



<u>Decision Ref:</u>	2019-0222
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Opening/Closing Accounts
<u>Conduct(s) complained of:</u>	Failure to provide notification /reason for closure
<u>Outcome:</u>	Rejected

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

Background

This complaint concerns the Complainant's accounts held with the Provider.

The Complainant's Case

The Complainant submits that he received a letter from the Provider dated 8 October 2015 to advise that the accounts he held with it were being closed. The Complainant submits that the Provider did not give any reason for this closure "*which appears to have been made without grounds, justification or explanation*". The Complainant submits that there was no lawful reason for the Provider to close this account, and all accounts were in credit.

The Complainant is seeking an apology from the Provider and commensurate compensation for the cost and inconvenience caused by it.

The Provider's Case

The Provider submits that on 8 October 2015, it exercised its contractual right to exit the Customer/Client relationship as set out in its terms and conditions. The Provider submits that it is satisfied that it has acted in a fair and professional manner and in accordance with its obligations. The Provider submits that its contractual right is contained in Clause 13.3 of the Terms and Conditions for Current, Demand Deposit and Masterplan Accounts.

The Provider submits that on receipt of the Complainant's complaint regarding the closure of his accounts, it agreed to extend the closure dated from 8 December 2015 to 30 January 2016. The Provider submits that it agreed to extend the closure date on four further occasions in order to facilitate a smooth transition of the Complainant's accounts to another institution, and to try and resolve the complaint. The Provider submits that it also offered the Complainant a number of opportunities to meet a senior member of management and provided contact details to support him with any difficulties that may have occurred. It submits that the Complainant's accounts were finally closed on 9 September 2016, some 11 months after the initial notice, thereby extending the closure date by 9 months in total.

The Complaint for Adjudication

The complaint is that the Provider wrongfully closed the Complainant's accounts "*without grounds, justification or explanation*".

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 27 May 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.

Submission dated 31 May 2019 from the Provider and submissions dated 4 June 2019 and 18 June 2019 from the Complainant, were received by this Office after the issue of a Preliminary Decision to the parties. These submissions were exchanged between the parties and an opportunity was made available to both parties for any additional observations arising from the said additional submissions. I have considered the contents of these

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additional submissions for the purpose of setting out the final determination of this office below.

I note that the Complainant, in his submission dated 4 June 2019, states, among other things, that:

“The Financial Ombudsman accepts that the bank is not obliged to provide the rationale for closing all the company’s bank accounts. Do you think this is fair, reasonable & appropriate behaviour? What would the position be if, for example, the bank’s decision was surreptitiously taken because I was a member of the traveller community, Jewish or indeed Coloured? How would you know, one way or the other, the rationale for the bank to make such a decision as the bank obtusely refuses to advise you?”

I note that the Complainant has not submitted any evidence that the Provider has discriminated against him on any of these grounds.

I note that the Provider, in its submission dated 31 May 2019, states, among other things, that:

“The Bank notes that while a finding was made in favour of the Bank pursuant to the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (the 1995 Regulations), the FSO has failed to address the jurisdictional matters raised by the Bank in its letters to the FSPO dated the 2 February and 22 October 2018. The Bank restates its position that the FSPO does not have jurisdiction to hear and adjudicate complaints pursuant to the 1995 Regulations.

The Bank also restates its position that the FSPO does not have jurisdiction to refer such matters to a Court of competent jurisdiction to determine. The Bank requests that these are now comprehensively addressed prior to issuing a final decision and continues to reserve its rights in this regard.”

The Provider, in its submission dated 2 February 2018, states, among other things, the following:

“In the first instance, it is the Bank’s opinion that the Office of the Financial Services and Pensions Ombudsman (the FSPO) does not have jurisdiction to consider complaints pursuant to the Regulations.

Regulation 8(1) (as amended by SI 160/2013) states that an “Authorised Body” may apply to the Circuit or High Court for a declaration that a term that falls within the scope of the Regulations is unfair. The FSPO themselves in their letter to each of the Complainants dated the 27th June 2017 have determined that they are not an “Authorised Body” within the meaning of the Regulations and are therefore not in a position to make a referral to the Court pursuant to Regulation 8(1).

Regulation 8(9) provides that Regulation 8(1) is without prejudice to the right of a consumer to rely on the Regulations in any case before a 'court of competent jurisdiction'.

It is the Bank's opinion that the FSPO is not a court of competent jurisdiction for the purposes of the Regulations and is not the appropriate forum to consider complaints pursuant to the Regulations. Regulation 8(1) is clear in outlining that it is only within the remit of the Circuit or High Court to make a declaration that a term is unfair. It is noteworthy that the amendment to the Regulations in 2013 extended the remit of making a declaration pursuant to the Regulations to include the Circuit Court, but went no further."

The Provider, in its submission dated 22 October 2018 states, among other things, the following:

"The position of the Bank in relation to jurisdiction remains as set out in previous correspondence.

It is the Bank's view that its letter of 2 February 2018 raised valid jurisdictional concerns which have not been addressed by the Financial Services and Pensions Ombudsman (the FSPO). The Bank does not believe that FSPO has jurisdiction to hear and adjudicate complaints pursuant to the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (the Regulations), nor does it have jurisdiction to refer such matters to a Court of competent jurisdiction for determination."

This office, in a letter to the Provider dated 14 December 2017, set out, among other things, the following:

*"The Financial Services Ombudsman's Bureau has reconsidered the question of its jurisdiction to consider complaints pursuant to the **European Communities (Unfair Terms in Consumer Contracts) Regulations 1995**, as amended, (the "Regulations").*

*This office has now decided on the basis of extensive legal advice received, that it is not necessary to make a referral to the High Court under s57CK of the **Central Bank Act 1942**, as amended (the "Act"). In that regard, this office has formed the unequivocal opinion that the Financial Services Ombudsman is entitled to consider and take into account the provisions of the Regulations in the context of its adjudications, both generally and also specifically in relation to this complaint in circumstances where the Regulations represent a central tenet of the issues raised.*

This office has formed this view on the basis of legal advice received, and taking into account its statutory functions and remit under the Act, together with relevant case law interpreting the Act."

I remain firmly of the view that I am entitled to take into account the provisions of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995, as amended.

Before turning to the issue at hand, I would point out the following:

The Complainant states that:

"I have requested the bank to provide all pertinent information concerning me that the bank has under the Data Protection Act 1988 & 2003 &, if relevant, the Freedom of Information Act 2014. I have yet to receive any information in this regard."

I would point out that any complaint regarding breaches of data protection legislation is a matter for the Data Protection Commissioner, and will not therefore be addressed in this Decision.

The Complainant submits that he received a letter from the Provider dated 8 October 2015 informing him that a number of his accounts were being closed. The Complainant submits that the Provider did not give any reason for the closure of the accounts, and this decision *"appears to have been reached without grounds, justification or explanation"*.

The Provider submits that on 8 October 2015 it exercised its contractual right to exit the Customer/Client relationship as set out in its terms and conditions. The Provider states *"The Complainant was advised that the Bank had exercised its right to contractually end the relationship as set out in paragraph 13.3 of the general terms and conditions governing current and deposit accounts"*. The Provider submits that Clause 13.3 of the account terms and conditions entitled it to close an account for any reason having given at least 2 months prior notice in writing.

The Provider submits that the terms and conditions require that it has a reason for closing a customer's account, but does not require or oblige it to provide that reason to the customer. The Provider states that it is *"unwilling to continue the contractual relationship in this instance, and therefore took the decision to close the Complainant's accounts and gave him the required notice"*.

The Provider submits that the Complainant held five accounts with it, in his sole name. These accounts were as follows:

- Account ending in '4213 – Personal deposit account
- Account ending in '4486 – Personal current account
- Account ending in '4643 – Personal deposit account
- Account ending in '5035 – Personal online account
- Account ending in '8005 – Personal online account

Condition 13 of the Terms and Conditions for Current, Demand Deposit and Masterplan Accounts provides the following:

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"13 Closure of your Account

13.1 *We can suspend or close your Account immediately in any of the following circumstances:*

...

13.3 *We may also close your Account for any other reason by giving you at least two months prior notice in writing"*

The Provider has submitted a copy of the *"Terms and Conditions for the Online Notice Deposit... Accounts"*. I note that Condition 9.3 of these terms and conditions provides that:

"9.3 We may also close your Account for any other reason by giving you at least one month's prior notice in writing"

The Complainant states that *"The bank's case appears to depend solely on sending a copy of its conditions along with the closure notice on the 7th October 2015. The bank now refers to & depends on its Terms & Conditions booklet which it only sent to me after the fateful unilateral decision was already taken"*. The Complainant submits that he never received a copy of the terms and conditions of the accounts.

The Complainant submits that he has since opened three personal deposit accounts in separate branches of the Provider, and on each occasion the Terms and Conditions booklet was not given to him or even referred to. The Complainant states that *"I have also since opened a joint Bereavement account with [the Provider]. As Executor of my father's estate it was thought convenient to do so & was indeed actively encouraged by the... branch. Again no booklet with the terms & conditions were given to either account holder. This pays lie to the banks insistence that a booklet with the terms & conditions is given at the time of opening accounts"*.

The Provider submits that a copy of the terms and conditions was provided to the Complainant at account opening, and by proceeding with opening his accounts, he agreed to be bound by those terms and conditions. The Provider submits that a copy of the terms and conditions was also sent to the Complainant with the closure notice on 8 October 2015. The Provider submits that the terms and conditions are available online and in every branch and have been approved by the Central Bank of Ireland.

The Provider submits that accounts ending in '5035 and '8005 are online deposit accounts and during the online account opening process requires customers to confirm their acceptance of the terms and conditions by ticking a box and also provides a link to the terms and conditions. The Provider has submitted a copy of the screenshots of the account opening process. I note that the last screenshot before confirmation of details provides, among other things, the following:

"Important information

...

You should read these documents carefully and tick each box to confirm the below

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...

I have read and accept the [account name redacted] Terms and Conditions.

...

The email address you provide will be used to send you these important documents related to your savings account.

Email address

Confirm email address

x Cancel

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The Provider states that *“Unfortunately we have been unable to locate copies of the account opening mandates for the Complainant’s sole accounts due to the passage of time since they were opened (20 – 30 years)”*. The Provider has submitted a redacted signed copy of the account opening mandate for one of the Complainant’s joint accounts. I note that this states, among other things, that:

“Application / Declaration

...

To: [the Provider]

1. Please open [a Provider] current account in our joint names (and such other accounts as we may require under the same signing instructions) and we agree that we are bound by the Bank’s terms and conditions for these accounts a copy of which has been / will be given to us”.

Provision 4.22 of the Consumer Protection Code 2012 provides the following:

*“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. To the extent that the contract for the provision of the product is a distance contract for the supply of a financial service under the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004, the Regulations apply in place of the requirement set out in the first sentence of this provision.”*

I accept, based on the evidence before me, that a copy of the terms and conditions for the online accounts were made available to the Complainant at the account opening stage. While I cannot say with certainty whether the Complainant received the terms and conditions for the other accounts at account opening stage, I note that the Provider submits that a copy of the terms and conditions were available online and in its branches. Both the Provider and the Complainant were bound by the terms and conditions of the account, and these terms and conditions were accessible to the Complainant.

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The Complainant submits that Clause 13.3 of the terms and conditions the Provider is relying on to justify its decision is unfair and in breach of the European Communities (Unfair Terms in Consumer Contracts) Regulations.

The Provider submits that it does not accept that its right to terminate the relationship with a customer is in breach of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995. The Provider submits that the Complainant was afforded an extended period within which to make alternative banking arrangements.

The European Communities (Unfair Terms in Consumer Contracts) Regulations 1995, sets out, among other things, the following:

"3. (1) Subject to the provisions of Schedule 1, these Regulations apply to any term in a contract concluded between a seller of goods or supplier of services and a consumer which has not been individually negotiated.

(2) For the purpose of these Regulations a contractual term shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer, taking into account the nature of the goods or services for which the contract was concluded and all circumstances attending the conclusion of the contract and all other terms of the contract or of another contract on which it is dependent.

(3) In determining whether a term satisfies the requirement of good faith, regard shall be had to the matters specified in Schedule 2 to these Regulations.

(4) A term shall always be regarded as having not been individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence its substance, particularly in the context of a pre-formulated standard contract.

...

(7) An indicative and non-exhaustive list of the terms which may be regarded as unfair, pursuant to Article 3.3 of the Council Directive, is set out in the Annex to the Directive and in Schedule 3 to these Regulations.

4. A term shall not of itself be considered to be unfair by relation to the definition of the main subject matter of the contract or to the adequacy of the price and remuneration, as against the goods and services supplied, in so far as these terms are in plain, intelligible language.

...

6. (1) An unfair term in a contract concluded with a consumer by a seller or supplier shall not be binding on the consumer.

(2) The contract shall continue to bind the parties, if it is capable of continuing in existence without the unfair term.

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...

9. In determining whether or not the terms of a contract are unfair account shall be taken of all its features and in particular of any information it contains concerning the matters set out in the Annex to the Council Directive and in Schedule 3 to these Regulations."

Schedule 3 of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995, provides the following:

"Unfair Terms in Consumer Contracts

1. Terms which have the object or effect of:

...

(f) authorising the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the seller or supplier to retain the sums paid for services not yet supplied by him where it is the seller or supplier himself who dissolves the contract;

(g) enabling the seller or supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so;

....

2. Scope of subparagraphs (g), (j) and (l)

*(a) Subparagraph (g) is without hindrance to terms by which a supplier of financial services reserves the right to terminate unilaterally a contract of indeterminate duration without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof immediately.
..."*

Having carefully considered all of the evidence before me, I do not consider that Clause 13.3 of the terms and conditions of the Complainant's account is an unfair term. I note that this clause provides for at least two months' prior notice in writing, which was what the Provider gave to the Complainant. While the terms and conditions of the account authorise the Provider to dissolve the contract on a discretionary basis, this facility is also granted to the Complainant. Condition 13.4 of the terms and conditions for the personal deposit and personal current accounts provides that:

"13.4 You may close your Account at any time by a written instruction to your branch."

Condition 9.4 of the terms and conditions for the online notice deposit accounts provides that:

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“9.4 You may close your Account at any time subject to the Minimum Notice period operative on the Account and the Notice to Withdraw or Close having been served online and accepted.”

The *“Minimum Notice Period”* is defined in the terms and conditions as follows:

“Minimum Notice Period” means to make withdrawals from or close the Online Notice Deposit Account you must give a minimum of 7 days online notice for an Online Notice Deposit 7 and a minimum of 21 days online notice for an Online Notice Deposit 21.”

The Provider has obligations pursuant to the European Communities (Payment Services) Regulations 2009 (the 2009 Regulations) in relation to the personal deposit and personal current accounts.

The Provider submits that the two months’ notice period is in compliance with Provision 56(3) of the 2009 Regulations, which provides that:

“Termination.

56. ...

(3) If agreed in the relevant framework contract, a payment service provider may terminate a framework contract concluded for an indefinite period by giving at least two months’ notice.”

The Provider states that the 2009 Regulations are intended to and do give effect to provisions of European Law. The Provider states that *“The chapter of which [Regulation] 56(3) forms part, provides for a number of obligations which apply to “framework contracts” and which remove ambiguity as to the entitlements of parties by stipulating expressly the circumstances inter alia, under which determination can occur. Just as [Regulation 56(3)] provides for the entitlement to terminate the contract by giving two months’ notice, where such is contained in the relevant framework contract, so also does [Regulation] 56 make other provision limiting the amount of notice which can be required from an account holder”.*

The Complainant states that *“I have had a good blemish free relationship with the bank & find this unexpected decision to unilaterally close all my accounts to be in breach of Article 81 of the EC Treaty (ex Article 85). Moreover, [the Provider] is regulated by the Central Bank of Ireland & as such has a responsibility to behave impartially, honestly & fairly. Any reasonable person would conclude that the decision of [named party], Relationship manager, [named branch] to be irrational & not worthy of a previously august institution that [the Provider] once was & could be again”.*

Article 81 of the EC Treaty (ex Article 85) relates to competition law. Any complaints regarding breaches of competition law is a matter for the Competition and Consumer Protection Commission, and will not be considered in this Decision.

The Complainant states *“What is the basis for which the bank is activating clause 13.3. Surely I deserve & would be entitled to an explanation for this decision. It is not acceptable & raises*

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a lot of probing questions concerning possible prejudice, human right abuses & possible interference by a State Agency”.

The Complainant submits that at no stage did the Provider try to resolve the complaint. The Complainant states that *“I repeatedly requested that the bank reverse it’s unexpected unilateral decision. The bank repeatedly denied the request despite it being brought to the attention of the bank’s chairman, it’s CEO & other senior managers”.*

In response, the Provider states that *“we would dispute the Complainant’s claim that the Bank did not try and resolve the complaint. We advised the Complainant repeatedly that the Bank would not reverse its decision. However, both [named representatives of the Provider] repeatedly offered to meet the Complainant to make the process of relocating the accounts to another institution easier. We also offered him alternate contacts to assist in this process”.*

The Complainant states that *“The bank claims that it offered the complainant a number of opportunities to meet a senior member of management and provided contact details to support the complainant with any difficulties that may have occurred. This is duplicitous & a prevarication... the bank repeatedly denied the request to resolve the situation from the bank’s chairman down to various senior managers in [the Provider]. The bank’s contention is patently untrue in this regard”.*

The Provider has submitted a copy of its correspondence to the Complainant. From a review of this correspondence, I note the Provider sets out the following:

- Letter 1 July 2016 – *“If we can facilitate the smooth transfer of your banking facilities in any way, please contact me, and I will arrange for one of my team to support you.”*
- Email (No.1) 12 July 2016 - *“I refer to the letter addressed to you dated 8/7/2016... In follow up to that letter my colleague... and I would like to meet with you to discuss the ongoing matter. We are available to meet with you anytime this Thursday, July 14th, Friday afternoon July 15th or next Monday morning, July 18th. Could you please let me know if any of these times would suit you, and we are flexible in terms of location?”*
- Email (No.2) 12 July 2016- *“We are available to offer whatever support and assistance you require in making alternative banking arrangements, and our offer of a meeting in this regard still stands.”*
- Letter 15 July 2016 - *“[Named representative] and I remain available to meet with you in order to support and assist you in transferring your banking relationship.*

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Alternatively, my colleagues at this branch... can be contacted by email... and phone... to assist you with any operational matters or queries you may have."

- Letter 26 July 2016 – *"I am aware that [named representative] has extended the offer of a meeting with [named representative]. This offer remains in place and I would encourage you to meet with them. [Named representatives] continue to be available to offer support and assistance to you with the closure of your accounts."*
- Letter 28 July 2016 – *"If you feel it would be helpful to meet in the interim, myself and [named representative] are available to do so.

My colleagues at this branch... can be contacted by email and phone... to assist you with any operational matters or queries you may have."*
- Letter 9 August 2016 – *"As previously advised we remain available to meet with you in order to support and assist you in transferring your banking relationship. My colleagues at this branch... can be contacted by email and phone... to assist you with any operational matters or queries you may have."*
- Letter 11 August 2016 - *"We would also like to draw your attention to the fact that my colleague... and I , continue to be available to meet with you to offer any support and assistance with the closure of the various accounts."*
- Letter 22 August 2016 - *"Once again I would also like to draw your attention to the fact that my colleague... and I continue to be available to meet with you to offer any support and assistance with the closure of the various accounts. As [named representative] is on annual leave from Monday, 22/08/2016, please ensure that all correspondence is addressed to me at the above address. Alternatively you can email me at... or by phone..."*
- Letter 26 August 2016 - *"I continue to be available to meet with you to offer any support or assistance with the closure of the various accounts. Please ensure that all correspondence is addressed to meet the above address. Alternatively you can email me at... or by phone..."*
- Letter 31 August 2016 – *"My colleagues at this branch... can be contacted by email... and phone... to assist you with any operational matters or queries you may have."*

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This Office will not interfere with a financial service provider's commercial decisions, other than to ensure that it complies with relevant codes/regulations and does not treat customers unfairly or in a manner that is unreasonable, unjust, oppressive or improperly discriminatory. I have been provided with no evidence that the Provider treated the Complainant in this manner.

While I note that the Provider only offered support to the Complainant after it made the decision to close all his accounts, I must accept that the Provider was entitled to make the decision to close the accounts by giving two months' notice. The Provider complied with its obligations under the European Communities (Payment Services) Regulations 2009 with regard to the closure of the personal deposit and personal current accounts, and was entitled to do so pursuant to the terms and conditions of the account. While I note that the "*Terms and Conditions for the Online Notice Deposit... Accounts*" set out that the Provider may close an account for any other reason by giving at least one month's prior notice in writing, I note that the Complainant was given at least two months' notice by the Provider.

Consequently, it is my Legally Binding Decision that this complaint is not upheld.

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**

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.