



<u>Decision Ref:</u>	2019-0181
<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

The Complainant holds a current account with the Provider. On **20 March 2017**, the Complainant attended one of the Provider's branches to lodge a cheque.

Shortly after leaving the branch, the Complainant received a call from a branch representative regarding his current account. The Complainant is dissatisfied with this call.

The Complainant's Case

The Complainant states that on **20 March 2017**, he attended one of the Provider's branches, which was not the branch where his account is held, to lodge a cheque. The Complainant states that a representative of the Provider was actively canvassing customers in the branch. He states that he purposely avoided this representative of the Provider who was holding a clip board and was standing at the door when he was leaving the branch. The Complainant states that he instinctively knew she was trying to sell something. Moments after leaving the branch, the Complainant states that, while in his car, he received a call on his mobile phone from a branch representative who did not, he states, introduce herself or check to see if he could speak confidentially with her about his account. He states that in full hearing of anyone in the car, the branch representative said:

“Hi [Complainant], I just missed you in the branch. I see you have a very large balance in your current account. Are you buying a property?”

The Complainant states that he immediately told the caller that the call was unwarranted and most incorrect. He states he was worried it may have been a hoax call and hung up. On arriving home, the Complainant states that he called the number back and complained that he believed the caller was attempting to sell to him and had dangerously broken confidentiality over the phone. The Complainant states that he made a complaint to the manager of his branch but he was dissatisfied with the response and apology he received.

The Complainant states that he believes the branch representative obtained his details and information regarding his account from the teller he had dealt with in the branch, who alerted the branch representative, who in turn called him. The Complainant states that despite avoiding the Provider's representative in the branch, he still received a call on his mobile phone.

The Complainant describes the call as an unauthorised sales pitch. He states that the Provider was trying to sell him a product or service he did not want or was trying to ascertain if he was in the market for a new mortgage. The Complainant states that the branch representative aggressively tried to sell to him without prior authorisation; called him directly without prior authorisation; and initiated a conversation on a mobile phone network without checking if he was in a position to speak confidentially. The Complainant also queries how the branch in question obtained his mobile phone number as he was not a customer of that branch.

The Complainant states the Provider behaved despicably, disrespected his privacy and breached his confidentiality and that the Provider has broken the Consumer Protection Code 2012.

The Provider's Case

The Provider states that when the cashier in its branch was lodging the Complainant's cheque she noticed a large cash balance in the Complainant's current account. Following this, the cashier spoke with one of the branch advisors in that branch as she was concerned about the security and account safety for such a large amount in a current account. The Provider states that a branch advisor rang the Complainant on the same day out of concern for the Complainant and to advise that if the funds were not being used for a home purchase it would be advisable to move the funds to a deposit account for account safety. The Provider states this was done in the best interests of the Complainant. The Provider states that the call was not a sales call but a call regarding the security of the funds held in the Complainant's current account.

The Provider states that the initial call was cut short as the Complainant was annoyed and hung up. The Provider states that the Complainant called the branch advisor back on the same line, at which stage the branch advisor was able to explain the purpose of the call was for the security and safety of his account.

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The Provider states that it is common practice for its staff to introduce themselves when they make telephone contact with customers and ensure that it is a convenient time for the customer to take the call. The Provider indicates that the branch advisor's statement in respect of what she believes would have been said on the initial phone call to the Complainant is as follows:

"... my normal practice when contacting customers is as follows and I am certain that I would have done same when contacting this customer:

1. I would say good morning my name is ... And I am calling from the [Provider] (I always call from the land phone so if they wish to look up the number they may).....

I would not say this call is being recorded as it was not! ----- however if I was on a recorded line I would advise the customer, that the call was being recorded for training and quality purposes

2. I would always advise of the reason I was calling – in this case the cash desk asked me to for his security reasons

3. I would always ascertain if the customer was available to talk – if not I would end the call and I would arrange another time or provide the [Provider's] phone number to the customer to enable them to call back at their convenience."

The Provider indicates that its branch advisor has provided the following statement:

"... however, I am certain that I would have said 'if you are not purchasing a property, it would be better to put funds into your demand deposit account for security purposes'. I would not normally call customer unless I have dealt with them previously or they have asked for a call back."

The Provider states that it does not maintain a central record of all incoming and outgoing calls and that the calls in question were not recorded. It states that there are cases in which calls are recorded and in such instances customers are advised in advance or at the start of the call.

The Provider states the Complainant made a complaint by email dated **20 March 2017**, to the manager of his branch. The manager then rang the Complainant and apologised for any inconvenience caused and said that he would pass the Complainant's concerns to the manager of the other branch.

The Provider refers to two further emails dated **21 March 2017** between the Complainant and the manager of his branch.

The Provider states that the call to the Complainant on **20 March 2017** was not a sales call. Its branch advisor was not trying to sell any product to the Complainant and the Complainant has not asserted that any product was offered to him. The call was made in an effort to protect the security of the funds in the Complainant's current account.

The Provider states that its systems and records are not isolated to individual branches and although the Complainant's current account is held in one branch, his personal details can be accessed by its staff in any branch. The Provider states that it would not hold the Complainant's mobile phone number unless the Complainant had provided it.

The Provider maintains that it has met its obligations under the provisions of the Consumer Protection Code 2012, as Provision 3.40 provides that the Provider can make contact with an existing customer if the customer holds a product which requires the Provider to maintain contact with the customer regarding the product and the conduct was with regard to that product. The Provider states that the Complainant holds a current account with it and it contacted the Complainant with security concerns on the current account.

The Complaint(s) for Adjudication

The complaint for adjudication is that the Provider's branch advisor contacted the Complainant without authorisation in order to make a sales call to him, in breach of his confidentiality/privacy and in breach of the Consumer Protection Code 2012.

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 9th May 2019, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that

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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, my final determination of this office is set out below.

By email dated **20 March 2017**, the Complainant made the following complaint to the manager of his branch:

"Hi [name]

I am sorry to write again, however I just lodged a cheque to my current account in the [Provider's] branch in [location] 30 mins ago.

When I left the bank I got a phone call from the branch [phone number] a lady called [name] who said 'Hi, is that [Complainant] I just missed you in our branch, you have a very high balance in your current account, are you buying a property?'

I was flabbergasted I could not believe someone would phone me like this, I dropped the call immediately telling the caller this was an absolute disgrace and that I will report it to Central Bank as nuisance call.

...

I rang back the number after getting over the shock, and to ensure it was in fact [the Provider], [name] immediately changed her tune and said the reason for the call was to protect me from fraud???

... what in the name of all that is good is going on in the [Provider]

This is simply unbelievable ..."

Following a call from the manager of his own branch, the Complainant wrote an email to the manager of his own branch dated **21 March 2017**:

"... [Provider's branch advisor] from [branch area] yesterday, on our second call, has me worried that the balance in my current account is not 'safe' and should not be held there?

If this is in fact correct ? then please move €300 k to a demand deposit with no notice period.

How it is any safer in a deposit is beyond my comprehension. ..."

In reply to this, the Complainant's local branch manager wrote by email dated 21 March 2017 to the Complainant:

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"Hi [Complainant],

Unfortunately we are seeing an increase in fraudulent activity & we do discuss large current account credit balances with clients as card, ATM, skimming & phishing are becoming too commonplace. With this in mind we discuss options to move funds on to deposit and away from current account. ..."

In an email authored by the branch advisor in question to her branch manager after the complaint had been made to this office, dated **18 July 2018**, she states:

"I just thought of something

When I called him he actually was very angry and hung up! He then called the landline back, only then as I am to [sic] apologise and advise him why I was calling

So technically the MOBILE conversation he is referring to is when he called back

I wasn't able to actually explain to him why I was calling on the call I made as he was so angry

...

I wouldn't have called only for the cashier was concerned for him ..." [My emphasis]

In a further email from the branch advisor dated **24 July 2018**, she states:

"I was given the customers phone number by the cashier ... This was not a sales call, I called him upon a request from the cashier as she was concerned from a security perspective.

I do not recall exactly what was said, as it was so long ago, however, I am certain that I would have said 'if you are not purchasing a property, it would be better to put funds into your demand deposit account for security purposes'. I would not normally call customers unless I have dealt with them previously or they have asked for a call back.

... my normal practice when contacting customers is as follows and I am certain that

I would have done same when contacting this customer:

- 1. I would say good morning my name is ... And I am calling from [the Provider] (I always call from the land phone so if they wish to look the number [up] they may).*

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I would not say this call is being recorded as it was not! ----- however if I was on a recorded line I would advise that customer, that the call was being recorded for training and quality purposes.

2. I would always advise of the reason I was calling – in this case the cash desk asked me for his security reasons.

3. I would always ascertain if the customer was available to talk – if not I would end the call and I would arrange another time or provide the bank phone number to the customer to enable them to call back at their convenience. ...”

In a letter from the Provider to the Complainant dated **3 April 2017**, it is stated:

“... [the branch advisor] contacted you regarding the balance in your account and to query if you had any plans to purchase any property with same. [The branch advisor] made this call to advise you of the current options available to you with regards to lodging these funds to a deposit account to earn some additional interest as there was currently nothing being earned on the current account”.

Commenting on the call he received from the branch advisor on **20 March 2017**, the Complainant states in an email sent to this office dated 24 May 2017:

“... I put the phone down immediately having left the caller in no doubt about my anger. ...”

In considering the issues in this complaint I have had regard to certain provisions of the Consumer Protection Code 2012. Chapter 2 states:

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

2.1 acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;

2.2 acts with due skill, care and diligence in the best interests of its customers;”

Chapter 3 states:

“3.40 A regulated entity may make telephone contact with a consumer who is an existing customer, only if:

a) the regulated entity has, within the previous twelve months, provided that consumer with a product or service similar to the purpose of the telephone contact;

b) the consumer holds a product, which requires the regulated entity to maintain contact with the consumer in relation to that product, and the contact is in relation to that product;

c) the purpose of the telephone contact is limited to offering protection policies only; or

d) the consumer has given his or her consent to being contacted in this way by the regulated entity

...

3.44 When making a personal visit or telephone contact in accordance with this Code, the representative of a regulated entity must immediately and in the following order:

a) identify himself or herself by name, and the name of the regulated entity on whose behalf he or she is being contacted and the commercial purpose of the contact;

b) inform the consumer that the telephone contact is being recorded, if this is the case;

c) where relevant, disclose to the consumer, the source of the business lead or referral supporting the telephone contact; and

d) establish if the consumer wishes the personal visit or telephone contact to proceed and, if not, end the contact immediately.”

I have been furnished in evidence with a copy of an internal e-mail dated 29 May 2017 written by the Complainant’s branch manager in which he states:

“My relationship with [Complainant] was solely as the branch manager in [branch] where [Complainant] holds his accounts. I have never met [Complainant] & my initial interaction with him happened on 1st Feb when [Complainant] emailed the previous manager with a complaint relating to an unpaid cheque on his account.

Subsequent to this engagement I received an email from [Complainant] on 20th March complaining about an interaction he had with a [Provider] employee from the [other branch of Provider]. I rang [Complainant] that day & acknowledged his email. I apologised for any inconvenience & upset that this call may have caused him but made comment that I could not deal directly with this as I could not speak for the other branch or the individual involved. However I did say that I would forward his email & contact the [other branch of Provider] manager [redacted] which I did on that day. My understanding is that [redacted] made contact with customer & discussed matter. Also [Complainant] informed me that he had logged issue with Customer Services.

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[Complainant] emailed me again on 21st acknowledging our call & requested that I open a demand deposit account for him. I replied that day confirming that I could not open an account based on email instruction, however I sent a link to the [Provider] website that he could use to facilitate same. I also informed him as to whom his Premier Relationship Manager in [branch] is [redacted]".

The e-mail then outlines some further interaction with the Complainant and concludes:

"Next time I heard from [Complainant] was on 29th March when he again sent me an email stating that he had heard nothing from Customer Services and that he was promised a reply within 5 working days. He asked that I would follow up on this. At this stage I forwarded his mail to [redacted] asking for a follow up with staff member & CGG. I also replied to [Complainant] confirming that I had forwarded his mail to [branch] [redacted] sent update to [redacted] at this stage.

Finally, [Complainant] sent me email on 12th April which was a reply to [redacted] (as a response to her Final Response letter dated 3rd April) & copied to [redacted] also in which he states his dissatisfaction with the response. On 14th April I received the last communication from [Complainant] which I am copying below.

*Hi [redacted]
I just wish to apologise for reacting so badly to that awful Final Response letter I got from Customer Service. I took it personally and genuinely was upset.
I should really get life and move on
Regards
[Complainant]*

I do recall another call with [Complainant] when he was travelling whereby I did follow up on a promise to revert with information which I did & he was grateful – No specific information offered but rang within promised timeframe.

Hope that this is of use.

Regards"

It is clear that the Complainant is upset about the fact that he received an unsolicited call from the Provider. He believes that the purpose of the call was to sell him a mortgage or some financial service. The Provider suggests the purpose of the call was for security reasons as it believed holding large sums of money in a current account presented a risk.

It would appear that the Complainant terminated the call before the Provider's representative had the opportunity to properly explain the purpose of the call.

Having considered the evidence and submissions in this complaint, I note that it is not disputed that the Complainant had a large balance in his current account. The reason advanced by the Provider for the call was the desire to ensure the security of the

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Complainant's funds particularly in light of the risk associated with current accounts identified by the Provider above.

This was subsequently conveyed to the Complainant during the second call that took place on 20 March 2017. Given the large account balance held in the Complainant's account and the fact that he had just lodged a cheque to this account, I would not find it unreasonable that the Provider would contact the Complainant in relation to security.

I note that the Complainant accepts that he terminated the call, believing it to be a hoax, after he states that the Provider's representative asked him whether he was purchasing a property. Therefore, it is not possible to establish with certainty what purpose the Provider's representative would have given for the call. I note that this call was not recorded.

It is disappointing that the Provider did not fully investigate this matter when the Complainant first reported it. The Complainant made contact immediately to complain about the call. It would have been helpful if the branch manager had sought details of the call content from the representative who made the call at an earlier stage.

While the conduct complained of happened in March 2017, I note that it was only following the intervention of this Office that a statement was sought from the agent concerned and this was provided in July 2018.

Not surprisingly over a year later, the agent states at this stage *"I do not recall exactly what was said, as it was so long ago"*. In the e-mails of 18 and 24 July 2018, the agent sets out what she believes she would have said and done.

If this information had been sought at the time the complaint was made, it may have been of some assistance in establishing what happened.

Given the limited recollection of the agent and the fact that the call was cut short, it is not possible to establish with certainty the exact purpose of the call.

I note that Provision 3.40 of the Consumer Protection Code permits a Provider to make contact with an existing customer if the customer holds a product which requires the Provider to maintain contact with the customer and the conduct was with regard to that product.

The Complainant had a current account with the Provider. It had a large balance and I do not believe it would have been unreasonable for the Provider to contact him to suggest it might be more prudent to move some of those funds to a more secure deposit account. Indeed, I note the Complainant did in fact take this course of action on foot of these communications.

Accordingly, while I have not been provided with evidence that the attempted call was a sales call in breach of the CPC, I do have some concerns about the explanation provided for the call and the manner in which the Complainant was dealt with.

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If the purpose of the call was in relation to security, it is disappointing that this was not stated in the Final Response Letter provided to the Complainant on 3 April 2017.

The Provider's Final Response Letter of 3 April 2017 states, among other things:

"I understand after leaving the branch you received a telephone call from [advisor name], Premier Advisor, [Provider branch]. [Advisor] made this call to advise you of the current options available to you with regards to lodging these funds to a deposit account to earn some additional interest as there was currently nothing being earned on the current account".

I note that the Final Response Letter makes no reference to the security issue, whereas the explanation given to the Complainant in that correspondence is not entirely consistent with the explanation given to this Office on 25 July 2018 by the Provider states:

"The Complainant came into the [branch] of the Bank on 20 March 2017 to lodge a cheque for €995. At that point the cashier noticed a large cash balance (€367,636.62) in the Complainant's current account. Following this, she spoke to one of the [Branch] Advisors as she was concerned about security and account safety for such an amount. The Branch Advisor rang the Complainant on the same day out of concern for the Complainant and to advise him that if the funds were not being used for a home purchase, it would be advisable to move the funds to a deposit account for safety.

This was done in the best interests of the Complainant in relation to the funds being held in his current account.

The Bank submits that this telephone call was not a sales call. It was a call regarding the security of funds in the Complainant's current account".

I fail to understand why, if the call was made for security reasons, the Complainant was not informed of this in the Final Response Letter and the response given to this Office in July 2018 could not have been provided to the Complainant in response to his complaint.

I believe that greater engagement by the Provider with the agent and the Complainant immediately following the phonecall might have resolved this matter earlier.

In respect of the Complainant's complaint that there was a breach of his confidentiality or privacy I note that the Complainant's account balance and information was accessed and discussed by the Provider in order to make a call to him to discuss the funds in his account. The Provider states that customer details are kept on a central system accessible by all staff. I note that the Complainant has not denied that he has provided the Provider or any of its branches with his mobile phone number.

The Complainant asserts that the Provider breached his confidentiality and privacy as the conversation took place on his mobile phone, in full hearing of anyone in his car, as his mobile phone was on hands free at the time of the call. No evidence has been given by the

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Complainant as to whether or not there was anyone present in the car at the time of the call and the Provider's representative could not have known this when making the call.

The Complainant has furnished a record of his recollection of what was said over the course of the call, prior to termination of this call, in an email dated the same day as the call. I accept, at that point in time, the Complainant would have a very good recollection of the call as it was still fresh in his mind. I note that the branch advisor has stated that she has a vague recollection of the call and I also note her comments to the effect that she does not recall exactly what was said owing to the time that has elapsed between the time of the call and her statement which I have outlined above. I note that the Provider has no contemporaneous record of the call. Neither the Provider nor the branch advisor have given any evidence as to what was said. The evidence advanced by the Provider is based on the normal practice of the Provider's representatives, that is what the agent "would" have said as opposed to a direct recollection of the call. In light of this, I accept the Complainant's version of what was said during the call, prior to its termination by the Complainant.

The statement of the Complainant in relation to the call indicates that the Provider' branch advisor did not comply with all of the provisions of 3.44 of the Consumer Protection Code 2012, which required the branch advisor to:

- a) identify himself or herself by name, and the name of the regulated entity on whose behalf he or she is being contacted and the commercial purpose of the contact;*
- b) where relevant, disclose to the consumer, the source of the business lead or referral supporting the telephone contact; and*
- c) establish if the consumer wishes the personal visit or telephone contact to proceed and, if not, end the contact immediately."*

As this section makes clear, the requirements imposed on a Provider by section 3.44 must take place immediately and at the beginning of the call. While the Complainant's account of the call indicates that the Provider's representative gave her name and suggested the name of the regulated entity by reference to his attendance at the branch before the call, he states that the Provider's representative did not establish if the Complainant wished the telephone contact to proceed. Further, she did not identify the commercial purpose of the contact. No evidence has been tendered by the Provider as to how the call began. Again the evidence offered is speculative and refers to what *would* have been said rather than what was actually said. In the branch advisor's email of 18 July 2018, she acknowledges that it was only on the second call that took place on 20 March 2017, that she had the opportunity to advise the Complainant as to the purpose of the initial call. As noted above, I accept the Complainant's version as to what was said on the call, to the point of termination of the call.

While it appears that the call was short, there was sufficient time for the branch advisor to comply with the requirements of section 3.44 at the beginning of the call. I find that the Provider did not comply with all the requirements of section 3.44 of the Consumer Protection Code 2012 during the call and that there were some shortcomings in the manner in which the call was conducted prior to termination, particularly as the Provider's

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representative did not ask the Complainant whether he was in a position to take the call at that time and whether he wished the telephone contact to continue.

I also believe there were shortcomings in the investigation of the complaint in that a statement should have been taken from the agent as to her recollection of the content of the call at an earlier stage.

For the reasons set out above, I partially uphold this complaint and direct that the Provider pay the Complainant the sum of €200 in compensation.

Conclusion

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

I direct pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Respondent Provider pay the Complainant the sum of €200 in compensation.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

6 June 2019

A Legally Binding Decision of the Financial Services and Pensions Ombudsman is open to review only by way of an appeal to the High Court not later than 35 days after the date of notification of the Legally Binding Decision.

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.