



<u>Decision Ref:</u>	2019-0050
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Opening/Closing Accounts
<u>Conduct(s) complained of:</u>	Refusal to open account
<u>Outcome:</u>	Rejected

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

Background

The Complainant is an independent, non-party political NGO. This complaint relates to the closure of the Complainant's three bank accounts (referred to below as the "accounts") two held in Dublin and one in another branch in another county.

The Complainant received an email dated **27 June 2016** from the Provider with a request for information pursuant to the Provider's obligations under **Section 35(3) of the Criminal Justice Act 2010**. The Complainant furnished the relevant information to the Provider.

By letter dated **29 July 2016**, the Provider notified the Complainant of its intention to withdraw the Complainant's facilities under Article 10.2 of the Provider's Account Terms and Conditions. Article 10.2 provides that:

"the Provider may terminate this Agreement at any time on two months' notice to the Customer"

Two of the Complainant's accounts were closed by the Provider on 29 September 2016 and the remaining account was closed by the Provider on 17 October 2016.

The Complainant's Case

The Complainant held three bank accounts with the Provider, two accounts in Dublin and one in another county. On 12 December 2001, account number *****06 was opened.

On 20 April 2006, account number *****26 was opened. On 25 November 2010, account number *****84 was opened.

The Complainant received an email dated **27 June 2016** from the Provider with a request for information pursuant to the Provider's obligations under **Section 35(3) of the Criminal Justice Act 2010**. This section of the 2010 Act allows a designated person, as defined in the Act, to monitor dealings with a customer with whom the designated person has a business relationship, to the extent reasonably warranted by the risk of money laundering or terrorist financing, by scrutinising transactions and the source of funds for those transactions. The email received by the Complainant states:

"Our request for information regarding the transactions on your account emanate from our obligation under Section 35(3) of the Criminal Justice Act 2010 to monitor dealings with, and scrutinise transactions of, persons with whom we have a business relationship. These questions are designed to ensure that the transactions on your account are consistent with the Provider's knowledge of your business relationship with us. The questions we have asked are also consistent with Section 39(1) of the Criminal Justice Act 2010 which gives us the Provider discretion to apply any additional enhanced due diligence measures it deems appropriate.

I'd like to get clarity on the following:

- 1. What are funds in the account used for?*
- 2. What are the source of funds in your account?*
- 3. Do you transfer funds to [Middle Eastern State] and if so, to whom in [Middle Eastern State]?*
- 4. Do you transfer any money to political organisations and if so, to whom and where are they based?"*

On **7 July 2016**, the Complainant responded to the queries raised by the Provider and attached a set of accounts to demonstrate its expenditure and the source of funds in its bank accounts. The Complainant responded to the queries raised as follows:

- "1. Our funds are used for campaigning for human rights...and to that end we rent an office, employ a co-ordinator, hold public meetings, host visiting speakers, print leaflets etc.*
- 2. Primarily our organisation is funded by our members' subscriptions and donations, however, we are obliged to organise fund raising events...*
- 3. We do transfer money to a textile factory in [Middle Eastern State] in payment for [garments] ...*

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4. *We are not affiliated to any political organisation and we do not transfer money to any political organisations.”*

On **29 July 2016**, the Complainant received a letter from the Provider advising of its intention to close the Complainant’s bank accounts. The letter states:

“We regret to advise you that, in accordance with the Bank’s Terms and Conditions outlined below, with effect from 29/07/2016, the Provider is no longer in a position to offer you banking facilities.

We will be continuing to provide these facilities for a period in order to facilitate you in making alternative arrangements. However, the Provider wishes to advise you that you must arrange to close your accounts on or before 27/09/2016...”

The Complainant states that there was no suggestion of any wrongdoing on the Complainant’s part, no further information was sought by the Provider and no consultation was sought with the Complainant.

On **2 August 2016**, the Complainant wrote to the Provider seeking an extension until 29 December 2016 before the Provider closed the accounts to allow the Complainant time to make other arrangements.

On **3 August 2016**, the Complainant received a response from the Provider in relation to its request for an extension to the 27 September 2016 closure date of the Complainant’s three accounts. In its letter the Provider states:

“Whilst I understand the difficulty associated with contacting your regular contributors, the Provider cannot extend the closure deadline beyond the timeframe outlined in the product terms and conditions. This is a standard notice period and is deemed adequate to enable an account holder to arrange alternative banking services”

The Complainant states that it submitted a Data Access Request in the names of the three signatories to the accounts. The Complainant states that the reason for submitting the data access request was an attempt to gather further information as to why the accounts were being closed. The Complainant states that the data was released on the day of the account closure (27 September 2016) and revealed nothing of note.

The Complainant states that it filed a formal complaint with the Provider on 26 September 2016 seeking the reversal of the Provider’s decision to close the accounts and sought full disclosure from the Provider of any allegations made against the Complainant that may have led to the closure of the accounts. The Complainant states that despite this, its banking facilities were withdrawn without adequate cause or justification by letter dated 27 September 2016.

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The Provider's letter of **27 September 2016** states:

*"Like all credit and financial institutions, the Provider is required to carry out ongoing due diligence reviews on customer relationships. This is particularly important where a customer is operating in or, is associated with high risk countries, industries or activities. Following the completion of such a due diligence review, which covered multiple risk factors, the Provider has unfortunately concluded that the maintenance of Account Numbers: *****06, *****26, *****84 is no longer consistent with the risk appetite of the Provider"*

The Complainant states that this withdrawal of banking facilities is despite the Complainant being a customer of impeccable standing with the Provider for many years. The Complainant states that as its activities have not changed since 2001, the closure of the bank accounts was unwarranted and unjustifiable.

The Complainant states that the closure of the accounts has placed great financial strain on it. Furthermore, the Complainant states that the Provider is aware that the greatest proportion of the Complainant's income is derived from membership dues, paid by way of standing order.

The Complainant states that the closure of the accounts caused great difficulty for its members and threatened the viability of the Complainant as an entity.

The Complainant says that the closure by the Provider was likely part of strategy against NGOs of its nature, and was political in nature, as part of a wider attack on organisations that advocate for a peaceful action to secure [*specified*] rights enshrined in international law.

The Complainant is seeking for the Provider to furnish a detailed explanation for the closure of the accounts, for the Provider to make disclosure of all documents pertaining to the closure of the accounts, in order to determine the legality of the closure. The Complainant is further seeking to have a fine imposed on the Provider for the wrongful closure of the bank accounts and for an open, written apology for the wrong and damage done to the reputation of the Complainant.

The Provider's Case

The Provider states that the Complainant opened the bank accounts on the following dates: 12 December 2001, account number *****06 was opened. On 20 April 2006, account number *****26 was opened and on 25 November 2010, account number *****84 was opened.

The Provider states that upon opening the accounts, the Complainant agreed to be bound by the terms and conditions applicable to the accounts.

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The Provider states that on 4 July 2016, a payment which presented for processing from the Complainant's account, was subject to the standard Provider review which applied to all international payments. Following this review, the payment was declined for processing as it did not comply with the Provider's risk protocols.

The Provider states that a due diligence review to cover multiple risk factors of the Complainant's accounts was undertaken. The Provider states that arising from this review, it concluded that the maintenance of the Complainant's accounts was no longer consistent with the Provider's risk appetite.

The Provider states that it emailed the Complainant on 27 June 2016 regarding its obligations under **Section 35(3)** of the **Criminal Justice Act 2010** and asked the Complainant to provide further information in relation to a number of questions.

The Complainant replied to the Provider's questions on 7 July 2016 where it referred the Provider to Article 2 of its Constitution. The Complainant went on to answer the four questions asked by the Provider.

The Provider states that it is a diversified Financial Services Group which adheres to all applicable legislative and regulatory requirements in all countries in which it operates. This includes all requirements emanating from the European Union, HM Treasury, the United Nations and the US Department of the Treasury's Office of Foreign Assets Control.

The Provider states that it is obliged to monitor and keep under active review, all national and international regulatory and legislative requirements, and as with all credit and financial institutions the Provider is required to carry out ongoing due diligence reviews on customer relationships. The relevant legislation and guidance requires more due diligence for customers with exposure to certain occupations, industry sectors, ownership complexities and geographic locations.

The Provider states that in its letter to the Complainant on 29 July 2016, the Provider advised the Complainant of its decision to close the accounts.

The Provider states that the terms and conditions set out at Clause 10.2 allow the Provider to close an account once the requisite notice period is given.

The Provider states that clause 10.2 of the terms and conditions does not stipulate any particular ground on which the Provider must exercise its right of termination. The Provider states that in its letter dated 27 September 2016, it has provided a detailed explanation to the Complainant as to why it decided to cease offering the Complainant banking facilities.

The Provider states that after careful consideration it determined that the maintenance of the accounts fell outside the scope of the Provider's risk appetite and a decision was taken to close the accounts in line with the terms and conditions of the accounts.

The Provider states that the accounts were closed in accordance with the Provider's normal practices and procedures and in line with its terms and conditions. The Provider states that a decision to close a customer's account is never taken lightly, however the Provider's decision is final.

The Provider states that it may be subject to strict regulatory action if it fails to adhere to the regulatory and legislative requirements placed on it and the Provider must, therefore, assess the risk of any such regulatory action against the Provider in respect of all its operations.

The Provider states that account numbers *****06 and *****84 were closed by the Provider on 29 September 2016 and account number *****26 was closed by the Provider on 17 October 2016.

The Provider states that in receiving two months' notice of the closure of the accounts, the Complainant was afforded ample opportunity to make alternative arrangements regarding its financial affairs.

The Provider states that a further discussion was held with the Complainant in relation to the closure of the accounts on 2 February 2017 at the request of the Complainant. The Provider has submitted the minutes of the meeting. The Provider was asked by the Complainant:

"Why did you close our accounts?"

The Provider responded to this question:

"The reason your accounts were closed is because the operation of your accounts are no longer consistent with the Provider's risk appetite. Providers may be subject to strict regulatory action if they fail to adhere to the regulatory and legislative requirements placed on them, and we must therefore assess the risk of any such regulatory action against the Provider in respect of all of our operations. The Provider's staff could be personally liable for any sanctions breaches and the Provider has a duty of care to their staff. The Provider is unwilling to accept any exposure"

The Provider is satisfied that it complied with its obligations under the Consumer Protection Code 2012.

The Provider points to Section 2.11 of the Consumer Protection Code 2012 which provides:

"without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services"

The Provider states that it has complied with Section 2.11 by providing the Complainant with two months' notice of termination of the accounts which allowed the Complainant sufficient time to arrange alternative financial services.

The Provider states that it must fully understand and apply all legislative and regulatory requirements which apply to it. Any failure to do so, could result in the Provider being exposed to severe sanctions including significant financial penalties and restrictions on its activities.

The Provider states that it is a matter of record that such sanctions have been imposed on Providers operating in Ireland and in other jurisdictions.

The Provider states that restrictions on its activities would have a severe impact on its customers.

The Provider wishes to clarify that it is in no way questioning the reputation or standing of the Complainant or any party connected to the Complainant.

The Provider appreciates that this decision is disappointing for the Complainant however, it is a decision which was taken after careful consideration and one which aligns with the Provider's risk appetite.

The Complaint for Adjudication

The complaint for adjudication is that the Provider wrongfully withdrew banking facilities from the Complainant in September and October 2016.

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.

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A Preliminary Decision was issued to the parties 5 February 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.

In the absence of additional submissions from the parties, the final determination of this office is set out below.

The Provider submitted a detailed response to the Complainant's submission. The evidence made available also includes the minutes of a meeting held by the Provider with the Complainant on 2 February 2017 which include the following details:

Minutes of meeting between the Provider and Complainant

Complainant: *We have done this exact transaction four times since the CJA 2010 came into legislation so why were past transactions processed and met your risk appetite but not the July 4 transaction*

Provider: *[Providers] are legally required to comply with regulations and legislation, which are always evolving. When you opened your account 15 years ago these were not in place and obligations will change with time*

Complainant: *We are in the dark and we have no idea the changes [Provider] made to their risk appetite. The payment went to another well-known NGO based in the UK and they bank with [****], so are you saying that [Provider] is stricter than the [****]? The payee also uses [+++] so are you stricter than them also? They also have to obey sanctions so are you stricter? I feel the most important question is, do [Provider] have information about the payee organisation that they are not sharing with us?*

Provider: *... the transaction was rejected as outside risk profile of [Provider].*

On 30 July 2018, the Complainant provided its response to the Provider's submission. The Complaint states:

"The minutes of the meeting which took place between the Provider and the Complainant are not an accurate reflection of what was discussed at the meeting which took place Thursday 2 February 2017"

The Complainant further states that:

"...it is abundantly clear that correspondence exchanged and a review of the minutes of the meeting between the Provider and the Complainant that, in

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fact, the Provider have absolutely refused to give any explanation for the closure of the accounts”.

Terms and Conditions of the Account

The relationship between the Complainant and the Provider was governed by the Terms & Conditions of the account, which were set out in the “*Business Customers*” booklet dated July 2016.

I note in that regard that Clause 10 headed “*Termination*” provides as follows:-

“10.1 The Customer may terminate this Agreement at any time on notice to the Bank.

10.2 The Bank may terminate this Agreement at any time on two months’ notice to the Customer.

10.3 The Bank may terminate this Agreement without further notice to you where there is a zero balance on the Account and there has not been a transaction on the Account for a period of 24 months or more.

10.4 In addition to the general right to terminate as set out above, and without any liability to the Customer, the Bank may terminate this Agreement and close the Account immediately, or, at the discretion of the Bank, may immediately block the use or operation of the Account in circumstances where:

- (a) the Bank is made aware of the death, bankruptcy or other act of insolvency of the Customer*
- (b) the Customer has failed security checks in a manner that the Bank deems unacceptable*
- (c) there is a reasonable suspicion of unauthorised or fraudulent activity on the Account; or*
- (d) there has been a breach of these terms & conditions by the Customer.*

Where the Account is so closed or blocked, the Customer will be notified and, where the Account is blocked, the Customer will be advised as to how the block may be removed”.

Whilst the customer is entitled to close the account at any time, the Provider’s equivalent entitlement to close the account “*at any time*”, requires two months’ notice to the customer (except in the event of certain specified reasons outlined at Condition 10.4, which do not arise in this instance). In the Complainant’s case, the Provider furnished the Complainant

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with two months' notice of the pending closure, so as to give the Complainant a reasonable opportunity to make alternative banking arrangements. The Complainant believes that the Bank was politically motivated; there is however no evidence available to the FSPO which confirms this. The Provider was entitled to end the relationship with the customer as it did, and indeed the relevant Terms & Conditions do not specifically require the Provider to explain its decision in this regard.

I take the view however that it was reasonable for the Provider, as it did, to offer an explanation for the closure of the bank accounts by way of letter dated 26 September 2017 and again in the meeting of 2 February 2017. The Provider must meet its due diligence requirements on an ongoing basis and comply with strict legislative provisions, including the **Criminal Justice Act 2010** and in 2016, it carried out the review pursuant to the requirements under this Act. By carrying out the review in this manner the Provider was adhering to the legal and regulatory requirements in this jurisdiction. Although the Complainant takes issue with the accuracy of the Provider's minutes of the meeting in February 2017, the Complainant's own "*transcript of meeting*" recording details of what was discussed at that same meeting confirm that the Provider expressed concern:-

"... in relation to the payments particularly international payments ... could result in [Provider] being exposed to very, very severe sanctions including financial penalties and restrictions on the [Provider's] activities. It's a matter of record that these types of sanctions have been imposed on [Providers] operating in Ireland and on [Providers] operating elsewhere. Restrictions on [Provider's] failure to carry out any of our activities would have a severe impact on our customers, breach of certain regulations can also carry potential personal liability implications for [Provider] staff and the [Provider] obviously has a duty of care ... may be subject to strict regulatory action if they fail to adhere to any regulatory or legislative requirements placed on them so we must therefore assess the risk of any such action against the [Provider] in respect of all [Provider's] operations and as we stated before the reason that the [Complainant] accounts were closed was because the operation of the accounts is no longer consistent with the risk appetite of the [Provider] group and it's important to note that the risk appetite is set to reflect the [Provider's] unwillingness to accept any exposure to breaches".

I note from the documentary evidence before me that the Complainant has secured alternative facilities with a different Provider. Furthermore, although the Complainant seeks an apology for what it says was damage to its reputation, I note that the Provider has not in any manner suggested that the Complainant has done anything wrong or inappropriate. I also note that it was the Complainant itself, and not the Provider which placed information in the public domain, in relation to the closure of the accounts. The Complainant encouraged its supporters to:

"take action to back our request to [the Provider] to re-open our bank accounts"

The Complainant also encouraged its members to:

"Email [the Provider] to complain...Call to complain...Write to complain...Talk to a

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manager...Consider closing any accounts with [the Provider] ... For all the background information you need you can read our full statement about the account closure here..."

I note that the Complainant is not satisfied with the explanation given by the Provider as to why it took the decision to withdraw the banking facilities. However, it is evident that the Provider gave the appropriate notice as required under 10.2 of its terms and condition and held a meeting with the Complainant at its request, in an attempt to provide further clarity to the situation.

I understand the Complainant's disappointment on learning that their banking facilities were to be withdrawn as the accounts were no longer consistent with the Provider's risk appetite. I am satisfied however that the Provider was entitled, pursuant to Clause 10.2 of its Terms & Conditions of the account, to take this action.

For the reasons set out above, I do not consider the Provider's actions to be wrongful. The Provider has at all times engaged with the Complainant in relation to this matter. Indeed, the Provider has made all relevant documentation in relation to the closure of the accounts available to the Complainant. As there is no evidence before me of any element of wrongdoing, in relation to the closure of the accounts, I take the view that it would not be appropriate to 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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

28 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.