



<u>Decision Ref:</u>	2019-0227
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Maladministration Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

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

Background

This complaint is in respect of the Complainant's banking facilities which were revoked by the Provider.

The Complainants' Case

On **16th November 2017**, the Complainant states that he received a telephone call from the Provider but he was not in a position at the time to engage with the caller and he requested a call back in an hour, however, this never happened.

Three days later, on the **19th of November 2017**, the Complainant went abroad for three days. Upon arrival home, having not used any facilities associated with his account whilst abroad, he attempted to use the card associated with his account with the Provider, however it was rejected. The Complainant states that he attempted to log into his online account to view it however, it had "*vanished*".

At this point, the Complainant was concerned that he had been the victim of a scam and was particularly anxious about the whereabouts of a large sum of money he had recently lodged into his account. The Complainant telephoned the Provider on the **22nd November 2017** to establish what the issue was regarding his account. The Provider, the Complainant states, said that he would have been made aware of this closure with several letters sent to the Complainant's home.

The Complainant denies receiving any notification letters regarding the closure of his account or any explanation as to why it occurred.

The Complainant claims his discontent was further exacerbated by the Provider's offer to open a new account for him by letter dated the **29th of November 2017** despite being told to make alternative banking arrangements in a letter dated **20th November 2017** sent by the Provider to the Complainant.

The Complainant refers to the copy emails furnished by the Provider which the Provider contends were sent to the Complainant on the **25th October 2017** and **6th November 2017** and states that he never received such emails. Furthermore he notes that the copies furnished by the Provider do not show the email address to which they were sent nor do they contain the date and time sent, other than a handwritten date on the copy emails.

The Provider has submitted a report from its email delivery system where it shows that emails with the subject "*Urgent Action*" were sent to the Complainant's email address on those two dates. The "*sendStatus*" on this report for each of these emails is noted as "3", which the Provider submits means that the emails has been delivered to the SMTP server of the email address they had been sent to. The Complainant submits that "*sendStatus 3*" is not satisfactory proof of service and he further notes that the report is blank under the "*created by*" and "*created by user*" headings of the report.

The Complainant states that the only emails received by him from the Provider between October 2017 and December 2017 were;

1. an email dated 8th November 2017 with the subject "*We are making changes to how we process your payments*" and
2. an email dated 19th December 2017 with the subject "*Changes to the way we use your information*".

The Complainant further states that the letter sent to him dated **20th November 2017**, advising that a stop was to be put on his account, was not received by him in advance of the stop being put on his account the next day, the **21st November 2017**.

The Complainant contends that "*this bank is not fit for practise and cannot be trusted to hold large sums of money*".

The Complainant is also unhappy with how he was questioned by the Provider's representative when he called regarding his "*vanished*" account on the **22nd of November 2017**. The Complainant contends that the representative "*proceeded to duress [him]*" with a series of "*demands*" for information relating to previous transactions dating back years on his account. The Provider's representative also requested personal information relating to a business account he holds with another Provider and information regarding the purchase of his home. The Complainant states that this line of questioning was, in his opinion, "*exhaustive information to be asked by a stranger*" and that he felt he was being "*held ransom*" for the large sum he had recently deposited. The Complainant further states that

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as a result of the experience of the line of questioning undertaken by the Provider on this call he felt *“utterly violated by [the Provider] sick to my stomach”*.

The Complainant is unhappy that, as he had intended to take out Buy To Let mortgage loans with the same Provider, he now feels that *“[his] lending options open to [his] business may suffer as a result”* of the closure of his account.

Finally, the Complainant is aggrieved over how his complaint was handled by the Provider.

The Complainant is seeking compensation to the value of €12,000.00 *“for [the Provider’s] errors”* and in recognition of his *“outstanding track record”* built up over the previous 10 years.

The Provider’s Case

The Provider does not accept the contention that the Complainant’s banking facilities were revoked without notice, justification or communication. The Provider states that it made reasonable steps to contact the Complainant through e-mail, telephone and post from **25th of October 2017** to **21st November 2017** when the stop was placed on the account. The Provider has stated that two emails were sent to the Complainant on the **25th of October** and the **6th of November** and a letter advising of the closure of the account was sent to the Complainant on the **20th of November 2017**.

The email from the Provider to the Complainant of the **25th October 2017**, which had the subject *“Urgent Action Required”*, advised the Complainant that it required updated information from the Complainant and that it had to re-verify information held by it in respect of the Complainant. This email requested that the Complainant contact the Provider within 10 days from the date of the email and advised that if the information was not furnished, the Provider would not be able to continue to provide the account services to the Complainant. The Provider submits that this email was sent on this date and that its email delivery system confirms that it was delivered to the complainant’s email address.

The Provider states that it sent a further email to the Complainant on the **6th November 2017** which also had the subject *“Urgent Action Required”* which again requested the Complainant to contact it with the information required to complete the Provider’s review. This email stated that as the Provider had not received the information required in its previous email it would cease operating the Complainant’s account from **18th November 2017** and this may ultimately result in the closure of the account.

The Provider has submitted a report from its email delivery system where it shows that emails with the subject *“Urgent Action”* were sent to the Complainant’s email address on those two dates. The *“sendStatus”* on this report for each of these emails is noted as *“3”*, which the Provider submits means that the email has been delivered to the SMTP server of the email address that they had been sent to. The Complainant states that *“sendStatus 3”*, as denoted on the report, is not satisfactory proof of service and he further submits that the

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report is blank under the “*created by*” and “*created by user*” headings of the report. In response to this the Provider again stated that it confirms that “*sendStatus 3*” means that the emails has been delivered to the SMTP server of the email address that they had been sent to. The Provider further states that the report was redacted to remove internal staff identification numbers but it has advised in correspondence to this office, the name of its employee who generated the emails on these dates.

The Provider submits that the letter to the Complainant dated **20 November 2017** advised that, as the Provider had not received the information required, the Provider had ceased operating the account and advised the Complainant to make alternative banking arrangements.

The Provider also submits that calls were made by the Provider to the Complainant on the following dates in respect of the information required and of the ceasing of the operation of the account;

16th November 2016 – call to the Complainant but Complainant could not take the call and requested a call back in the afternoon. The Provider states that it furnished a contact number for the Complainant to call it back should the Provider not be able to get in touch with the Complainant.

17th November 2017 – call to the Complainant and voicemail left.

20th November 2017 - call to the Complainant but there was no answer.

21st November 2017 – call to the Complainant and a voicemail left

The Provider further submits that when the Complainant contacted the Provider on **22nd November 2017** by telephone he advised the Provider that he “*doesn’t get voicemails*”. The Provider states it is unable to comment on why the Complainant did not respond to any of its emails, its letter or its telephone calls.

The Provider submits that the questions asked of the Complainant on the telephone call on **22nd November 2017** were in order to comply with its regulatory obligations by ensuring the information the Provider holds on relation to the Complainant is up to date, including but not limited to ownership and financial control of the business, personal information and information on the transactions the account held. The Provider apologises if the nature of the questions had the negative knock on effects as outlined by the Complainant but it states that the information sought was necessary for ongoing monitoring and compliance with the Provider’s anti-money laundering obligations.

The Provider states that it does not hold a recording of the telephone call with the Complainant on **22nd November 2017** and therefore it cannot comment on the tone of the discussion in the call but advises that its staff members are trained to deal with such matters as sensitively as possible. The Provider does accept that it will have been concerning for the Complainant to have been informed during this call that his account has been suspended and that the Provider had taken action to close it.

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In respect of the Complainant's submission that his future borrowing potential has been jeopardised by the Provider, the Provider submits that the Complainant's future borrowing potential is not a matter for the Provider and that the Provider cannot comment on the lending criteria or practices of other financial institutions.

The Provider contends that the Complainant's complaint was handled effectively and that it has complied with Chapter 10 of the Consumer Protection Code 2012 (as amended) (the "CPC") in that it sought to resolve any complaints with the Complainant and that the complaint was handled in accordance with the Provider's complaint's process.

The Provider states that it acknowledged the Complainant's complaint within five business days, as required to do so by Chapter 10.9 (a) of the CPC, contact details of the individual dealing with the complaint were supplied to the Complainant, in line with Chapter 10.9(b). The Provider further submits that the complaint was dealt with and a final response issued within 40 days of receipt of the complaint, as required by Chapter 10.9(d). A written response letter was issued to the Complainant by the Provider on **29th November 2017**, as per Chapter 10.9(e) and a log of all complaints received from consumers is kept by the Provider in line with Chapters 10.10 and 10.11.

However, in the handling of the Complainant's complaint, the Provider does accept that it did not deal with the aspect of the complaint in respect of the nature of the questions asked of him on the telephone call on **22nd November 2017** in its written response to the Complainant dated **29th November 2017**.

The Provider accepts that the letter sent on the **29th of November 2017** by the Provider to the Complainant in respect of future services the Provider could offer the Complainant may have been misleading in that it incorrectly advised the Complainant if he wished to continue his facilities with the Provider, he must reapply for a new account. The Provider accepts that this was contradictory to the letter sent by it dated **20th November 2017**, where it stated that the Complainant must make alternative arrangements for his account, other than with the Provider. The Provider claims to have qualified this error by letter dated the **19th of December 2017** reiterating that the Complainant's account would be closed and he must make alternative arrangements for a new account other than with the Provider.

The Provider has furnished a copy of its terms and conditions which were furnished to the Complainant on the opening of the account. Condition 5.2 of the terms and conditions outlines the Provider's procedure should it conclude that it could no longer provide facilities, as follows;

"We may require you to close the Account. Where your Account is a Payment Account, we will give you not less than 60 days' notice. Where your Account is a non-Payment Account we will give you not less than 30 days' prior notice or such period of notice you would have to give us in order to close your Account, whichever is longer. We may do this by writing to you indicating the period within which you are required to comply with this request. If, at the end of that period, you have not closed the Account, we will be entitled to refuse to accept any debt and outstanding payments into the Account (except such payments as are necessary to repay any debt and outstanding interest and charges on the Account) and may

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return any existing balance to you at the last address you have intimated to us as your home address. We do not have to give you a reason for our decision.”

The Provider states that under Section 6 of the account opening information the Complainant has signed his name confirming that he has read, accepted and held a copy of the terms and condition.

The Provider has offered €750 in compensation in acknowledgement of its conduct set out above where it accepts that it fell short. The Provider has confirmed that this offer remains open to the Complainant.

The Complaints for Adjudication

That the Provider ceased operation of the Complainant’s account without notice, justification or communication of the reasons for doing so, that its questions were intrusive, that it jeopardised the Complainant’s future borrowing potential and handled the complaint poorly.

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 17 June 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.

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In the absence of additional submissions from the parties, within the period permitted, taking into account all of the evidence and submissions my final determination is set out below.

On the **25th of October, 2017** an agent of the Provider e-mailed the Complainant and provided the Complainant with its contact information and asked the Complainant to contact it within 10 days. The Complainant did not contact it. The e-mail stated that if the Complainant did not provide up to date information to the Provider that the Provider would no longer be able to continue to operate the Complainant's bank account. At this point on the **25th of October, 2017** the Complainant was on notice that his bank account may be closed down.

The e-mail address that the e-mail was sent to is the same address that the Complainant has used in his interactions with this office and the Provider has asserted that the e-mail was delivered to that address. The copy email supplied to this office by the Provider does not show what email address this email were sent to nor the date sent, however, the Provider has furnished a copy of a report from its email delivery system which shows that an email was sent on this date to the Complainant's email address with the subject "*Urgent Action Required*".

On the **6th of November 2017** an agent of the Provider contacted the Complainant on the Complainant's mobile number. The agent for the Provider claims that she called back immediately and left a voice message requesting the Complainant to call her back. On the same date the Provider claims an email was sent to the Complainant from the Central Operations department at 14:10 with the subject heading "*Urgent Action Required*" which stated in the body of the email that the Complainant had not provided information requested for the Provider to comply with its regulatory obligations and that consequently the Provider would have no other option but to cease operating the Complainant's account from the **18th of November 2018**, which may ultimately lead to the closure of the Complainant's account. The email informed the Complainant that he would not be able to use any debit cards, credit cards and or charge cards and they would be rendered inoperable. The Complainant claims he never received this email, the Provider has furnished a copy of the email sent to the same email address the Complainant has used to correspond with this office. Again, the copy email supplied to this office by the Provider does not show what email address this email was sent to nor the date sent, however, the Provider has furnished a copy of a report from its email delivery system which shows that an email was sent on this date to the Complainant's email address with the subject "*Urgent Action Required*".

The Complainant disputes receiving these emails.

Clause 11.7 of the CPC states that;

"A regulated entity must maintain complete and readily accessible records; however, a regulated entity is not required to keep records in a single location."

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The Provider, in failing to maintain a complete record of these emails, to include the email address and date and time on which these emails were sent, is in breach of this provision of the CPC. However, while it is unsatisfactory that the Provider is not in a position to provide copies of the relevant emails containing the email address to which the email was sent and the date the email was sent, I accept the contents of the report submitted by the Provider from its email delivery system, which shows that the emails were sent to the Complainant at the email address given by him to the Provider. From the information and documentation furnished by the Provider, including copy emails, letter and the report from the email delivery system, I accept that the Provider made numerous attempts to contact the Complainant in relation to his account. I also accept that a number of calls were made to the Complainant between the **25th October 2017** and **20th November 2017**. It is disappointing, and unsatisfactory, that the Provider did not call Complainant again as it advised that it would on **16th November 2017**. However, I do accept that further attempts were made by the Provider to reach the Complainant by phone over the following weeks and that voicemail messages were left for the Complainant. I note the Complainant has stated he does not access his voicemails. If the Complainant had spoken with the Provider on any of these occasions there would have been an opportunity for him to raise any issues in respect of the proposed closure of the account.

The Complainant did not engage with the Provider until a stop was placed on his account after several attempts were made to contact the Complainant, by email and telephone requesting that he contact the Provider.

It is further disappointing that the Provider does not have a recording of the call on the **22nd November 2017**, which the Complainant states he was left feeling "*violated*" and "*sick to my stomach*" after. However, I accept that the Provider is required to establish certain facts in order to fulfil its regulatory and statutory obligations.

I find that the Provider, under the terms and conditions of the account, which I accept were notified to the Complainant, was entitled to close the account within the time period that it did. The terms and conditions required the Provider to write to the Complainant to notify him of the intention to close the Account. However, in this instance the Provider went further and corresponded on a number of occasions by email and also sought to contact the Complainant by telephone in advance of the closure of the account. From my review of the documentation available to me, I find that there is no evidence to support the Complainant's contention that his future borrowing potential with other lending institutions has been negatively impacted by the Provider's actions. I believe that such decisions will fall within the commercial discretion of any lending institution concerned and I do propose to make any finding in that regard.

In relation to the Complainant's contention that money vanished from his account and that access to his money was used to hold him to ransom, I have not been provided with any evidence to support this.

A stop was placed on the Complainant's account on **21 November 2017** and then lifted on **22 November 2017** after the Complainant spoke to an agent of the Provider. His account was then fully operational for transactions until it was closed on **30 January 2018**. I note

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the Complainant carried out Point of Sale debit card transactions on his account on **24 November** and **26 November 2017**. On **5 December** he transferred money from his savings account to his current account and then withdrew €23,375.

I find that the Provider did deal with certain aspects of the Complainant's complaint poorly, in that it provided misleading information to the Complainant by letter dated the **29th of November 2017** which contradicted its prior letter dated **20th November 2017**. The Complainant would reasonably have understood from the letter of **29 November 2017** that he could apply for a new account with the Provider, which may have given him a false reassurance. I accept that this was ultimately corrected by the Provider and it was made clear in the letter dated **19th December 2017** that he would have to make alternative arrangements with another provider.

Further, the Provider did not deal with the aspect of the Complainant's complaint, in respect of the nature of the questions asked by it on the telephone call on **22nd November 2107** in its written response to the Complainant, which reasonably left the Complainant aggrieved.

The Provider has offered the sum of €750 in respect of its failings in the issuance of misleading letter dated **29 November 2017** and the failing in the handling of the Complainant's complaint. I consider this to be a reasonable sum of compensation for the inconvenience caused to the Complainant by these aspects of the Provider's handling of his complaint and the issuance of the misleading letter dated **29 November 2018**, together with the identified failure of the Provider to retain copies of the emails issued to the Complainant.

For the reasons outlined above and on the basis the offer of €750 remains available for acceptance by the Complainant, I do not uphold this complaint.

Conclusion

My Decision is that this complaint is rejected pursuant to **Section 60(1)** 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**

11 July 2019

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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.

