



<u>Decision Ref:</u>	2019-0203
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Banking Online Facility
<u>Conduct(s) complained of:</u>	Accessibility issues Maladministration
<u>Outcome:</u>	Upheld

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

Background

This complaint concerns the withdrawal of on-line banking facilities in relation to the Complainants' mortgage account.

The Complainants' Case

The Complainants hold a mortgage loan account with the Provider, which they drew down in 2001.

On 3 January 2017 the Complainants were unable to access the details for this account through the Provider's on-line banking platform. The effect of this was that the Complainants could not check their up-to-date mortgage account balance on-line.

The complaint is that the Provider wrongfully withdrew on-line banking services from the Complainants in relation to this mortgage account.

They would like the full on-line banking service to be reinstated for this account, and redress for the inconvenience that this has caused them.

The Provider's Case

The Provider has stated that while it is entitled, pursuant to the account terms and conditions to withdraw the on-line banking services, in this case it failed to provide the

requisite notice for such withdrawal. It has apologised and offered compensation to the Complainants.

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 Complainants were 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 **17 May**, 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.

The Provider made further submissions to this office on **7 June** and **18 June**.

Following the consideration of the additional submissions from the Provider and all of the evidence available, my final determination is set out below.

Account Terms

The following on-line service terms and conditions are relevant to this complaint:

"16. We reserve the right to change the Service from time to time and shall give You sixty days prior notice of any material changes.

"17. We may suspend, withdraw, or restrict the use of the Service or any part of the Service where:

[...]

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(c) as a result of a change in the way You operate your Account or in your financial circumstances, We have reasonable grounds to believe that You may have difficulty in meeting your commitments...”

Under the terms of the on-line service platform, the Provider is entitled to suspend/withdraw/restrict the use of the service in circumstances where an account is in arrears, such as in this case.

However, it must give sixty days prior notice of its intention to do so, as a suspension/withdrawal/restriction of the service is clearly a material change in the service.

The Provider has not provided evidence of having given any such notice to the Complainants in this case. In the circumstances it acted wrongfully in not permitting access to the Complainants on-line platform for their mortgage account on 3 January 2017.

The Complainants suggested a figure of €100 per month as long as the service was not available to them.

The Provider has offered a figure of €2,500 by way of redress for its error, a significantly higher sum than the €150.00 it offered prior to the complaint being made to this Office.

I consider the Provider's offer of €2,500 to be reasonable.

As part of the investigation and adjudication of this complaint, I wrote to the Provider in the following terms on 6 March 2019 requesting clarification of a statement the Provider had made in a previous submission to this Office dated 14 June 2018, which stated:

'It is part of our internal process that where mortgages are in arrears we do place a negative marker on our system to show the account is in arrears. This prevents the account being visible on [on-line] Banking'.

It also stated:

'I am currently unable to restore the customers' [on-line] Banking access to the mortgage account" and "as matters currently stand, no change can be made to the system records for the mortgage as there is no current agreement in place for its repayment'.

I requested the Provider to:

"clarify in detail why it was not possible for the Provider to give the Complainants access to the mortgage account on-line. This should include, but not be limited to, whether this is a policy decision by the Provider and if so, the reason the policy is in place and the purpose it aims to achieve".

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I also requested the Provider to:

“outline if there are any technical reasons why the Complainants could not be allowed access to the mortgage account on-line”.

I received the Provider’s response (dated 3 April 2019) on 5 April which stated, among other things, as follows:

“The customers’ mortgage was in arrears and they were having difficulties in meeting their financial commitments. On that basis, the access to [on-line] Banking was withdrawn.

While the Complainants were unable to access [on-line] Banking from January 2017, it was not the case that the Complainants had no other ways of accessing information about their mortgage. There were alternative options available to the Complainants namely:

- We have a dedicated mortgage team for customers in mortgage arrears. Customers can phone them to request details of the balance outstanding, transactions and to discuss the arrears on the mortgage. They can also make requests by writing to the team.*
- I attach copies of twenty letters issued to the Complainants in 2017, all of which quote the phone number and address of the Bank’s Arrears Support Unit. The letters ask the Complainants to contact the Bank in relation to their mortgage account.*
- An up to date statement can be posted to customers on request. The balance of the mortgage changes when interest is charged and any lodgements were made by the customers in reduction.*

The withdrawal of their [on-line] Banking access was made in contemplation of taking recovery action for the amount outstanding, with legal action being considered.

From January 2017, the Bank staff made calls and had conversations with the Complainant to discuss the arrears on their mortgage. While the customers no longer had access to [on-line] Banking, the Bank’s Arrears Support team continued to make contact with the customers and they were readily available to discuss all aspects of the mortgage account and arrears with them.

There was a technical reason why the Complainants could not access to the mortgage account. The customers were prevented from viewing their mortgage on-line through [on-line] Banking due to a negative marker placed by the Bank on the customers’ mortgage record because of the arrears.

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The Bank does not believe that its options are ‘improperly discriminatory’ for the following reasons:

- *If a customer’s account is in default, then all accounts of that customer are subject to a negative marker. Please note in the terms and conditions for [on-line] Internet and Telephone Banking (previously supplied to your office in this case), the [on-line] banking service can be withdrawn when the customer is deemed to be having difficulties in meeting their commitments. The negative marker is therefore set at a customer level and not just linked to an account.*
- *The reason for the policy being in place is to adopt a consistent approach and essentially means that because of the long term financial difficulties of the customer, the Bank wishes to exit the entire relationship and not just the mortgage account. It is part of our recoveries process to close those accounts (be they in credit or in debit) when the Bank deems it at risk of loss.*

In my Preliminary Decision I stated that, “It would appear to me that the only reason the Provider denied the Complainants access to on-line banking was because the Complainants were in arrears with their mortgage.” In response to this point, the Provider, in its Post Preliminary submission of **7 June 2019** stated, “We would like to highlight an additional point of fact which has just become known. [The Provider] denied access to on-line banking because [the Provider] had moved to commence legal action against the Complainant. [The Provider’s] mortgage customers in arrears retain access to their on-line banking until such time as the bank has exhausted all efforts with the customer and the customer has been deemed outside the protections of MARP and legal action is the option being pursued to recover the debt.”

I fail to understand how removing on-line access from the Complainants or customers in arrears generally can, in any way, help the situation for either the borrower or the lender. In fact, I can see how it could exacerbate matters.

In the absence of any other logical reason for the withdrawal of the on-line service, I must question if this is done as some sort of punitive measure.

I am particularly mindful of the Provider’s opening comment in its letter of response quoted above of 3 April 2019:

“The customers’ mortgage was in arrears and they were having difficulties in meeting their financial commitments. On that basis, the access to [on-line] Banking was withdrawn”.

In response to my question as to whether there was a technical reason for the withdrawal of the service, the Bank stated as follows:

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“There was a technical reason why the Complainants could not access to the mortgage account. The customers were prevented from viewing their mortgage on-line through [on-line] Banking due to a negative marker placed by the Bank on the customers’ mortgage record because of the arrears”.

This does not appear to me to be a technical reason. Rather, it appears to be a policy decision by the Provider to deny access to customers in arrears.

I note the Provider has suggested that customers in arrears can call or have statements posted out if they wish to know their arrears balance.

I am at a loss to understand how requiring customers in arrears to telephone the Bank or seek, and possibly pay for, statements is of any assistance in dealing with arrears.

Given the potential negative impact of this measure on customers in arrears, I propose to bring this practice by the Provider to the attention of the Central Bank of Ireland.

In conclusion, while I accept the €2,500 is reasonable compensation for the Complainants in the circumstances, I believe the Provider’s conduct in relation to this issue, where it stands by its decision to remove on-line access from customers in arrears, is unreasonable and discriminatory.

For this reason, notwithstanding the Provider’s offer of €2,500 compensation to the Complainants, I uphold this complaint and will bring the matter to the attention of the Central Bank.

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)**.

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 Complainants in the sum of €2,500, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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**

12 July 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.