



<u>Decision Ref:</u>	2019-0126
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service
<u>Outcome:</u>	Partially upheld

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

Background

This complaint concerns the Provider's conduct in requiring photo ID to be produced by her in order to make a withdrawal, and the conduct of the Provider's staff.

The Complainant's Case

The Complainant holds a demand deposit account with the Provider, and has been a customer for some 65 years. On the 14th and 15th of August 2017 the Complainant sought to make an in branch withdrawal from her account. During the course of this transaction, the Provider required the Complainant to produce proof of identification, which the Complainant sought to do by producing a travel pass and a social welfare card. The Provider did not accept these as valid forms of identification. The Complainant feels that the Provider's staff handled the interaction in a most unsatisfactory manner, asking her to come to a private room which she feels would have suggested to bystanders that she had done something wrong.

The Complainant states that in its response to her complaint the Provider referred to a different travel pass to the one that she produced on the day, and queries how the Provider could know that she has such a pass when it was never shown by her.

The Complainant states that the Provider's conduct in failing to allow her to access her own money, and causing her embarrassment in front of numerous bystanders was unreasonable, unjust, oppressive and/or discriminatory in its application to her. She is also concerned that the Provider may have acted unlawfully in accessing her travel pass records to find out that she also had another travel pass (which she states she never produced to it).

The Complainant would like an apology and compensation.

The Provider's Case

The Provider states that it has a duty to verify a customer's identity, it discharges this duty by asking a customer to present photo identification when making a withdrawal in branch, and it is satisfied that its staff members acted in an appropriately professional manner.

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 on 10 April 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.

The terms and conditions applicable to the Complainant's account contain the following provisions, relevant to this complaint:

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“4(a) The Criminal Justice Act (1994) (as amended, re-enacted or replaced from time to time) and the Third Anti Money Laundering Directive as implemented in Ireland require us to satisfy ourselves as to your identity and the identity of any other Customers on an Account before opening an Account, permitting transactions on an Account or providing certain services

(b) We shall make such enquiries and/or request such information and/or documentation from you as may be required in accordance with statutory and bank regulations.”

The Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010, came into force on the 15th of July 2010.

Its long title contains the following information:

“AN ACT TO PROVIDE FOR OFFENCES OF, AND RELATED TO, MONEY LAUNDERING IN AND OUTSIDE THE STATE; TO GIVE EFFECT TO DIRECTIVE 2005/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 26 OCTOBER 2005 ON THE PREVENTION OF THE USE OF THE FINANCIAL SYSTEM FOR THE PURPOSE OF MONEY LAUNDERING AND TERRORIST FINANCING [...] AND TO PROVIDE FOR RELATED MATTERS.”

The Act requires certain measures to be put in place by financial service providers. Those measures are designed to hinder and ideally prevent money laundering and the funding of terrorism and other illegal activities. These are sweeping worldwide measures which have been implemented over the last two decades to curb the funding of criminality.

Section 33 of the Act essentially requires the Provider to obtain *“documents or information that [the Provider] has reasonable grounds to believe can be relied upon to confirm the identity of the customer”* prior to providing a service to that person (or prior to continuing to provide that service, if the service was being provided before the enactment of the Act).

A provider is required to satisfy itself of a customer’s identity when providing a service; there can be no dispute about that. This principle operates entirely to the benefit of customers by hindering criminality and fraud and preventing unauthorised access to a person’s account.

In operating her account the Complainant is bound by its terms and conditions. It has already been noted that the requirement to identify a customer cannot be disputed.

The Provider has noted that there was a history of possible security breaches on this account. I must stress that this was through no fault of the Complainant. The account was subject to a warning/hold whereby identification was required in order to make any withdrawal. It would be remiss of a provider not to verify the customer’s identity by seeking photographic identification in these circumstances.

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Accordingly, there is no basis for finding that the Provider acted wrongfully in requiring that the Complainant produce photographic identification when carrying out transactions on the account.

I must therefore, consider what constitutes satisfactory identification, whether or not the Provider acted wrongfully in requiring a particular type of travel pass to be produced, and whether or not the Provider's staff acted inappropriately in their interactions with the Complainant in general.

The terms and conditions, as well as information leaflets produced by the Provider from time to time, advise customers of various acceptable forms of proof of address and photo identification (utility bills, passports etc.)

On this account, on the 13th of January 2015 the Complainant had previously satisfied the proof of address and photo identification requirements by using an electricity bill and her "green companion travel pass". The Provider has furnished copies of these documents (the retention of which is a regulatory requirement).

The "green companion travel pass" referred to is the Complainant's Public Services Card (PSC). It is not clear why the PSC was referred to as a "green companion travel pass", but this terminology has been consistently used by both Complainant and Provider to refer to the Complainant's PSC.

This explains how the Provider was in a position to refer to a "green companion travel pass" as opposed to through any unlawful procurement of personal data. It is clearly not the case that the Complainant had "*never shown this to anyone anywhere*".

In all the circumstances, the Complainant was entitled to effect transactions on her account on production of the "usual" photographic identification cards (e.g. passport/driver's licence) and, by reason of the note on her account, by producing her PSC.

On the 14th of August 2017 the Complainant produced her "ROI Senior SmartPass" as proof of identification. The Provider's staff member(s) did not accept this as a valid form of identification. She then produced her department of social welfare card which bears her signature but again, this was not accepted as a valid form of identification.

The acceptable forms of identification are set out in the card terms and conditions and the information leaflets produced from time to time by the Provider. The identification cards provided by the Complainant on the 14th of August 2017 are not acceptable forms of identification within those terms. The Provider was entitled to refuse to effect the transaction until a valid form of identification was produced.

On the 15th of August 2017 the Complainant returned to the branch to attempt to effect a transaction. The accounts of this exchange given by the Complainant and the Provider are consistent. Again she was unable to do so as she did not produce a valid form of identification. On this occasion, she was asked to go to a private room. The Complainant was unwilling to do so as she felt it would have suggested that she had done something wrong.

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I am satisfied that this exchange and the upset caused to the Complainant as a result cannot be attributed to the wrongful conduct of the Provider. It has been explained (and I accept) that, because the Provider was unable to effect the transaction due to the Complainant's failure to produce an acceptable form of identification, the Provider's staff member thought it would be preferable to talk to the Complainant in private rather than in front of other customers. This was not an unreasonable approach to take. Unfortunately, the exchange resulted in upset being caused to the Complainant. I am satisfied however that this upset stemmed from the Complainant's mistaken belief that she was being treated unfairly in not being able to effect a transaction with her ROI Senior SmartPass, as opposed to being caused by any wrongful conduct on the part of the staff.

The Complainant has noted that she was able to take items from the Provider's safety deposit box using her ROI Senior SmartPass, and wonders why she could do that but was not able to effect a transaction in branch. While it did not form part of the original complaint to this office, it is noted that the terms and conditions applicable to a safety deposit box (and the regulatory requirements surrounding identification) might not necessarily be identical to those attaching to bank accounts, and holding the original receipt was likely a significant factor too.

The Complainant's account was subject to a hold whereby a transaction could only be effected on production of valid photo identification, specifically:

- a) valid passport;
- b) valid UK or European driver's licence (full or provisional);
- c) Irish government travel document;
- d) EU National ID card.

By arrangement with the Complainant, and as an accommodation to her particular needs (it is noted that she did not habitually carry any of the above documents in her wallet), the Provider also accepted her Public Services Card as a valid form of identification.

On the 14th and 15th of August 2017, the Complainant did not produce any of the above valid forms of identification. It was a matter for the Provider to decide whether or not the ROI Senior SmartPass and/or a Department of Social Protection card was acceptable. That said, it is not clear to me why a Department of Social Protection card does not constitute acceptable identification.

The overarching objective of the procedures and the legislation is to protect all customers and the general public from the effects of criminality.

The inconvenience caused to the Complainant is outweighed by the obligation of providers to ensure compliance with any and all measures designed to prevent fraud, money laundering and funding of criminality.

The unhappy exchange that followed on the 15th of August 2017, which no doubt caused upset to the Complainant, was not caused by the wrongful conduct of the Provider.

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However, the Complainant is a lady of advanced years. It is accepted by the Provider that she is a “*vulnerable customer*” within the meaning of the Consumer Protection Code 2012. I believe that the Provider should have been more clear in its communication with her, particularly in relation to the so called “*green companion travel pass*”. In addition and, in particular, it is impossible to ignore the contrast between the detailed response provided to this office on foot of her complaint on one hand, and the one page explanation provided to her in September 2017 by way of Final Response Letter to her complaint.

There is a duty on all providers to take particular care to explain its conduct to vulnerable customers in a clear and comprehensible manner. In that regard, I believe one page Final Response Letter sent to the Complainant in September 2017 was wholly inadequate.

I fail to see why the Provider could not have engaged in a much more meaningful way with the Complainant to address her complaint. Ideally this would have invited a face-to-face meeting with her to discuss and resolve the matter.

I am satisfied that had the Provider (a) provided a more detailed and in depth answer to the original complaint in its Final Response Letter; and (b) clearly identified that the “Green companion travel card” referred to therein was in fact the Complainant’s PSC, the referral of the complaint to this office may well have been avoided.

There is no evidence upon which to find that the Provider’s conduct in August 2017 has been unreasonable, unjust, oppressive and/or discriminatory in its application to the Complainant, or at all. However, I am satisfied that the Final Response Letter issued to the Complainant in September 2017 lacked sufficient clarity for a vulnerable customer, and therefore constitutes a failure on the part of the Provider to provide an explanation for its conduct when one should have been provided.

On that basis, I partially uphold this complaint and direct that the Provider make a compensatory payment of €1,000 (one thousand euro) 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 partially upheld, on the grounds prescribed in **Section 60(2)(f)**.

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 (one thousand euro), 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**

9 May 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.