from Mr W of Bank branch to Director B enclosing a copy of "latest and up to date mandate" held at the branch.

19 November 2010 - Letter from Mr W of Bank branch to "To whom it may concern" advising Director A called into the branch on the 02 July 2010 and "signed a new mandate where any two signatures to sign".

23 December 2010 - Letter from Solicitors on behalf of Director B regarding the dispute ongoing between Director A & B and requesting the Complainant Company monies to continue to be held and not released.

04 January 2011 - Three letters issued from Mr W of Bank branch to the Complainant Company, Directors A & B advising: *"the account will remain blocked to all debit transactions pending receipt of a new mandate agreeable to all parties"*.

13 January 2011 - Letter from Mr W of Bank branch to "To whom it may concern" advising that [Director A] transferred 40k from his personal account to [the Complainant Company account] on 27 April 2009 and same was transferred back to his personal account on the 10 July 2009".

10 February 2011 - Letter from Director B to Bank branch requesting account opening documentation for the Complainant Company and a copy of the first 12 months transactions.

February 2011 - Letter from Director B to Bank branch requesting account opening details for the Company Account.

18 February 2011 - Two Letters from Director B to Bank branch seeking confirmation of the date the Complainant account was opened and the date the first transaction took place on the account and the details of the first agreed overdraft on the account.

18 February 2011 - Letter from Mr W of Bank branch to Director B replying to his queries.

01 March 2011 - Letter from Ms M of Bank branch to Director B enclosing a Visa Business Card application form.

18 April 2011 - Letter from Solicitors for Director B to Bank branch requesting the continuance of the branch to hold monies in the Company account until the dispute is resolved between the parties.

07 July 2011 - Letter from Mr W of Bank branch to Director A confirming that the Bank *"reviewed this matter and decided not to enforce its right in relation to the closure of the account pending receipt of instruction agreeable to all parties"*.

19 July 2011- Letter from Director B to Bank branch requesting account opening documents and mandate documentation.

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25 August 2011 - Letter from Mr W of Bank branch to Director B enclosing requested documentation. This letter also confirmed:

"that due to the conflicting instructions which the Bank received in relation to the operation of the account the Bank blocked the account to debit transactions on the 30th June 2010. [The Bank] forward a new mandate for completion to [Director A] on the 30th June 2010, which was returned to this office completed by [Director A] on the 2nd July 2010, this new mandate if completed by you would have required all withdrawals to be authorised by both yourself and [Director A]. [The Bank] retained the new mandate on file at this office awaiting completion by you, however after some period of time as this matter had not been finalised mandate was disposed of".

18 June 2012 - Letter from Solicitors on behalf of Director B to Bank branch confirming litigation was ongoing between the parties.

01 August 2012 - Letter from Solicitors on behalf of the Complainant Company to Bank branch raising issues regarding the instructions received from Director B on the 30 June 2010.

08 August 2012 - Letter from Mr W of the Bank branch to Director B's Solicitors responding to the Bank's decision to block the Company account.

28 August 2012 - A further letter from Director B's Solicitors to Bank branch in reply to the Bank's letter of the 08 August.

09 October 2012 - Letter from Director B to Bank branch enclosing a copy of a letter from Director A dated 14 October 2010 to another provider regarding payments to be made to an account 465***.

18 October 2012 - Letter from Director B to Bank branch requesting details on account number 465***. This account appears to be held in the name of another Company that Director A was / is associated with.

05 and 06 November 2012

Emails between Mr. E of Bank branch and Director A regarding a query from Director A:

"If I get a judgement against [Complainant Company] for the money owed to myself and [another named person] [for] (€59.5k) will [the Bank] release that amount from the account".

Mr E confirmed to Director A that:

"[The Bank] will obey any order addressed to the Bank by the court. The order has to be specific and clear, instructing [the Bank] to act, and [the Bank] will comply".

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13 December 2012 - Letter from Director B to Bank branch requesting the Bank not to accept any resolutions or mandates from the Company without his attendance at the Bank to sign such documents in the presence of branch staff.

Director B wished to be informed of any attempt to draw up a new mandate or any attempt to withdraw or transfer any funds from the Company account.

19 December 2012 - Letter from Solicitors on behalf of Director B confirming there is no agreement for Director B to resign as director of the company and requesting that Company funds not to be altered in any way.

10 February 2015 - Letter from Director A to Bank branch raising a complaint regarding the Bank's actions in June 2010.

"However, on the 30th of June 2010 in response to a written instruction from [Director B] attempting to "revise the company mandate" (see instruction attached). [The Bank] unilaterally and without any notice to me placed a block on the Company Account thereby preventing the transfer of [monies from one account to another]"

As regards the need for a Resolution of the Company to change the mandate, Director A states:

"it is clear that no such Resolution was presented to the Bank on behalf of the Board of the Company and that the Bank acted without instructions from Board of the Company and that these actions were in conflict with the Company Mandate / Resolution in force at the time and more significantly were to the detriment of the Company and me personally" .. no one individual has the right to attempt to revise operation of the Company Account without the benefit of a Company Resolution".

17 April 2015 - Letter of resignation as director of the Complainant Company from Director B to Director A.

30 June 2015 - Letter of complaint from Director A to Bank branch enclosing copy of Mandate.

"It is clear that the Board of the Company have not endorsed the instruction given to you by [Director B] in his letter of 29 June 2010. Moreover I confirm there has been no board resolution regarding the change of bank mandate. Accordingly the bank mandate that still applies is that enclosed herewith (being that signed by the two directors on 5 February 2010) and I say that instructions given to you by [Director B] on 29 June 2010 have no legal effect".

The Bank's suggested solution for the difficulties with the mandate was for the disputing parties to complete a new mandate.

11 August 2015 - Response Letter from Bank branch to Director A.

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12 August 2015 - A new mandate for the account of the Complainant Company was received and signed by Director A.

20 January 2016 - A cheque was drawn on the Company made payable to Director A for the sum of €82k+ leaving a balance in the account of 0.87 cent. The Bank states that as the account thereafter became overdrawn in June 2010 due to a request for duplicate statements for 2009 and 2010 which carried a fee of €43.00 and further bank fees in line with the terms and conditions of the account, the account was closed centrally by the Bank on the 29 July 2016 and fees were credited by the Bank.

Updated resolution of 2015 submitted by the Complainant

“9. Notwithstanding part 8, the Bank be authorised (but not obliged) to suspend transactions on the account where in its sole discretion it reasonably believes it (a) has unclear authority from the Company on the signatories authorised to transact on the Company’s behalf or (b) has contradictory instructions in relation to the operation of the account from two or more of the Directors, Secretary, officials, or persons whom the Bank believes to be in a position of authority in the Company and that the Bank be authorised to maintain this suspension until the Company furnishes a new and clear authority in the form of this document or in another form acceptable to the Bank”

Letter dated 8th May 2009 from a separate Bank (not the Provider in this dispute) to Director A. Director A states in his letter of 10th February 2015 that this is a letter from the separate Bank in response to a similar unilateral instruction from Director B. The letter from the separate Bank stated:

“In respect of managing the accounts of [Complainant Company] the Bank must take instructions in accordance with the mandate we hold from the Company and is bound by this mandate until it is either altered by the Company in the form of a board resolution or superseded by a Court Order.

Therefore, the Bank must continue to operate the account in accordance with this mandate until a valid supplemental mandate is received. In the future, we cannot accept instructions to freeze any account of the Company, unless we have the agreement of the Board of Directors, as this would amount to a revocation of the Company mandate.

Please note that the Bank will not become embroiled in Boardroom dispute and we would advise that you discuss the operation of the accounts with the co-directors and your legal advisors”.

The above letter while provided in evidence by the Complainant Company, is from a separate provider, and cannot provide any assistance in the resolution of this complain. The terms of the Complainant Company’s mandate with the Bank in this complaint and the actions of the parties (the Bank and the Complainant Company’s Directors) are the subject of the this investigation.

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Decision

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

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

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

A Preliminary Decision was issued to the parties on 8th June 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, the final determination of this office is set out below.

The issue for investigation and adjudication is whether the Bank acted correctly and reasonably in relation to the blocking of the Complainant Company's account in June 2010, following a request by Director B to make certain changes to the operation of the Mandate.

On the 30 June 2010 the Bank received a letter dated 29 June 2010 from Director B, a director of the Complainant Company and a signatory to the Mandate dated 05 February 2010 requesting the Bank to do as follows:

"I wish revise the mandate for [the Complainant .Company] with immediate effect.

ALL the directors signatures must now be present on all transactions, other than lodgements and in particular My Signature must be on all transactions. All direct debits are to be cancelled / stopped as these payments will not be made by cheque from the office of the company. The facility for making payments on-line to be withdrawn / removed, all invoices will be paid from the office of the company. The on-line facility for checking the account balance should remain".

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The Bank submits that the other director of the Company, Director A, who now brings this complaint on behalf of the Company did not wish the mandate to be changed from "any ONE signature". The Bank states that it wrote three separate letters to the Secretary of the Complainant Company, Director A and Director B, both Directors of the Complainant Company advising it had received conflicting instructions in relation to the operation of the Complainant Company account and advising that "the account in question has been blocked to all debit transactions pending receipt of a new mandate agreeable to all parties concerned and that all items presented for payment will be returned unpaid marked "Refer to Drawer No Mandate Held". The letter also advised that the service provided in relation its Visa Business Credit Card was being cancelled. The letter further offered a solution to the issue by enclosing a "new mandate for completion" and confirmed that "the Bank will be happy to review the operation of the account on receipt of the enclosed mandate completed in accordance with the Memo & Articles of the Company".

The Bank says it was advised that there was an ongoing dispute between Director A and Director B as evidenced from the various correspondence outlined above resulting in no new mandate being received which was signed by both parties.

The Bank states that, consequently, the account remained on hold by the Bank until August 2015 when a new mandate was received from the Complainant Company and signed by Director A and another person. The Bank states that Director B had resigned from the Complainant Company at this time. The Bank submits that as a result of the new mandate being received, the Bank lifted the block on the account and the Complainant Company was entitled to operate the account as normal thereafter. A cheque was subsequently drawn on the account of the Complainant Company on the 19 January 2016 in favour of Director A for the sum of €82k+ leaving a balance of 0.87.

The Bank says that no further lodgements or withdrawals were made from this account thereafter. The account was closed by the Bank on the 29 July 2016 after it had become overdrawn in June 2016 as a result of fees accruing on the account.

The Bank believes its actions were a practical and prudent response to an unfortunate and intractable dispute which arose between the two principals in the company concerned and that if any losses arose to the company they arose as a result of the actions of those two principals rather than as a result of the actions of the Bank. The Bank's position is that faced with a situation where there was a clear dispute between the two principals in the company and where, if the mandate continued to be recognised, either director could potentially empty the account, the Bank took the prudent course of advising the company that the account had become inoperable due to the conflicting instructions.

The operation of the account was suspended and the company money in the account was preserved. The Bank suggested a solution whereby a new mandate might be completed by the two disputing parties but that solution was not availed of.

The Account 1900*** in the name of the Complainant Company was closed on 29 July 2016.

The Bank notes that it did not comply with the timelines specified in Chapter 10 of the CPC in respect of investigating and trying to resolve the complaint when it was raised by Director A in February 2015 as a matter he might intend referring to the FSPO.

The Bank did not issue an acknowledgement letter or 20 day letter prior to the Final Response letter being issued on the 11 August 2015. In light of this the Bank states that it would like to offer the Complainant Company €500.00.

In response to the Bank's submission on 23/09/2017 the Complainant states that on receipt of a letter received from Director B on 30th June 2010, the bank immediately without any reference to the Board of the Company or Director A, ruled the Company account.

The Complainant states that it is incorrect for the Bank to suggest that Director A was unwilling to revise the mandate, nor has the Bank provided any evidence of this. The Complainant Company states that in fact, it did not become aware that Director B had requested this revision of the mandate until after the Bank had ruled the account.

The Complainant says that the bank makes a most extraordinary statement. "The Bank did not close the Company bank account in June 2010, nor did it rule it" The Complainant submits that this statement is incorrect.

The Complainant states that in the letters from Ms. T on behalf of the Bank, dated 30th June the Bank confirms that:

"the account in question has been blocked to all debit transactions pending receipt of a new mandate agreeable to all parties and that all items presented for payment will be returned unpaid marked 'refer to drawer no mandate held'".

The Complainant states that this clearly demonstrates that the Bank did rule / close the Company account on 30th June 2010.

The Complainant submits that the Bank must only take instructions in accordance with the mandate it held from the Board of the Company. The Complainant says that the Bank was bound by that mandate until it was either altered by the Company in the form of a Board resolution or superseded by a Court Order. The Complainant states that the Bank did not have the right to become embroiled in what was a Boardroom dispute and that it certainly did not have the authority to rule/ block the account.

The Complainant submits that the complaint to the Ombudsman is made by Director A as a Director on behalf of the Company. Director A states that it is his fiduciary duty to do what is right for the Company and its creditors of which he is but one. The Complainant says that the Bank yet again seeks to personalise the complaint and infer that Director A is seeking to personally gain from the process.

The Complainant states that this is unfair and clearly seeks to discredit the motives of Director A in bringing this complaint on behalf of the Company.

In response to the Complainant's above submission, the Bank submits that it is abundantly clear from the timeline of events set out in the Bank's Response to this Complaint that the Bank was receiving conflicting instructions as to the operation of the account of the Complainant Company for the period June 2010 onwards.

The Bank submits that its actions were a practical and prudent response to the events that occurred.

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The Bank submits on 11/10/2017 – in response that as to the suggestion by the Complainant that creditors of the Complainant Company are still owed money because of the actions of the Bank and that the directors have liabilities arising from personal guarantees, the Bank notes that when an acceptable fresh mandate was eventually agreed and submitted to the Bank in August 2015, the company was then free to operate the account as normal thereafter. The Bank says that at that point the balance of the account was €85k+ in credit. The Bank states that a small number of modest transactions took place on the account over the following few months and on 19th January 2016, €82k+ was paid out to the benefit of Director A, the Complainant herein on behalf of the Company, leaving a balance of 0.87.

The Complainant made a submission dated 13/10/2017 – in response to the Bank's above submission. In this submission he submits that:

- The Bank has not demonstrated where it received conflicting instructions from the board of the Company or indeed anybody else, prior to it taking upon itself to close the Company bank account. The Complainant states that the Bank could only take instructions from the Board of the Company in relation to the operation of its account.
- It is also worth noting that prior to ruling the account; the Bank did not notify the Board of its intention to do so.
- For the Bank to suggest that its action in ruling the company account was a "prudent and practical" response is misleading. The Complainant says that the effect of the Bank's action was catastrophic for the Company.
- That this action by the Bank had a profound effect in that it prevented the Company from further trading, and caused irreparable damage to the Company's reputation in the eyes of its staff, its creditors and its clients.
- The Bank did not have the authority to act on behalf of the Company. The Complainant says that this is the sole responsibility and duty of the board of the company.

The Complainant says that it is also worth noting that notwithstanding the fact that the Bank had ruled the account, it subsequently allowed a credit card direct debit from the same account.

The Complainant submits that the Bank has suggested in both of its responses that Director A had personally benefited to the tune of €82k+, in preference to the Company's creditors. The Complainant argues that this is untrue and unfair and is, a deliberate attempt by the Bank to discredit Director A personally as Complainant on behalf of the Company.

The Complainant states that the creditors to the Company are many and diverse, and include various lending agencies, county enterprise boards, suppliers, staff, staff pension funds, company directors, revenue commissioners accountants and legal representatives. The Complainant says that many of these debts have been partly addressed through

payments from the Director A personally, payments from the company account since August 2015 and through payments from another Company.

The Complainant submits that for the Bank to infer that Director A is in breach of fiduciary duties to the company, is without basis and malicious.

The Complainant says that ultimately all creditors must be treated equitably and equally and rejects, what he describes as, *the scurrilous allegation* which the Bank has resorted to making in order to somehow justify its actions.

The Bank's response of 19 October 2017 to the Complainant's above submission is that the Complainant Company only had two directors, Director A and Director B. The Bank states that in late June 2010, Director B wanted the Company's bank mandate to be revised. Director A did not want the mandate revised. The Bank says that this was the conflict which caused the Bank to take the view that the account had become inoperable.

The Bank states that over the course of the following months and years the dispute continued with the involvement of solicitors on both sides.

The Bank submits that it did not close the Company bank account in June 2010, nor did it rule it. The Bank says that it suggested that the two directors agree between themselves a fresh mandate and provide that to the Bank so that the account could again operate. The Bank's position is that this was not done until August 2015. It is the Bank's submission that the dispute between the two directors was what caused the Company's difficulties rather than the actions of the Bank.

The Bank submits that it has not suggested that Director A has personally benefited in preference to the Company's creditors nor has it inferred that he is in breach of any fiduciary duties. The Bank says however, that in the Complaint Form dated 8 September 2015 by which this complaint was commenced, Director A stated: *"I am at this point at a significant financial loss due to the actions of [the Bank]. Accordingly, I would ask that [the Bank] now compensate me for the losses I have incurred to date."*

The Bank states that in that context, the Bank submits that it was appropriate for it to note in its last response that the balance of the Company account on closure (€82k+) was paid out to Director A in January 2016.

The Complainant's response of 24 October 2017 to the above submission is the same as that previously submitted in the submission of 23rd September 2017.

Analysis

It is clear from the evidence submitted that the Bank was faced with a conflicting situation where instructions were coming from Director B as to how the account was to operate, which were different to those agreed under the bank mandate, and where that agreed mandate was being used by Director A in accordance with what was originally agreed.

The mandate that was completed for the Complainant Company on 5th February 2010 authorised “Any One” of the two named Directors (Director A or Director B) to carry out transactions and give instructions to the Bank.

Therefore, unless the Bank was given notice to the contrary, it would allow any of the named Directors to operate the Company account.

In a situation where one of a number of authorised account holders requests changes to the operation of a bank account because of a dispute with a fellow account holder, a Bank should reasonably be cautious. This is the situation that occurred here.

The communication from Director B was extensive in what he wished to happen with the account, but the Bank did not accede to those demands. For the Bank to have done all that was requested by Director B, it would have needed the agreement of the Board of Directors of the Company. This is so, as much of what was being required by Director B would have amounted to a revocation of the Company mandate that was in place.

The action that the Bank took was to block all debit transactions pending receipt of a new mandate agreeable to all parties. The Bank reasonably and prudently immediately communicated this action to Director A, Director B, and to the Secretary of the Complainant Company.

It is clear that the Bank found itself in the center of a dispute between the two Directors of the Company that ultimately seems to have taken 5 years and a High Court case to resolve.

A Bank cannot become involved in a Company’s internal dispute – but it has some responsibility for protecting the funds in the account while such difficulties are being worked through.

I consider that the Bank’s actions of putting a block on all debit transactions was reasonable and prudent. By placing a hold on the account, it meant that neither of the disputing account signatories could withdraw funds.

I consider that even if the Bank had not taken this prudent step of its own accord, it was some way compliant in doing so upon receipt of the instruction from Director B. This is so, as the Resolution attaching to the mandate gave the Bank the authority to: *“act on all instructions [from “Any One” of the signatories to the mandate] relating to the accounts, affairs or transactions of the Company including instructions to close any of the accounts ...”*. While the letter from Director B sought to *revise* the mandate, this would not have been possible without the resolution of the Board of the Complainant Company, but Director B also gave the instruction to stop all payments out of the account and such instruction on its own would have been actionable by the Bank.

The Bank used its discretion to not enforce its right to fully close the account, but considered it reasonable to await receipt of instructions on the account agreeable to all the parties.

The disagreement between the two Directors of the Complainant Company, were primarily matters for the Directors themselves to resolve. I am satisfied that until the Directors did take steps to resolve matters, the Bank had in my view, no option other than to suspend the operation of the Company's bank account. I note that in the absence of Director A and Director B resolving matters themselves, the Bank put forward a solution whereby a new mandate might be completed by the two disputing Directors, but that remedy was not availed of by both directors of the Company.

I accept that stopping an account which is in daily or frequent use can cause serious problems. For example, if automatic payments, direct debits or loan repayments are made from the account. It is the account holders' responsibility to ensure that these payments can continue, and I consider that it may have been the Bank's hope that the parties would have resolved their differing requirements on how the mandate was to operate, at an earlier time. I note that it took the Directors years to resolve matters. I do not believe that the Bank could have been expected to foresee that it would take this length of time and I cannot find that the Bank was at fault in its actions.

The Complainant's view was that the Bank was trying to discredit him in its comments about the monies that were ultimately released from the accounts, and says that the Bank was inferring that he was in breach of his fiduciary duties to the company. I have not been provided with any evidence to support this. It would appear to me the Bank was communicating this information to provide a complete picture, and to indicate how closure was brought to the matter by the transfer of the monies that rested in the Complainant Company Account, into an account controlled by Director A.

As regards the Bank's handling of the complaint, I note the following. The Bank accepts that it did not comply with the timelines specified in Chapter 10 of the CPC in respect of investigating and trying to resolve the complaint when it was raised by Director A in February 2015 as a matter he might intend referring to the FSPO. The Bank did not issue an acknowledgement letter or 20 day letter prior to the Final Response letter being issued on the 11 August 2015. In light of this the Bank states that it would like to offer the Complainant Company €500.00. I am of the view that this payment is sufficient compensation for the Bank's lapse in this regard. On the basis that this offer remains available to the Complainant it is not my intention to uphold this aspect of the complaint.

Having regard to all of the above, it is my Legally Binding Decision that this complaint is not upheld.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint 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.

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GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

6th July 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.

