



<u>Decision Ref:</u>	2018-0159
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Disputed transactions
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

In October 2015 the Complainant contacted the Bank and provided it with a photocopy of 4 pages of a deposit book, showing three entries/transactions – the first, a deposit made in 1979 and two subsequent withdrawals of monies. It shows a remaining balance of IR£10,500 in the account, in February 1980.

The Bank has submitted that it has been unable to locate any record of the account and submits that it is satisfied that the funds were withdrawn by the Complainant and the account was closed between 1980 and 1984.

The Complainant's complaint is that the Bank are refusing to pay to him the euro sum equivalent of the balance displayed in the copy deposit book, which he says remains due and owing to him.

The Complainant's Case

The Complainant submits that he opened an account with a branch of the Bank in Ireland, by way of transfer of funds from an account held with a UK branch of the Bank.

The Complainant submits that he holds a valid Deposit Account Book, which shows that monies were deposited into the bank account and that monies were subsequently withdrawn from the account, leaving a balance of IR£10,500.

The Complainant submits that the Bank has told him that it is unable to locate his account, even though it accepts that the account existed (and the Complainant submits should still exist) and the sum of IR£10,500 was deposited in it.

The Complainant submits that he requires the funds held in this account to pay for eye surgery. He is seeking to have the Bank pay to him the euro equivalent of the balance of IR£10,500.

The Provider's Case

The Bank submits that it has been unable to locate any record of the account relevant to this dispute.

The Bank submits that the Complainant has not provided any evidence to the Bank that the account in dispute is still open. It contends that the photocopy of the deposit book provided by the Complainant, or indeed the original book itself, which it has not had sight of, do not constitute proof that the account remains open or that it was open any time after the last withdrawal entry in 1980. It submits that a pass book does not constitute proof of funds.

The Bank submits that pass books were issued for deposit accounts at that time (1979) but that they were only a memorandum of transactions and were not always written up to date. It submits that they regularly did not detail interest gained and customers often did not, or could not, present the book when transacting on their account. The Bank submits that it was possible to transact on an account without producing the pass book. The Bank submits that as outlined in the terms and conditions, for deposit accounts, the Bank's own records recorded the true details of account transactions and balances held.

The Bank submits that it has extensively and exhaustively reviewed its records for the details of the account provided by the Complainant and that it is satisfied that the funds were withdrawn and the account closed between 1980 and 1984, on the basis that the Bank's records confirm the account was not in existence on 01 November 1984.

The Bank submits that the Consumer Protection Code, which has since come into being, - confirms that the Bank is obliged to retain details on transactions for six years after the date on which the particular transaction is completed or discontinued and are required to retain all other records for six years from the date on which it ceased to provide a product.

The Bank submits that if no withdrawal had taken place on the account since 1980, then under the Dormant Accounts Act 2001, the account would have been included in the first tranche of accounts to be moved to the NTMA in 2003 - in circumstances where no customer initiated transaction had occurred for well over 15 years. It says however that upon review of the sweeps of accounts held at the former branch where the Complainant had opened the account, it found no account listed under the account number provided by the Complainant, or in the Complainant's name, or variations thereof.

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The Bank submits that it has complied with all relevant legislation for deposit accounts over the period including the Dormant Accounts Act, Consumer Protection Code, Payment Services Regulations, SEPA legislation and the Deposit Guarantee Scheme. It submits that changes to how the product operates and terms and conditions were notified appropriately to customers at all such material times.

The Bank submits that statements have been sent to Demand Deposit account holders on at least an annual basis since 2003, in any instance where the balance was over €20. The Bank submits that it has an "Integrity Checker", which highlights on an exception report any account which has not received a statement in the last 365 days. The Bank says that when that control was introduced in 2013 it carried out a once off check back to when statements were introduced in 2003 and rectified any accounts which had not received a statement.

The Bank submits that all accounts which were open in 2003 have received statements and that therefore, if the account the subject matter of this complaint remained in existence during this period, the Complainant would have received statements.

The Bank submits that the Complainant has provided no evidence to the Bank that the account remains open. The Bank submits that it has spent a significant amount of time and resources and carried out exhaustive searches in attempting to locate the account and that no record has been found. The Bank submits that it is satisfied that the account was not in existence on 01 November 1984 and therefore was closed at a time between the last transaction recorded in the photocopy of the deposit pass book of February 1980 and 31 October 1984.

Decision

During the investigation of this complaint by this Office, the Bank was requested to supply its written response to the complaint and to supply all relevant documents and information. The Bank responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Bank's response and the evidence supplied by the Bank. 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.

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A Preliminary Decision was issued to the parties on 16 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.

The Complainant furnished a submission to this Office, dated 17 September 2018. Having considered and taken into account the contents of this submission, the final determination of this office, is set out below.

I have had regard to the photocopy pages of the passbook furnished by the Complainant. The first two pages identify the branch of the Bank as well as the Complainant's name and address (in the UK) and the account number to which it relates (xxxxx086).

The other pages shows details of three transactions:

09 Feb 1979	Paid In IR£13,000		Balance IR£13,000
28 June 1979		Paid Out IR£500	Balance IR£12,500
20 Feb 1980		Paid Out IR£2000	Balance IR£10,500

1979 DATE	Name etc AMOUNT IN WORDS	INITIALS	WITHDRAWN	PAID IN	BALANCE
Feb 9	By [redacted] assembly	L		13,000	13,000
June 28	five hundred [redacted]	S	500		12,500
Feb 20	two thousand [redacted]	S	2,000		10,500

Deposit Pass Book

The Complainant's position is that the pass book which he holds constitutes evidence that he holds an account with the Bank and that there remains a balance of IR£10,500 within the account.

The Bank's position is that the pass book does not represent such evidence and that entries in passbooks do not necessarily show the true balance of an account. It submits this was stated within its terms and conditions governing deposit accounts, over the years.

It has submitted that if the Complainant's account was still in existence as contended, then the terms and conditions currently prevailing to deposit accounts would prevail.

The Bank has submitted that it withdrew deposit pass books in September 2013. It has furnished a copy of the terms and conditions which were applicable in 2013, Section 15 of which states that:

15 Demand Deposit Pass Books

15.1 Deposit account pass books are issued by us for your convenience only. We reserve the right to recall them on giving notice to you by such means as we consider appropriate.

15.2 You must take all reasonable steps to keep the deposit account pass book secure and must advise us if the book is lost or stolen.

15.3 Where a pass book has been issued for your Account you should produce it when lodging or withdrawing money to or from your Account, however, we may permit transactions without production of the pass book.

15.4 Entries in the pass book may not necessarily show the true balance of your Account which is kept on our own books.

The Bank has submitted if the Complainant's account was still in existence, then the terms and conditions currently prevailing (dated May 2015) would be applicable to his account. Section 15 of which deals with deposit pass books, which I have set out below:

15. Demand Deposit Pass Books

15.1 Deposit account pass books will no longer be issued by us.

15.2 Where a pass book has been issued by us for your Account and you produce it to us within a period of three months from June 18, 2013 (date of our notification of withdrawal from issuance) we will update such pass book with any transactions by way of lodgement or withdrawal and in respect of all interest accrued.

15.3 Entries in any pass book issued may not necessarily show the true balance of your Account which is kept on our own books.

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I note from the foregoing that during the period when passbooks were in active use by customers, the Bank retained a discretion to permit the execution of transactions even in the absence of a passbook. This means that lodgements and withdrawals may have taken place on an account but would not be reflected on the face of the passbook. This is accounted for within clause 15.3, above, which confirms that the "*true balance*" of an account is that kept within the Bank's own records.

I am satisfied, therefore, that the passbook is not, in the absence of further evidence, conclusive as to the status of the account and/or the balance of monies within it.

The Bank has submitted that in October 2015, the Complainant contacted it seeking information on the current balance of the account number in question, xxxxx086. The Bank states that the relevant branch closed in June 2001 and that the management of any accounts which remained open in that branch at that time, were transferred to another of the Bank's branches.

It has submitted, in some degree of detail, the nature and extent of the searches it conducted in relation to the account in question, which I have set out below.

The Investigations Conducted by the Bank

The Bank has submitted that the account number furnished could not be located on the Bank's computer system, under the account number provided by the Complainant, or following a search using the Complainant's name and variations thereof and the address provided by the Complainant at that time.

The Bank has submitted that it conducted further searches throughout the period from October 2015 to March 2016, after the Complainant verbally provided details to it of other addresses that he had resided at and could remember over the years. The Bank says that these addresses, along with the address recorded on the photocopy of the deposit account pass book, were checked when conducting all searches for accounts.

The Bank states that it received a letter dated 22 December 2015 from the Complainant's representative at the time, advising that they were acting on behalf of the Complainant and requesting that the matter regarding the deposit account be resolved. The Bank says that in this letter, and all subsequent letters to the Bank, the representative referred to the account number being xxx*x086 and not xxx086, (being the one shown on the face of the copy deposit passbook pages). The Bank has submitted that it conducted all of the searches to locate the Complainant's account with regard to both of the above account numbers and under all 4 addresses provided to it by the Complainant.

It says that its branch checked the oldest "*balance microfiche*" records which it held in respect of the original branch and that the oldest records held dated back to 06 December 1990. The Bank has submitted that the balance microfiche lists the balance in each account as at the date of the microfiche.

The Bank says that the account numbers appear on the microfiche in a sequential number order - based on the first 5 digits of the account number, known as the "*customer number line*". It submits that when the microfiche search was conducted, it checked for number lines xxx*x for the Complainant's account number however it did not appear on that microfiche. The Bank submits that the microfiche was also checked for the Complainant's account by reference to number line xxxxx but that it did not appear on that microfiche.

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The Bank submits that the branch also attempted to locate the account by way of "Ledger microfiche". It says that Ledger microfiche is produced daily and any account that has transacted on that day appears on the day's Ledger microfiche. It is produced in sequential number order based on the first 5 digits of the account number, the customer number line.

The Bank has said that on the basis that interest is currently posted to demand deposit accounts on 01 April and 01 October each year, the branch contacted Distribution Services and obtained Ledger microfiche for 01 April 1985 and also for 09 April 1985. It submits that the microfiche was checked for both number lines xxx*x and xxxxx, to locate the Complainant's account but it says that they were not found to be on these microfiche.

The Bank says that in the course of its investigations, it noticed an unrelated deposit account which showed that deposit account interest was posted annually on 1st November for the years 1983, 1984 and 1985, As a result, the branch enquired from Distribution Services, as to what the earliest 01 November Ledger microfiche records held in archive storage were, and says that it was advised that records for 01 November 1984 were the earliest held. The Bank has submitted that the branch then requested that 01 November 1984 and 01 November 1985 microfiche be retrieved from archive storage.

The Bank has submitted that if the Complainant's deposit account was still open in 1984, it would show on the 01 November 1984 Ledger microfiche, due to the interest posting to all open deposit accounts at that time. The Bank has submitted that microfiche was checked for the Complainant's account under number line xxx*x and xxxxx but, again, no record was found.

The Bank's position is that based on all of the above searches, the Bank is satisfied that the account numbers provided the Complainant of xxx*x and xxxxx were not in existence at 1 November 1984.

The Bank has submitted that further efforts to locate the account included searches of "history cards", which were cards used by the Bank in the past when opening new accounts but which are no longer used. It has submitted that in line with procedures at that time, history cards were held in archive storage for a period of six years after the account had been closed, before being destroyed. The Bank has submitted that in early February 2016, 19 boxes of history cards for the original branch were recalled from archive storage and searched. The Bank has submitted that there was no history card located for these account numbers or in the Complainant's name.

The Bank has submitted that its branch checked its safe for old manual transaction ledger books which were used prior to computerisation but that no ledger books could be located either in the branch safe or in archive storage.

The Bank has submitted that the branch noted that the transaction written in the deposit pass book on 28 June 1979 is the National Sorting Code for a different branch in Munster. The Bank submits that it contacted the Munster branch to see if they had the microfiche dating back to 28 June 1979 but that they did not.

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The Bank has submitted that following this, the branch contacted the Bank's Dormant Accounts Unit, (i.e. an account that has not had a customer initiated transaction for a period of at least 15 years). The Bank submits that it conducted a search of the Dormant Register but that it could not locate any record of such an account. The Bank submits that it was advised that it holds 20 accounts in the Dormant Register, for the original branch, under the surnames of the Complainant, or variations thereof, but that none of these accounts are the Complainant's account or any variation thereof and none contain any of the addresses provided by the Complainant.

The Bank submits that the Dormant Accounts Unit advised that when the Dormant Accounts Act 2001 came into force, the first sweep or tranche of dormant accounts was carried out by the Dormant Account Unit in 2003 for any accounts that had not had a customer initiated transaction for a minimum of 15 years. The Complainant's account is not in the Dormant Account Register.

The branch of the Bank in the UK where the Complainant held an account had closed and the business was transferred to its Business Centre. The Bank submits that it contacted the business centre in question which advised they only hold records for 14 years. The Bank says that in an effort to locate the account, the branch contacted the Bank's Core Accounting IT Department, which holds records of all retail banking accounts currently open. The Bank says that it was advised that the oldest data backups that they hold are dated 1996 and the oldest Customer Information File records held are 1993. The Bank has submitted that it checked for both account numbers in question, and checked for variations of the Complainant's name and under each of the four addresses provided, and that they did not have any record of the account. The Bank says that it concluded from their searches that the account was closed on some date before 1993.

Analysis

The Complainant's position is that the balance showing on the face of the passbook, in the sum of IR£10,500, remains due and owing to him by the Bank.

The Complainant has not adduced any evidence of the continued existence of such an account, save for the passbook.

I accept that the passbook entries show that the Complainant held an account with the Bank in the year 1980 and that the last entry shows a balance of IR£10,500. However I also accept that having a passbook that looks "live" is not conclusive evidence that there is still money in an account or that the account remains in existence. As it was possible for lodgements and withdrawals to have occurred on the account without being recorded within the book, it does not necessarily reflect all events on an account. Rather, it simply shows a snapshot in time. It is entirely possible that the balance listed was withdrawn without the passbook, or transferred into another account. It is simply not possible to say in the absence of any further evidence as to what occurred, given that the balance displayed dates from almost 39 years ago.

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The Bank has not produced any evidence of a withdrawal of the Complainant's monies but I accept that the Bank has no obligation to retain documentary records relating to particular transactions after six years from the date on which a particular transaction occurred or six years after the date on which it ceased to provide a product to a customer.

Although I can understand the disappointment of the Complainant, having considered the matter fully and on the basis of the foregoing considerations, I have come to the conclusion that the balance of probability suggests the account was closed or the money transferred by the Complainant on a date prior to 1984, and that as a result it has not been possible to locate any details of this account.

In those circumstances, I believe that the Bank has acted very reasonably in conducting thorough searches for any records which would refer to the account, but has been unable to find any such records. I take the view that the evidence discloses no wrongdoing on the part of the Bank, and that there is no reasonable basis upon which this complaint can be upheld.

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.

**MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION
AND LEGAL SERVICES**

08 October 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.