



<u>Decision Ref:</u>	2019-0027
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Maladministration
<u>Outcome:</u>	Rejected

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

Background

The complaint arises from the Complainant's receipt from the Bank of a text message to his mobile phone and to the Bank's sending of further text message/s notwithstanding instructions from the Complainant that it should cease.

The Complainant's Case

The Complainant states that he received an unsolicited text message from the Bank (on a date which he originally did not specify to this office) following which he "*contacted the bank requesting that no more be sent*". Thereafter, the Complainant states he received a further unsolicited text message on **29 August 2017**. The Complainant states that he "*again contacted the bank requesting no more text messages be sent*" but that this was "*also ignored*" insofar as, on **20 September 2017**, the Complainant received a further unsolicited text message from the Bank.

On **25 September 2017**, the Complainant sent a letter to the Bank seeking an explanation as to how he had come to receive the text message on 20 September 2017. The Complainant states that this was not a complaint but a request for an explanation. In the absence of a response, the Complainant sent a further letter on **9 October 2017**. The Complainant maintains that, unknown to him, his original letter was processed as a complaint and, on 24

October 2017, the Complainant received a final response letter from the Bank in relation to the issue.

The Complainant is unhappy because he says that he never made a complaint. He did not know that a complaint was being investigated, he had no input into the investigation of the complaint and he had no communication with the Bank in relation to this complaint.

Another issue raised by the Complainant, relates to the content of the text messages, as opposed to the fact that the text messages were sent. The Complainant, in a letter to this office of 15 March 2018 made this point clear insofar as he stated, having reproduced the text message of 29 August 2017 (only), as follows:

I have made a complaint to the Data Protection Commissioner about the Bank of Ireland sending unsolicited text messages. My complaint to your office is not about the sending of unsolicited messages but about the appropriateness of the content of these messages (sic) that the Bank are sending.

The Complainant states that the Bank potentially compromised any information sent by way of text message as if it failed to check that the phone number was a personal phone to which the Complainant had sole access.

The Provider's Case

The Bank's Final Response Letter of 24 October 2017 expressly refers to a "complaint of 18 October 2017" and to the complaint about "an SMS text notification" received on 20 September 2017. The letter notes that the Complainant does not want to receive any further texts and confirms that no further texts will be sent. A further letter was sent to the Complainant on 27 October 2017 stating that the Bank had removed his mobile phone number from its records.

The Complaints for Adjudication

The Complainant's first complaint is that the Bank inappropriately established a "complaint" when none had been made. The Complainant "wants to know what was investigated" and he seeks redress generally.

The second complaint is that the contents of the text messages sent by the Bank to the Complainant were inappropriate.

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.

A Preliminary Decision was issued to the parties on 28 January 2019, 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.

Following the consideration of an additional submission from the Complainant, the final determination of this office is set out below.

Prior to considering the substance of the complaint, I consider it useful to set out the content of the text messages

Text Messages

Originally, when the Complainant made his complaint, he had not recited the content of the first text message that he had referred to.

The text of **29 August 2017** stated as follows:

"You may have noticed a difference between the IBAN number on your statements and the IBAN on 365online. you can now use either IBAN for transactions. Thanks [Bank]"

The Bank states that the message of **20 September 2017** provided as follows:

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“Good news! No transaction fees in September as you kept at least €3k in your account throughout the last fee quarter. €5 maintenance fee applies. Thanks, [Bank]”

In correspondence to this office of 7 September 2018, the Complainant stated that the text of 20 September 2017 in fact provided as follows:

“We would like to advise you that your current account fees will be charged this Friday 22nd Sept. Fees include account Maintenance, ATM, DDs etc. Thanks [Bank]”

The Bank appears to accept the Complainant’s correction.

Since the Preliminary Decision was issued by the FSPO to the parties on 28 January 2019, the Complainant has referred to a previous text message received on **19 January 2016** at 04:51 as follows:-

“Just to let you know that / The E2.50 ATM card govt./Stamp duty per card for / 2015 will be charged at / End Jan thanks BOI FROM [BANK]” 19/01/16 04:51

Analysis

The Complainant refers to unsolicited text messages. However, he has expressly stated that his complaint to this office does not relate to the fact that the messages were sent.

Rather the complaint relates to the content of the messages. The Complainant originally identified two of the three text messages only from 2017, the contents of which are set out above. He has since (following the issue of the Preliminary Decision of this office) identified the content of the earlier text message which he refers to from January 2016.

The Complainant states that the Bank potentially compromised any information sent by way of text message, as if it failed to check that the phone number was a personal phone to which the Complainant had sole access. The number of the mobile phone held by the Bank with reference to the Complainant’s account, must of course be a mobile number that the Complainant himself elected to give to the Bank, in the knowledge of whether he alone had sole access, for the purpose of use, or to receive calls. In my opinion, in any event, the information transmitted, as confirmed by the Complainant, was not in any way personal or sensitive or tending to disclose private information. The message of 29 August 2017 simply provided certain generic information regarding IBAN numbers. It did not disclose the Complainant’s IBAN number itself. I am not of the view that this comprised information that would represent a risk or any ‘compromise’ if it had been read by someone other than the Complainant. When the Preliminary Decision issued to the parties from this office, there was no suggestion that this text had been read by anyone else or that *“all the [Complainant’s] information was going out to God knows where”*.

More recently, in February 2019, the Complainant indicated that the text messages *“were read by people that I do not share any of my personal financial information with. The text of 29/8/2017 put me in an embarrassing and awkward situation of having to deny that I have a secret 365 online account, as this text implies that I have such account”*. Any

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complaint in that regard that the Complainant's personal details or data were shared with a third party without the Complainant's consent, is not a matter for the FSPO and is, rather, more appropriately dealt with by the Data Protection Commission, to which the Complainant has indeed made a complaint.

The text message of 20 September 2017 outlined the date on which the charges would be levied and what they would include. The actual amount of the fees is not stated. I note that the text message in January 2016 identified a figure of €2.50 but this was not referable to any particular account charges, but rather represented government stamp duty on a card.

I do not accept that this information created a risk or comprised information that would represent a 'compromise' had it been read by someone other than the Complainant. I do not accept the Complainant's contention (as rather forcibly expressed in phone call of 15 December 2017) that the messages were akin to something a "fraudster" might send. The messages do not request responses of any kind and do not provide or suggest any particular means for a response. It remains unclear how they (or similarly worded messages) could have given rise to any risk of fraudulent loss. I also disagree that the messages were "shocking". Accordingly, I do not uphold this aspect of the Complainant's complaint.

The other aspect of the Complainant's complaint relates to the manner in which the Bank initiated the 'complaint' and the manner in which it investigated same. The Complainant correctly points out that his letter of 25 September 2017 did not constitute a complaint but rather a request for information. However, it is clear that the Bank's final response letter of 24 October 2017 does not identify the letter of 25 September 2017 as the source of the complaint but rather a complaint communicated on "18 October 2017".

The Bank has stated that this date refers to the date on which the Bank's staff member "assigned" the matter, to the Bank's Customer Complaint's Team. This is not satisfactory as it provides a misleading history for anyone seeking to review matters. However, it is clear that the Bank escalated the Complainant's position to the level of a 'complaint' following on from a phone conversation had with the Complainant on 13 October 2018 in which the Complainant was understood to have expressed dissatisfaction with receiving text messages. Whilst the Bank has no recording of this conversation, I have no difficulty in accepting the proposition as the Complainant clearly was dissatisfied with having received text messages. Accordingly, I am not satisfied what the Complainant has made out any stateable grievance regarding the logging of a complaint by the Bank.

The Bank has regulatory obligations to recognise complaints, in the sense of dissatisfaction expressed, even if the word "complaint" has not been used.

Finally, the Complainant takes issue with manner in which the investigation of the complaint was carried out by the Bank in circumstances where he was not provided with the opportunity to have input into the investigation of the complaint and in circumstances where he had no communication from the Bank in relation to this complaint. Again, I am not of the view that the Complainant has established any wrongdoing by the Bank. The Complainant did have input insofar as he had the opportunity to outline his concerns in the course of the phone call of 13 October 2018. His recent submission of 4 February 2019

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indeed confirms that he did so. Thereafter, the Bank concluded its investigation and provided a response within 11 days including a commitment to ensure that no further texts would be sent as had been requested. I am not of the view that the Bank was required to issue any communication to the Complainant in the interim and indeed I note that the Bank decided against sending the Complainant a text message advising of the status of the complaint given the subject matter of the complaint; this was an appropriate course of action to adopt in my opinion.

At the time when the Complainant submitted this complaint to the FSPO in March 2018, the complaint which he outlined in the Complaint Form was a complaint to the effect that the Bank had investigated a complaint that he never made. He noted on his Complaint Form that *"I have no idea what the complaint they investigated is nor had I any input"*. It was clear at that time however, from the terms of the Final Response Letter which the Complainant submitted to the FSPO, dated some months earlier, on 24 October 2017, that the Bank had written to the Complainant acknowledging as follows:-

"I note your complaint relates to an SMS text notification you received on 20 September 2017."

I also note that 3 days later on 27 October 2017, the Complainant was sent a separate letter confirming that the Bank had removed his mobile phone number from its records. The Bank took the opportunity to notify the Complainant that it had noted that the landline number held on its records for the Complainant, was not in service. The Bank therefore furnished the Complainant with the landline number of the author of the letter so that the Complainant would be in a position to make direct contact if a further need arose.

Although the Complainant in his recent submission suggests that the investigation the Bank conducted was flawed because it did not address the issues as to why the texts had not been stopped in 2016, there is no evidence before me to suggest that the Complainant made any contact with the Bank after receiving the text in January 2016 and, rather, all of the documentary evidence on file suggests that the Complainant first communicated his dissatisfaction to the Bank regarding the issue arising in October 2017 and that the Bank responded promptly to ensure that no further texts would be issued to the Complainant, in accordance with his clearly stated preference. Indeed, the Complainant's own correspondence with the Bank in 2017, makes no reference to any text in 2016, or indeed to any request by the Complainant during 2016 to arrange to have all SMS communications to his mobile phone, stopped.

In light of the entirety of the foregoing, and in the absence of evidence of wrongdoing by the Bank or conduct within the terms of **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017** that could ground a finding in favour of the Complainant, I am not in a position to uphold the complaint.

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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

26 February 2019

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.