



<b><u>Decision Ref:</u></b>	2019-0141
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Debt Management
<b><u>Conduct(s) complained of:</u></b>	Opening / closing of credit facility
<b><u>Outcome:</u></b>	Rejected

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

This complaint concerns the Provider's decision to withdraw overdraft facilities on the Complainant's current account.

**The Complainant's Case**

The Complainant holds a current account with the Provider. In August 2015 he received a letter advising that the Provider was withdrawing his overdraft facility.

The Complainant states that an agreement was reached in September 2015 with the Provider whereby he would lodge €20,000 into the account, however he did not agree to clear the overdraft balance in full.

Subsequently, the Provider withdrew the overdraft facility. The Complainant contends that the withdrawal of the overdraft was contrary to the agreement reached with the Provider in September 2015, and representations given to him by agents of the Provider.

The withdrawal of the overdraft has caused significant difficulties for the Complainant.

The complaint is that the Provider in breach of the September 2015 agreement, or otherwise wrongfully, withdrew overdraft facilities from the Complainant's account.

The Complainant also submits that despite him giving authority for the Provider to discuss his affairs with an accountant, the Provider did not do so.

He would like his overdraft to be reinstated, and compensation.

### **The Provider's Case**

The Provider states that the Complainant's overdraft limit of €25,000 was due to expire on the 18<sup>th</sup> of September 2015. At a meeting on the 18<sup>th</sup> of September 2015 the Provider agreed not to withdraw the overdraft facility on the basis that the overdrawn balance would be cleared during October/November 2015, and that if this transpired to be a difficulty the Complainant would have to revert.

The Provider states that the overdraft was not cleared and no further contact was received within the envisaged timeline. Accordingly, a review letter issued to the Complainant in December 2015 explaining that the overdraft would expire by the 23<sup>rd</sup> of January 2016. The Provider states no contact was received from the Complainant and the overdraft was withdrawn on the 25<sup>th</sup> of January 2016.

With regard to the alleged failure to contact the Complainant's accountant, the Provider states that the Complainant was advised to furnish a full set of accounts if he wished a full review to take place, but that it was then up to his accountant to contact the Provider once the accounts had been collated.

### **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 on 9 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 Complainant had an authorised overdraft facility of €6,348.68 which was approved in May 2001. Over the years the authorised overdraft facility moved up and down and ultimately in August 2006 a €25,000 overdraft was approved for 12 months. This facility was automatically renewed each year up until 2014.

In January 2014 a letter was issued to the Complainant advising that his overdraft was due to expire on the 17<sup>th</sup> of March 2014. This was not responded to, but the overdraft did not expire. Instead in May 2014 another warning letter was sent advising that the overdraft would expire on the 14<sup>th</sup> of July 2014. Again, the Complainant did not respond to this letter. On this occasion, the overdraft facility was withdrawn on the 15<sup>th</sup> of July 2014. Once the Complainant was notified of the withdrawal of the overdraft facility, he contacted the Provider and negotiated an extension for six months, which was granted by the Provider.

Ultimately, on the 23<sup>rd</sup> of July 2015 the Provider wrote to the Complainant in the following terms:

*"We are due to review your above [overdraft] facility which is due to expire by 23<sup>rd</sup> September 2015. We know it can be difficult to make time to deal with such matters, but it really is important for your to contact [the Provider].*

*... so please call your branch before 23<sup>rd</sup> September 2015 to arrange the review."*

On the 18<sup>th</sup> of September 2015 the Complainant attended in the Provider's branch to discuss his overdraft. He met with two agents of the Provider.

Certain parts of the conversation that ensued are not in dispute: the Complainant did not want the overdraft facilities to be withdrawn, and agreed to make a significant payment into the account.

The Complainant contends that he did not agree to clear the full overdraft balance (roughly €22,000 with a limit of €25,000), merely that he promised to make a significant lodgement (ultimately just over €21,000) in exchange for the Provider's continued forbearance.

The Provider's staff contend that the Complainant told them he intended to clear the entire overdraft balance over the ensuing months ("October/November") from the proceeds of his business.

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It is common case that a review was envisaged on foot of information received from the Complainant's accountant, once such information was received.

As a general proposition, the Provider had a discretion to periodically review / withdraw a facility such as the Complainant's overdraft, this cannot be in dispute. The only possible inhibition on this discretion would arise if an agreement was reached that the overdraft would continue until a review on a given date.

Given the history of dealings between the Complainant and the Provider, he would have been aware that overdraft facilities are subject to periodic review.

The Complainant does not put forward any time limit for when, on his understanding of the agreement, any sort of review would take place, and it cannot reasonably be contended that the result of the meeting was an indefinite extension of the overdraft facility.

In the event, the Provider wrote to the Complainant on the 10<sup>th</sup> of December 2015, advising him that his facility was due to expire on the 23<sup>rd</sup> of January 2016. This is a significant letter.

Having received no response, the Provider wrote to the Complainant again on the 25<sup>th</sup> of January 2016 advising that the overdraft facility had been withdrawn.

The Complainant is habitually out of the jurisdiction from January to March.

The Complainant contends that the Provider ought to have made contact with his accountant.

The difficulty with the Complainant's position is that he was the party seeking forbearance from the Provider, and a certain responsibility lay with him to be proactive in that regard. He was not entitled to an extension of his overdraft as of right, nor was he entitled to one for an indefinite period of time. It was not a suitable course of action for the Complainant to take on such an important matter. Having a meeting with the Provider in September 2015 regarding a possible extension of an overdraft, and then having no contact with the Provider whatsoever until May the following year to take issue with matters about which the Provider sent him correspondence the previous January and December.

I accept it may have suited the Complainant for the Provider to make contact with his accountant while he was abroad, however its failure to do so cannot be considered "wrongful", in my view.

The significance of the letter dated 10<sup>th</sup> December 2015 is that the Complainant was in the jurisdiction during December, and there is no evidence before me to suggest he did not receive it. If an agreement had been reached in the September meeting along the lines that the Complainant puts forward, then one could expect him to have reacted urgently to that letter.

I accept on the basis of the account terms and conditions that the Provider was entitled to withdraw the overdraft facility when it did; I accept in all the circumstances that the Provider

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did not act unreasonably in withdrawing the overdraft facility, and I accept that the Complainant was appropriately notified of the Provider's decision.

For the reasons set out above, I do not 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.**

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

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.**