



<u>Decision Ref:</u>	2019-0140
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Fees & charges applied
<u>Outcome:</u>	Rejected

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

Background

The Complainant holds a current account with the Provider which was subject to an exemption on fees and charges. On **17 July 2017**, the Complainant received a letter from the Provider informing her that her account was subject to the reintroduction and increase of a quarterly maintenance fee of €18.00 commencing on **25 September 2017**.

The Provider states that it is entitled to reintroduce the quarterly maintenance fee. The Complainant states that the Provider unilaterally removed the exemption and wants the exemption reinstated.

The Complainant's Case

The Complainant states that she has been a loyal customer of the Provider since **2003**. The Complainant states that she holds two current accounts with the Provider; one of which has always been exempt from fees. The account which is the subject of the exemption is used by the Complainant solely for the purpose of servicing her mortgage and three transactions take place on this account per month.

The Complainant states that she received a letter on **18 July 2017** from the Provider informing her that it was applying a fee of €18.00 per quarter to this account. The Complainant states that this came as a surprise to her as she was unaware that the Provider

could unilaterally change the terms and conditions on her account, especially when the account had always been classed as 'exempt'.

The Complainant states that she telephoned the Provider to ask it to reconsider its decision to apply fees to her account, particularly given the number of monthly transactions. She states that she explained the importance of the account for the purpose of being able to manage her financial affairs and make her mortgage repayments. She states that the Provider outlined the exemptions and options available to her for avoiding some or all of the fees. However, none of those applied to the Complainant. The Complainant states that the Provider promised to review the matter and revert to her.

On **28 July 2017**, the Complainant states that she received a letter from the Provider. The Complainant describes the letter as "*... the usual standard letter which left me in no doubt that they did not give any consideration to my own circumstances whatsoever.*"

Following this, the Complainant states that she received an unexpected call in September 2017 and a follow-up letter on **28 September 2017**, offering her €50.00 as a gesture of goodwill. This was not the outcome the Complainant was hoping for and found it to be something of an insult. The Complainant wishes for her account to remain open but states that €64.00 per annum is a lot to pay in fees for a small current account which only has three transactions per month.

Following a request from this Office to the Provider that it furnish the fees and charges brochure that was in force at the relevant time, the Complainant was asked if she would like to make any further submissions. In response to this the Complainant stated that what she wanted from the Provider, and what the Provider failed to produce, was the fees and charges terms and conditions that were in effect at the time when she opened her account approximately 15 years ago. The Complainant further states that the fees and charges brochure submitted in evidence is irrelevant to the resolution of her complaint.

The Provider's Case

The Provider states that the Complainant opened an account with the Provider on **29 March 2004** (the account the subject of this complaint). Certain accounts held with the Provider were exempt from fees and charges if certain criteria were met. One of these criteria was where the account was linked to the customer's mortgage account held with the Provider, such as the one the Complainant holds which is the subject of this complaint. The Provider states that in **2006** it elected to waive fees on a number of its accounts, including the type of account that the Complainant held with it, and in **September 2017** this was reversed.

The Provider states that the Complainant's account was used to service her Provider mortgage account which was drawn down on **1 July 2004**. The Provider refers to its *Personal & Business Banking Charges Brochure* under the headings '*Fees & Charges Exemptions for [Provider's Account]*'. The Provider states that as the Complainant had her mortgage account with the Provider, her account was classed as being exempt from standard fees and charges. The Complainant's mortgage is now currently held with another provider. The Complainant continued to avail of fee free banking after she closed her Provider mortgage account on **27**

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August 2010. The Provider states that the Complainant availed of an exemption on fees and charges on her account until it updated its charging structure on **25 September 2017**.

The Provider states that it undertook a review of its charging structure in July 2017 to ensure that its product offering remained competitive within the market place. As part of this review, the Provider reversed the 2006 decision to waive fees and charges. The Complainant's account formed part of this review.

The Provider states that as part of the review it made a commercial decision to reintroduce fees and charges on previously exempt accounts together with other changes in an effort to simplify its portfolio, increase transparency and cover the costs of providing a full suite of current account products to its customers. The Provider states that it is entitled to make such commercial decisions and that its charging structure was approved by the Central Bank of Ireland, prior to implementation.

The Provider states that the Complainant agreed to be bound by its terms and conditions when applying for her account on **29 March 2004**. The Provider states that the Complainant signed the application form indicating that:

"I/we agree that the [Provider's] Current Account General Terms and Conditions from time to time in force shall govern the Account."

The Provider states this declaration makes reference to the fact that its terms and conditions are subject to change from time to time but remain in force to govern the account with each new edition. This is standard practice within the banking industry.

The Provider states that the Complainant ticked the box indicating receipt of its *Brochure on Charges and Fees* and the *Current Account General Terms and Conditions*. The Complainant signed the application form beneath a declaration stating that she has acquainted herself with these documents.

The Provider refers to the heading "*9 Fees and Charges*" of the terms and conditions which were in place in 2017 entitling the Provider to alter fees and charges and introduce new fees and charges on 30 days' notice. The Provider states it wrote to the Complainant on **17 July 2017** notifying her of its intention to reintroduce fees and charges on her account from **25 September 2017** in accordance with the terms and conditions.

The Provider states that on **21 July 2017**, the Complainant contacted it by telephone expressing dissatisfaction in respect of the new charging structure and that the exemptions did not apply to her particular circumstances. The Provider issued a Final Response Letter on **27 July 2017**.

On reviewing the matter at a later date, the Provider felt its Final Response Letter did not address the Complainant's complaint in full. The Provider acknowledges that the issues raised in respect of the possible account exemptions were not addressed. In light of this, the Provider issues a revised Final Response Letter dated **28 September 2017** offering a

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payment of €50.00 as a gesture of goodwill for this service failing. The Provider subsequently increased its offer to €100.00 to bring the complaint to an amicable conclusion.

The Provider states it acknowledges the Complainant's circumstances. It further points to the options open to the Complainant to avoid the reintroduction of the maintenance fee, or to reduce that fee.

The Complaint for Adjudication

The complaint for adjudication is that the Provider wrongfully reintroduced a maintenance fee in respect of the Complainant's current account and that the Provider did not adequately deal with the Complainant's complaint about the reintroduction of this fee.

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 11 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, the final determination of this office is set out below.

The Complainant signed the Provider's *Personal Current Account Application* form on **29 March 2004** in respect of the account which is the subject of this complaint. The form states:

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"I/we hereby apply to [the Provider] for a current account of the type described above

...

I/we agree that the [Provider's] Current Account General Terms and Conditions from time to time in force shall govern the Account.

...

I have received the [Provider's] current (please tick as appropriate):-

Brochure on Charges and Fees [✓]

Current Account General Terms and Conditions [✓]

I/we have read, have had a real opportunity of becoming acquainted with, have understood and agree to be bound by the above brochure and terms and conditions."

In the Provider's Terms and Conditions dated **31 March 2017**, I note the following sections:

"3 Scope and Acceptance:

(a) These Conditions apply to the operations of the various Account products and services offered by us and (unless agreed in writing to the contrary) are deemed to be incorporated in and form part of all agreements between us and our Customers for such Account products and services.

...

9 Fees and Charges:

(a) Details of fees and charges which are charged by us on Accounts are set out in the Fees Booklet (as published from time to time) which is available on request at any branch of the [Provider].

(b) Subject to notifying the relevant regulatory authority where applicable, we may from time to time alter such fees and charges and introduce new fees and charges, giving 30 days' notice in accordance with these Conditions. ...

(c) You may be eligible to apply to have certain fees and charges exempted. These conditions under which fees and charges are discounted and/or exempted are available on request at any branch of the [Provider].

...

29 Complaints Procedure

We are committed to providing you with the highest standard of service. We hope that you never have any reason to complain to us, but if you do, we want to hear from you so that we can address your concern as quickly and as fairly as possible.

If you raise a complaint:

(i) We will deal with your complaint fairly, courteously and promptly

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- (ii) *Your complaint will be logged and fully investigated.*
- (iii) *We will identify the cause of the complaint and take steps in as far as possible, to prevent it happening again.*
- (iv) *We will give you an explanation and an apology where we have made a mistake. ...”*

The Provider has furnished in evidence a copy of its *Personal & Business bank charges* brochure dated **13 January 2018**. I note this brochure post-dates **17 July 2017** and was therefore not in existence when the Complainant was informed that fees and charges were being reintroduced to her account. This Office requested that the Provider furnish its *Personal & Business Bank Charges* that was in effect on **17 July 2017**. The Provider subsequently furnished a *Personal & Business bank charges* dated **15 August 2017**. This brochure was also not in effect at the operative time.

The Provider has also furnished in evidence a copy of a notice published on its website on **5 July 2017**, notifying customers of changes to its maintenance fees and deals with a number of frequently asked questions.

On **17 July 2017**, the Provider wrote to the Complainant informing her of the reintroduction of maintenance fees on her current account:

“... We are writing to inform you of a change in the fee structure on your current account.

Reintroduction and Increase of Quarterly Maintenance Fee from 25th September 2017

We will be reintroducing and increasing the quarterly maintenance fee on your account from 25th September. The fee will be applied at €18 per quarter.

Exemptions available on the Quarterly Maintenance Fee

There are certain ways to avoid some or all of this fee. Please see the table of maintenance fees and transaction charges at the end of this letter. ...”

The Complainant contacted the Provider on **21 July 2017**, by telephone regarding the reintroduction of the maintenance fee. While there is no audio recording of this call, I note it is recorded in the Provider’s *Customer Grievance Draft* and *CFM Details Report with Notes* document. The *Customer Grievance Draft* states:

“Specific grievance to which this complaint relates: Dissatisfaction fees increasing, waivers apply to her other current account but cannot be used to avoid fees on her

loyalty account and she has been with us for a number of years. She doesn't use the loyalty account very much."

On **27 July 2017**, the Provider wrote to the Complainant. The relevant part of the letter states:

"Having investigated the matter, I would like to take this opportunity to clarify the situation for you.

We have recently undertaken a review of our charging structure to ensure we remain competitive within the current market place. Because of this, we have amended our Terms & Conditions as applicable. This change allows us to cover the cost of providing the services available to you on your Accounts as well as allowing us to continue to improve as your [Provider].

We remain competitive with the new charging structure as we will not charge for individual automated transactions and non-automated transactions such as Visa Debit Card transactions, Direct Debits, Standing Orders, Electronic Funds Transfers, etc. Some other fees may be applicable. For example if you choose to use your VISA Debit Card outside the Eurozone, additional fees may be charged."

A further letter was sent by the Provider to the Complainant dated **28 September 2017** and repeats word for word, the second and third paragraphs from the letter dated **21 July 2017** which I have quoted above. In addition, the letter offers the following apology:

"... following an investigation into your complaint, we identified that not all aspects of your complaint were addressed in the letter we issued to you on 25th July 2017. ... On behalf of [the Provider], I would like to acknowledge and thank you for your existing loyalty. We apologise sincerely if you feel this has not been recognised and would like to reassure you we value and appreciate your custom. ..."

In reaching my decision on this complaint, I have had regard to the following provisions of the Consumer Protection Code 2012 (the **Code**):

"3.10 Where a regulated entity intends to amend or alter the range of services it provides, it must give notice to affected consumers at least one month in advance of the amendment being introduced.

...

4.22 A regulated entity must provide each consumer with the terms and conditions attaching to a product or service, on paper or on another durable medium, before the consumer enters into a contract for that product or service.

...

4.54 Prior to providing a product or service to a consumer, a regulated entity must:

a) provide the consumer, on paper or on another durable medium, with a breakdown of all charges, including third party charges, which will be passed on to the consumer; and

b) where such charges cannot be ascertained in advance, notify the consumer that such charges will be levied as part of the transaction.

...

4.56 A regulated entity must display in its public offices, in a manner that is easily accessible to consumers, a schedule of fees and charges imposed by that regulated entity. If the regulated entity has a website, its schedule of fees and charges must also be made publicly available through placing this schedule on its website.

...

6.18 A regulated entity must:

a) notify affected consumers of increases in charges, specifying the old and new charge, or the introduction of any new charges, at least 30 days prior to the change taking effect; and

b) where charges are accumulated and applied periodically to accounts, notify consumers at least 10 business days prior to deduction of charges and give each consumer a breakdown of such charges, except where charges total an amount of €10 or less."

Insofar as it concerns complaints, the Code states:

"A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

...

2.8 corrects errors and handles complaints speedily, efficiently and fairly;

...

10.7 A regulated entity must seek to resolve any complaints with consumers.

...

10.9 A regulated entity must have in place a written procedure for the proper handling of complaints. This procedure need not apply where the complaint has been resolved to the complainant's satisfaction within five business days, provided however that a record of this fact is maintained. At a minimum this procedure must provide that:

...

d) the regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; ..."

Having regard to the submissions of the parties and the evidence in this complaint, I note the following.

The Complainant originally qualified for an exemption when she opened her account and this was granted to her by the Provider. Following the transfer of her mortgage to another provider in 2010, the Complainant no longer qualified for any exemption in respect of fees or charges but the Provider nonetheless continued to apply the exemption to the Complainant's account. Some years later, the Provider conducted a review of its current accounts and the Complainant's account formed part of this review. Following this, the Provider took the decision, for the reasons set out above, to reintroduce a maintenance fee in respect of the Complainant's current account, effectively removing the exemption.

When the Complainant applied for her account, she agreed to be bound by the Provider's terms and conditions which were subject to change from time to time. The Complainant acknowledged that she had familiarised herself with the Provider's *Brochure on Charges and Fees* and its *Current Account General Terms and Conditions*. Clause 9 of the terms and conditions deals with fees and charges. Clause 9(a) refers the Complainant to where details of fees and charges are to be found. Clause 9(b) entitles the Provider to alter or introduce fees and charges and sets out the conditions for this. In essence, it requires the Provider to notify the relevant authority and to give the customer 30 days' notice prior to altering its fee structure or introducing new types of fees. The Provider states that its charging structure was approved by the Central Bank of Ireland prior to implementation. Additionally, the Complainant was given 30 days' notice of the reintroduction of fees on her account. The Complainant was notified on **17 July 2017** that a maintenance fee would be applied to her account from **25 September 2017**. Clause 9(c) refers to the applicability of exemptions and that details of these are available on request at a customer's local branch.

The Provider holds itself out as providing the highest standard of service. Furthermore, in the event of a complaint, the Provider states it will investigate it fully and provide an explanation. The Complainant made a complaint to the Provider on **21 July 2017** regarding the reintroduction of the fees and charges to her account. While the Complainant acknowledges that the options available to her for avoiding fees were explained by the Provider's call representative, she states that it was promised that her complaint would be reviewed and she would be reverted to by the Provider.

The Complainant received a response dated **27 July 2017** to the effect that the Provider was implementing changes to its charging structure. I note that this letter did not set out the options as to how to avoid fees and charges. Following this, the Complainant received a further letter dated **28 September 2017** acknowledging that not all aspects of her complaint were addressed in the previous letter. Despite this acknowledgement, the Provider did not identify in the letter what aspects of the complaint were not addressed nor did it seek to provide further clarity on those aspects. This letter essentially repeats what was said in the previous letter.

I take the view that the Provider's letter dated **17 July 2017** was sufficient to inform the Complainant and make her aware that fees and charges were being reintroduced to her current account. The options for avoiding these fees and charges were also set out in this

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letter. The Complainant was further informed of these options when she subsequently telephoned the Provider and spoke to one of its call representatives. While the two further letters received by the Complainant are somewhat generic, they nonetheless informed the Complainant that fees and charges were being reintroduced and further explained what these fees and charges covered.

Looking at the three points of contact the Complainant had with the Provider regarding her complaint, I accept that it was made clear to her that changes were occurring to the Provider's charging structure; this involved the reintroduction of fees and charges to the Complainant's account in the form of a maintenance fee; the nature of the changes; and the options for avoiding fees and charges. Furthermore, I note that the means of avoidance were clear and it was up to the Complainant to bring herself within one of those options, if she wished to avoid the fees.

While the Complainant may be dissatisfied with the reintroduction of the maintenance fee to her account and the fact she is no longer in a position to avail of any of the options to avoid this, I am satisfied that the Provider was contractually entitled to reintroduce fees and charges to her account and the Complainant must decide if she wishes to continue to hold that account, bearing in mind the cost she will incur in doing so.

The Provider is not obliged to give the Complainant specific reasons as to why such a decision was taken. I do not accept the Complainant's submission that the fees and charges terms and conditions that were in effect at the time she opened the account in question are the relevant terms and conditions for the purpose of resolving this complaint. When the Complainant signed the account application form it clearly and expressly stated that the terms and conditions were subject to change from time to time. These terms and conditions did change over time. The relevant terms and conditions, for the purposes of the present complaint, are those that were in effect at **17 July 2017** and not those that were in effect at the time the account was opened. Therefore, the Provider's entitlement to impose fees and charges is as outlined in the terms and conditions booklet dated **31 March 2017**, which I have referred to above, in particular Clause 9. This detail is then supplemented by the charges brochure. While the Provider has failed to furnish the correct brochure, its entitlement to charge fees does not arise from, nor is it dependent on this brochure.

Therefore, I conclude that the Provider was entitled to reintroduce fees and charges to the Complainant's current account. In doing so, the Provider complied with the provisions of the Code that I have outlined above.

For the reasons set out above, I do not propose to uphold this aspect of the complaint.

I am aware that in its Final Response letter the Provider offered the Complainant the sum of €50.00 as a goodwill gesture acknowledging that *"our service fell short of the high standard that we set ourselves."* In its submission to this Office, the Provider has increased this offer to €100.00. I consider this to be a reasonable sum of compensation for the inconvenience caused to the Complainant by certain aspects of the Provider's handling of her complaint, as distinct from the subject matter of her complaint.

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In these circumstances, on the basis that this sum remains available to the Complainant, I do not propose to uphold this aspect of the 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

8 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.