



<u>Decision Ref:</u>	2018-0128
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Fees & charges applied Disputed transactions
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant is a customer of the Respondent Bank, and has been for a number of years. She holds a current account with the Bank and is dissatisfied over the manner in which charges have been applied to this account *“over the last couple of years”*.

She explains that on a number of occasions her account became overdrawn, usually by a nominal amount, i.e. by €2/€3, unless a Direct Debit was applied to her account *“unexpectedly”*. She submits that on the occasions when her account was overdrawn, charges were applied to her account, ranging from €4.44 to €12. The Complainant states that she spoke to various Managers of the Bank about the application of these charges at various stages. She says that during a recent conversation, she was informed that the Bank had a facility available to customers whereby a text message can be sent to the customer’s mobile phone outlining the balance of the customer’s account. The Complainant is very annoyed that she was only just advised of this facility. She points out that when she asked her Bank Manager for more details about the facility, she was told that she should *“read up on it”*.

The Complainant maintains that the application of charges to her account has been nothing short of extortion. She is particularly upset that charges continued to accrue on her account following previous complaints being made about the charges and discussions taking place.

The Complainant's Case

The first complaint is that the Bank wrongfully applied charges to the Complainant's account when it became overdrawn, on most occasions overdrawn by a very nominal margin.

The second complaint is that the Bank provided the Complainant with an inadequate level of customer service.

The Provider's Case

The Bank rejects the allegation that it wrongfully applied charges to the Complainant's account.

The Bank explains that the account in question is a current account, which has an agreed overdraft facility of €250. Any transaction presented on the Complainant's account which causes the overdrawn balance to exceed the agreed limit of €250 is considered an 'Unarranged Borrowing' and this incurs an irregular account charge of €4.44 per transaction.

The Bank states that the Complainant's account was opened in July 2013 and since then, irregular account charges have been applied to the account. The Bank has supplied a breakdown of the charges applied to the Complainant's account in 2017, by way of example, which illustrates that the charges were applied due to the account becoming overdrawn in excess of the agreed overdraft limit of €250.

The Bank states that the possibility of irregular account charges being levied is outlined to customers in its brochure, entitled 'A Guide to Personal Accounts, Fees and Interest'. The brochure advises customers of the following-

"Your debit balance should not exceed your arranged overdraft limit. If your account overruns without formally agreeing an overdraft or you exceed your arranged overdraft limit, this is called unarranged borrowing, When this happens you will incur Unarranged Borrowing charges. You will also pay Unarranged Borrowing Interest.

If you have not arranged a suitable overdraft limit in advance and there is not enough money in your account we may not always be able to authorise unarranged borrowing. We may not be able to pay cheques, standing orders, direct debits or future-dated payments, including those to a [Respondent Bank] loan and we will charge a fixed amount for each item we do pay (see the table below). Unarranged borrowing will incur higher interest than arranged overdrafts and should be avoided."

Regarding the Complainant's dissatisfaction over not being advised at an earlier stage of the Bank's mobile telephone text message facility, the Bank points out that this information is readily available on the Bank's website. The Bank states that the text alert

/Cont'd...

service is not an automatic service; it is a service customers must specifically opt in to. The Bank states, therefore, that the service is one which the Complainant must specifically request in order to avail of it.

The Bank emphasises that it remains the customer's responsibility to manage his/her accounts and to ensure that the accounts remain within the approved credit limit at all times.

The Bank points out that the Complainant raised complaints about the imposition of irregular account charges previously. These complaints were raised and promptly addressed in May 2012, November 2012, December 2012, January 2016, February 2016 and in September 2016. The Bank states that the Complainant received refunds, as a gesture of goodwill, on three occasions in 2012. The Bank points out that despite its previous clarification on the matter the Complainant continued to enter into Unarranged Borrowing post 2012, which resulted in further charges being applied to her account.

Notwithstanding the Bank's position that it acted properly at all times, in its letter to this Office dated the 22 August 2017 the Bank indicated that it would be agreeable to providing the Complainant with €500, as a gesture of goodwill, in settlement of the dispute.

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 21 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.

This complaint concerns the application of charges to the Complainant's current account. The Complainant is aggrieved that charges were applied to her account over the years, when the account exceeded the agreed overdraft. The Complainant has also expressed dissatisfaction with the customer service provided to her, specifically regarding the Bank's failure to advise her, at an earlier stage, of its text alert facility.

The account forming the subject matter of this complaint is a current account, which the Bank confirms was opened in July 2003.

The Bank also confirms that the agreed overdraft facility applying to the account is in the amount of €250- the Bank has furnished documentary evidence in the form of a computer printout bearing this out.

The Bank accepts that charges have applied to the Complainant's account over the last number of years when the account exceeded the agreed credit limit, i.e. when the account was overdrawn in an amount greater than €250. The Bank insists that the charges were correctly applied and has provided details of the charges imposed in 2017, by way of an illustrative example.

In circumstances where the Complainant has not identified specific instances of charges being levied on her account, but rather has referred to the imposition of charges in a general sense (*"they have been taking between 4.44 and 12 Euros from my account for the last 10 or 15 years*), I am prepared to accept the 2017 account information as evidence of the manner in which the Bank has applied charges to the Complainant's account to date.

Having scrutinised the transaction history on the Complainant's account, as detailed under Appendix O of the Bank's submission to this Office under cover of letter dated the 22 August 2017, it appears that charges were only applied to the account when it exceeded a balance of €250 DR. Furthermore, it seems that the account exceeded the overdraft limit by amounts greater than €2/€3 on occasion, which does not fully accord with the Complainant's contention that her account was usually overdrawn by nominal amounts only.

Details surrounding the Bank's application of charges to accounts exceeding the arranged overdraft are outlined in the Bank's brochure entitled 'A Guide to Personal Accounts, Fees and Interest'. A copy of the Bank's brochure, dated 20 May 2017, has been furnished in evidence. Section 7 of the brochure provides information about interest and charges in borrowing, and states as follows-

"Once you've agreed your arranged overdraft with us, you can use it at any time you need within your arranged overdraft limit, subject to terms and conditions."

At page 11 of the brochure, Section 7 also contains a table of charges a customer may have to pay, as follows-

/Cont'd...

		Why it is charged	When it is charged	Charge
Irregular Account Charge		This is a charge we make whenever your account goes into unarranged borrowing or we have to extend an overdraft due to transactions you have carried out where you do not have enough available in your account.	It is charged each time you make a transaction and we add it the following business day.	€4.44
Unpaid Outwards Charge		This is charged when we return an item such as a cheque, direct debit, standing order or future-dated payment because you do not have enough available in your account.	This is charged for each item and taken from your account as and when a payment is returned.	€12.70

Section 8 of the booklet addresses the issue of how to avoid paying fees and charges and outlines the following-

“If there are payments such as direct debits, standing orders, cheques, future-dated payments and so on due from your account, please make sure you have enough in your account to meet these payments by close of business on the working weekday before the amounts are due. If you do not, it will result in unauthorised borrowing and we will charge surcharge interest and fees.

If you have an overdraft, always make sure that you keep within your agreed overdraft limit. This will mean you avoid unnecessary charges on your account.

You can check your balance at any time online or by phone on Anytime Banking. Please contact your branch if you would like to discuss your financial needs further, and for more information on managing your account.”

Given the content of the terms and conditions applicable to the overdraft on the Complainant’s account, and in light of the fact that the Complainant’s account was always

/Cont’d...

in an overdrawn state over and above the agreed limit when charges were applied¹, It is clear that the Bank was entitled to impose the charges in the manner in did. Contrary to what is alleged, I accept that the Bank acted correctly, lawfully and within the parameters of the terms and conditions of the Complainant's account when irregular account charges were levied, as described above.

The second complaint advanced by the Complainant concerns the level of customer service provided by the Bank. The Complainant submits that she recently discovered that the Bank provides a text alert facility, whereby the balance of an account can be communicated via text message to a customer's mobile telephone. Implicit in her complaint is dissatisfaction over not being told about this service at an earlier stage, when she suggests this service might have assisted her in managing her account with its limits and prevented her account from entering into an overdrawn state and thus prevent the imposition of charges. The Complainant points out that when she asked about the service she was simply told to "read up on it".

The Bank has confirmed that it does provide a text alert facility to customers holding an eligible account, who are aged 11 years and over and who have a valid Republic of Ireland mobile telephone number and an email address. Information about this facility has been supplied in evidence, under Appendix Q of the Bank's 'Schedule of Evidence'.

The information includes the following description of the service-

"Get your balance text to you on a regular day and time each week.

Get your account balance sent straight to your phone. With [the service] we will send you a text each week, on a day of your choosing. You can even specify morning or afternoon.

You can also set up to receive alerts if your account goes above or below a certain amount, so you'll know when you're receiving a large payment or if you're low on funds."

I accept the Bank's position that the service in question is one which a customer must specifically opt in to and as such unless a customer requests to avail of the service it will not be actioned.

I note that the existence of this service and details of how it operates is set out on the Provider's website. I note that the Complainant is enrolled in the Provider's on-line banking system. I also note that the Provider has a free mobile app available to its customers.

Notwithstanding that all these services are very useful and that it would be helpful if the Complainant was informed of the text service earlier, it is, and will remain, the responsibility of the Complainant to manage her account within the limits.

¹ As evidenced by the 2017 sample account history provided in evidence.

Before I conclude I would like to comment on the submissions to this Office by both the Complainant and the Bank. Following the submission of her Complaint Form to this Office, and after the Bank prepared and furnished its response to the grievances outlined therein to this Office, the Complainant made some further submissions to this Office. In an email dated the 20 July 2017 the Complainant referred to charges not being reimbursed to her account due to *“work that was done at one of their banks”*. In another email dated the 4 August 2017 she referred to the Bank *“closing branches all over the country”*. In an email dated the 13 February 2018 the Complainant made some comments about the Bank’s internal communications and referred to it being *“consistently disorganised”*. These additional comments by the Complainant were sparse at most, with little or no detail supplied.

The Bank, by email dated the 9 February 2018, asked that these additional comments be excluded from the current dispute, given that they did not form part of the initial complaint and as they did not form part of the Bank’s response to the Schedule of Questions posed and evidence sought by this Office.

Given the general nature of this complaint and the lack of any specific conduct complained of as it relates to the Complainant, I do not intend to deal with these matters.

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

Conclusion

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.