



<b><u>Decision Ref:</u></b>	2019-0113
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Current Account
<b><u>Conduct(s) complained of:</u></b>	Delayed or inadequate communication
<b><u>Outcome:</u></b>	Upheld

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

**Background**

This complaint relates to the disclosure of information in relation to a joint bank account following the death of one of the account holders.

**The Complainant's Case**

The Complainant is unhappy that the Bank divulged information, namely the account number and balance, of her now sole bank account despite several requests she made of the Bank not to do so. Prior to late 2015, the account was held jointly with her brother who died intestate at that time. The Complainant feels aggrieved that her surviving siblings have had access to this information despite several requests made in the branch and to the Bereavement Support Unit not to divulge this due to it being a sensitive and highly stressful situation.

The complaint is that there was maladministration on the part of the Bank in respect of the Complainant's account, in that the Bank wrongfully disclosed account details to third parties in spite of (a) the Complainant's requests not to do so, and in spite of (b) alleged assurances by the Bank's representatives that the Bank would not do so. The Bank's conduct has caused the Complainant "*tension & stress*".

### **The Bank's Case**

The Bank maintains that if a joint account holder dies intestate, his or her next-of-kin are entitled to receive a copy of the account balance and account number as at the date the deceased died. As the deceased had no spouse or children, the Bank submits that the deceased's siblings were his next-of-kin.

### **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 26 March 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, I set out below my final determination.

### **Analysis**

This Office has already clarified that any complaint against the Bank in relation to alleged breaches/potential breaches of data protection legislation is a matter for the Office of the Data Protection Commissioner and does not fall within the remit of this Office. The Complainant has been advised that if she wishes to make a specific complaint about alleged

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data breaches, she should refer these particular grievances to the Data Protection Commissioner.

Insofar as the Complainant may contend, as a general proposition, that it was inappropriate for the Bank to share the bank account details with her siblings (and I should note that the Bank disputes this and has a policy to share information as of the date of death with personal representatives), I view this as a matter for the Data Protection Commissioner. I will therefore examine the conduct of the Bank in its interactions with the Complainant and to a consideration of any requests made by the Complainant and/or assurances provided by the Bank.

I will first set out hereunder a chronology of certain matters including a summary of the communication had between the Complainant and the Bank on this issue:

28 July 2015	joint account opened
Late 2015	death of deceased
21 January 2016	account converted to sole account in Complainant's name
19 July 2016	Grant of Administration extracted naming Complainant's brother as administrator
28 October 2016	Grant of Administration received by Bank
8 December 2016	Certificate of Balance on the account in question issued to Complainant's brother
30 December 2016	Meeting between the Complainant and a manager of the Bank in the course of which the Complainant states that she (and two individuals accompanying her) heard the Bank manager's phone conversation with another Bank employee which confirmed that <i>"the file in question had a note on it 'not to divulge any information'"</i>
6 January 2017	Letter from Bank explaining that account information (as of the date of death) was disclosed to the named brother of the Complainant
15 July 2017	Letter of complaint from Complainant to the Bank
01 August 2017	Final Response Letter from the Bank to the Complainant

The Complainant states that she contacted the Bank on a number of occasions after the death of her brother and *"asked for "no information" to be divulged"*. The Complainant states that she spoke with three (or possibly four) different named individuals regarding this

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matter *“who all assured me that this a/c had nothing to do with [the deceased’s] English/Irish Estate”*.

The Complainant is unable to identify the dates of these phone calls which she estimates numbered *“no more than 6”* but they would seem to have taken place in late 2015 and/or early 2016.

The Bank has not disputed that the Complainant made multiple phone contacts with it following the deceased’s death. In response to a direct question on the issue, the Bank responded to this Office indicating that it had a record of a phone call on 20 September 2016.

No reference is made to the other alleged phone calls, however the Bank had previously asked for the dates of the calls from the Complainant in order to attempt to isolate the call recordings and these were not capable of being provided. However, in its letter of 9 August 2018 to this Office, the Bank acknowledged that *“it is possible that other calls were made to and from unrecorded lines”*. I have not been provided with any recordings of the calls other than the call of 20 September 2016. However, I am satisfied that the Complainant *did* make multiple phone calls.

The Complainant states that she provided multiple instructions in the course of these phone calls to the effect that the Bank account details should not be disclosed to third parties. Again, I am satisfied to accept the Complainant’s contentions on these matters. The Bank has provided email *“statements”* from three individuals. Of the three individuals, only one of the names corresponds with the names identified by the Complainant. Two of the statements confirm that the authors had no interaction with the Complainant or with the deceased’s account. The final statement, which is written by an individual whose name does not correspond with any of the names listed by the Complainant, simply confirms that the author *“didn’t give out any information to a third party”*.

The Bank’s response on this issue is most unsatisfactory. No explanation is given as to why the statements provided are authored by individuals with names that do not correspond with the names identified by the Complainant. It may be that the particular branch had no employees with names as described by the Complainant, but the Bank has opted not to address this matter in any way.

Furthermore, the statement from an individual that did have an interaction with the Complainant on this issue is itself unsatisfactory. The statement confirms that the author did not disclose any information to third parties however it entirely omits to address the actual issue; namely whether instructions were given not to disclose information and whether assurances were given that no disclosure would take place.

I am also persuaded by the evidence of the Complainant regarding the meeting of 30 December 2016. The Complainant has clearly stated that she was given to understand that the file had been marked with a note *“not to divulge any information”*. The Bank has chosen not to deny this claim or to engage with it in any manner. Accordingly, I am satisfied, even in the absence of recordings of the calls, to conclude that the Complainant provided the

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instruction on multiple occasions that the account details were not to be disclosed to third parties.

The question that then arises is whether the Bank's employees gave assurances that the details would not be disclosed or some other similar assurances. The Bank has gone to some length to emphasise that no information was provided regarding the account relevant to any period after the account became a sole account.

The Bank has also been at pains to highlight that information was not provided to anyone other than someone who was an appropriate recipient of the information- that is the administrator of the estate of the deceased. However, the Bank has not directly engaged with the question of whether or not the assurances were provided.

From the evidence before me, I have come to the conclusion that the Complainant was either assured precisely as per her contentions or there was a failure to advise her that, notwithstanding her instructions and her clear wishes (and this was clearly a matter than she was most anxious about), there would be an obligation on the Bank to disclose certain details to the deceased's administrator. I am satisfied that this amounts to poor communication and maladministration. It may well have been that the Bank was unable to comply with the Complainant's instructions however the important point is that no assurances should have been provided and she should have been informed of the future necessity to divulge information to the administrator of the deceased's estate.

Even in the event that it was appropriate to disclose the account details to the administrator of the deceased's estate, there was a failing on the Bank to advise the Complainant of the duty on the Bank to make such disclosure. Clearly, this duty would also be inconsistent with the provision of any assurances not to disclose.

In addition to the allegation that information was disclosed to the Complainant's brother, there is also an allegation that the Bank disclosed information to a nephew of the Complainant. In its Final Response Letter (01 August 2017), the Bank stated as follows:

*"In relation to the Accounts held by your late brother [name redacted], I confirm that we only corresponded with parties who represented themselves to us as immediate next of kin and therefore entitled to the information provided.*

...

*...the account held between yourself and your brother ... was converted to your sole name in accordance with survivorship principal. No information was shared regarding this account relating to the period after conversion of the account."*

The Bank did not identify in this letter with whom precisely it corresponded, and the Complainant maintains that she is entitled to this information. A letter of 6 January 2017 recorded that information had been provided to the (named) brother of the Complainant. A letter from the Bank of 28 September 2018 to this Office states that the information was provided to the "Administrator of the Estate".

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In its substantive response to this Office, the Bank clarifies that the information was provided to the Complainant's brother only after "the provision of the relevant documentation confirming his position as Administrator in this case the Grant of Grant of (sic) Letters of Administration dated July 2016 and provided in October 2016". Though the Bank was not entirely clear on the matter in its correspondence with the Complainant, I accept that the Bank provided the Certificate of Balance to the Complainant's brother only.

I am satisfied that the Bank provided inappropriate assurances and/or failed to inform the Complainant of its duty to disclose certain information to the administrator of the estate. In the circumstances, I am satisfied that such maladministration and/or poor communication warrants a sum of compensation for the inconvenience caused to the Complainant.

Therefore, I uphold this complaint and direct the Bank to pay a sum of €1,000 to the Complainant.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld, on the grounds prescribed in **Section 60(2) (b), (f) and (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €1,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

**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**

25 April 2019

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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.

