Decision Ref:	2019-0249
Sector:	Banking
Product / Service:	Business Bank account
Conduct(s) complained of:	Delayed or inadequate communication Complaint handling (Consumer Protection Code)
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to the closure by the Provider of six business accounts which the Complainant held with the Provider. The Complainant states that the Provider did not provide any acceptable reasons for its decision to close its business accounts.

The complaint also refers to the handling of the Complainant's complaint by the Respondent.

The Complainant's Case

The Complainant is a financial service provider, regulated by the Central Bank of Ireland, and has been in operation for over 40 years. The Complainant opened the first of its accounts with the Provider in **2010**.

The Complainant states that it was contacted by an employee of the Provider by email on **3 March 2017** with a request to furnish the Provider with *"Anti-money laundering procedures that the company operate under and evidence (annually) of the existence and effectiveness of the anti-money laundering controls operated by the client (such as results from assurance testing or MI)."*

Following this email, the Complainant states that it contacted, by phone, the employee of the Provider who had sent the email and was informed that its accounts with the Provider would be closed within 60 days if it did not comply with the request in the email.

The Complainant stated that it asked the Provider why such detailed information was required and was told that the information was required to comply with the Criminal Justice (Money Laundering and Terrorism) Finance Act 2010 (the "**2010 Act**") and was also required at the request of the Central Bank of Ireland.

The Complainant then states that it contacted the anti-money laundering ("AML") department of the Central Bank of Ireland to assess the veracity of the Provider's request. The Complainant states that it was informed by the Central Bank of Ireland that there was no requirement for the Provider to request such detailed information, however, the Complainant does accept that the Central Bank of Ireland stated that the Provider could have introduced these measures into its AML policy and procedure.

The Complainant then asserts that it contacted the same employee of the Provider by telephone and sought more information from the Provider as to exactly what documentation was required. The Complainant states that it received no response from the Provider and indeed the next contact received from the Provider was in **November 2017** when the Complainant received a letter from the Provider wherein the Provider stated its intention to close the Complainant's accounts within 60 days.

The Complainant states that following this **November 2017** letter, the Complainant visited the Provider's branch and met the Complainant's customer service manager. At this juncture, the Complainant states that it was told that the AML department of the Provider does not correspond with customers directly and that the customer service manager was unable to provide any further detail as she was not familiar with the subject.

The Complainant then asked the customer service manager how he could confirm to the Provider's satisfaction that he had complied with all aspects of the 2010 Act. This prompted a written response from the Provider which stated:

> *"Under the Criminal Justice Act 2010 (as amended), [the Provider] has determined what its CDD requirements/standard are for its customers. [The Provider] is required under the Act to complete a level of customer due diligence on all of its customers and to adopt a risk based approach in doing so. While [the Complainant] are a designated body under the act and regulated by the Central Bank of Ireland, [the Provider], as [provider] for [the Complainant], are not in a position to accept confirmation from them that they are compliant with all legislation and codes without providing some evidence of same. Therefore, the request is still valid and remains. Should [the Complainant] be unwilling to provide the required information/documentation, this may affect [the Provider's] ability to continue to provide a …. service to them in the future."*

The Complainant states that this written response from the Provider provided no detail as to what the Provider's AML department wanted to see from the Complainant's AML

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documentation. Regardless, the Complainant states that it furnished its branch customer service manager with a copy of its AML policy and procedures and the Provider put a 7 day stay on the withdrawal of services to review the documentation.

On **18 December 2017** the Complainant states that it requested an update from the Provider's customer service manager on the matter and also enquired as to whether any other information was required from the Provider. The Complainant states that at this stage it was told that there was no news in relation to the review of the documentation.

On **17 January 2018** the Complainant states that it received a letter from the Provider's local branch manager stating that its accounts would be closed with no explanation provided as to why this was occurring. During a follow up call on **18 January 2018**, the branch manager told the Complainant that the Provider's compliance department had indicated that the Complainant's accounts should be closed. The only explanation provided by the branch manager was that the documentation provided by the Complainant was not up to the Provider's standards. The branch manager also stated that he could not provide further details as to what the Provider's standards entail. During this phone call the Complainant requested that the branch manager log a complaint relating to the situation.

The Complainant followed this verbal complaint with a written complaint on **26 January 2018** and raised issue with the fact that more than seven working days after the Complainant's verbal complaint was lodged, no written confirmation of the complaint was received by the Complainant from the Provider. The Complainant asserts that pursuant to the Provider's published complaints procedure (contained on their website), the Provider should have written to the Complainant within five working days giving it the name of the person dealing with its issue and letting it know when it could expect a full response. The Complainant states that the first piece of written correspondence received by the Complainant from the Provider subsequent to its oral and written complaint was received on **5 February 2018** in the form of an undated letter and makes no reference to the verbal complaint of **18 January 2018**, focusing solely on the written complaint of **26 January 2018**.

When responding to the Provider's response documents and the particular assertion by the Provider that the Complainant's **18 January 2018** complaint was classified as a complaint under the Payment Services Directive 2 and therefore was subject to a longer period of time for a response to be required, the Complainant states that it is unlikely that any banking customer unfamiliar with the internal workings of banking would know anything about the Payment Services Directive 2 and, notwithstanding that point, that there is no evidence that the letter received on **5 February 2018** was issued on **1 February 2018** (within 15 days), as asserted by the Provider, as the letter is undated.

The Complainant states that it does not understand how it can meet the Provider's expectations with regards to AML compliance when the Provider will not communicate in relation to this compliance with the Complainant, and in particular the Complainant seeks to discover how its AML procedures do not meet the Provider's criteria.

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The Complainant further states that as a financial service provider it is considered low risk for money laundering due to the small sums of money involved and its high level of knowledge about its customer base, much of which consists of recurring customers.

Furthermore, the Complainant states that the Provider has not provided any evidence that the Complainant was a higher risk for AML than any other entities even though that is being used as a reason to close its accounts. The Complainant notes that in the Provider's response to the complaint, the Provider has changed its terminology to state that the Complaint's accounts did not meet its "*risk appetite*", but the Complainant submits that the core question remains – what evidence exists to suggest that the Complainant's AML procedures were not sufficient to satisfy the Provider's risk appetite.

Crucially, the Complainant points to the fact that no evidence of the due diligence allegedly carried out by the Provider on the Complainant has been provided in the context of this dispute. Such documentation, according to the Complainant, would be able to clarify exactly why the Provider has taken the action it has taken or alternatively show that the action taken was taken in error.

The Complainant also queries the veracity of the Provider's claim that the Provider's policies and procedures internal documents used to make the decision to close the Complainant's accounts are commercially sensitive. The Complainant points to the confidential nature of this Office's procedures and points to the fact that it is seeking documentation only insofar as it relates to the Complainant and not in relation to any other customer.

The Complainant asserts that it adheres to all required regulations, including AML legislation and its AML procedures are very closely based on those created for the Consumer Credit Association of the Republic of Ireland by a consultant who is an expert in this area and understands the moneylending sector. The Complainant states that a number of other members of the Consumer Credit Association of the Republic of Ireland use these procedures and have bank accounts with the Provider. The Complainant asserts that these other members have not been asked for their AML procedures by the Provider and have not had their accounts closed based on AML concerns.

The Complainant also states that it is regulated by the Central Bank of Ireland and passed an inspection by that entity for AML implementation in 2013.

Finally, the Complainant states that it is extremely concerned that the actions of the Provider could impact upon its business reputation and potentially cause problems for the Complainant with other banking organisations. In its response to the Provider's responding documentation, the Complainant states that the actions of the Provider have already caused significant business disruption to the Complainant as its customers have raised questions as to why it needed to change its banking provider. The Complainant further states that the Provider failed to transfer some of its standing orders to the Complainant's new provider in circumstances where all the required information was furnished to the Provider in sufficient time and this caused disruption to the Complainant and its business.

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In its initial complaint form, the Complainant sought to have its accounts with the Provider remain open and usable for business and it wanted the Provider to issue a letter stating that the Complainant's AML procedures are acceptable.

However, given recent correspondence furnished to this Office it appears that the Complainant's accounts with the Provider have been closed subsequent to the initiation of this dispute and the Complainant has moved to another provider for its banking services.

The Provider's Case

The Provider states that pursuant to the Act it is obliged to apply an enhanced level of customer due diligence in all cases where a customer relationship is considered to be higher risk of money laundering or terrorist financing. In taking the steps to comply with this requirement of enhanced due diligence, the Provider states that it did not conclude that any such acts had occurred nor did it treat the Complainant less favourably but rather it complied with its obligations pursuant to the legislation.

The Provider states that as a regulated entity it has a number of legal obligations in respect of combatting money laundering or terrorist financing risk including (but not limited to) the obligation to review and carry out customer due diligence on an on-going basis throughout the duration of every customer relationship. As such, the Provider states that it regularly reviews the customer relationships it has and makes decisions as to whether it is satisfied that it is able to continue to comply with its legal and regulatory obligations whilst servicing those customer relationships.

The Provider states that as a result of the above, when assessing its customer relationship with the Complainant, the Provider complied with both its regulatory obligations and its own risk profile (and appetite) by conducting a level of due diligence appropriate to the Provider's potential exposure to money laundering or terrorist financing risk.

Furthermore, the Provider states that following completion of its due diligence review of its relationship with the Complainant, the Provider concluded that the maintenance of the Complainant's accounts was no longer consistent with its own risk profile (and appetite) and took steps to close those accounts in full adherence with the Terms & Conditions applicable thereto.

The Provider states that, as per its Terms and Conditions applicable to the Complainant's accounts, it may exercise its discretion to terminate its agreement with the Complainant at any time on the provision of two months' notice to the Complainant. Clause 10.2 states:

> *"The [Provider] may terminate this Agreement at any time on two months notice to the Customer."*

The Provider submits that it has complied with this as it gave the Complainant two months' notice of the intended closure of the account. The Provider further submits that it is under

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no obligation to provide commercial rationale nor does the Provider accept that it has an obligation to engage with the Complainant in this regard nor provide it with detailed reasons so as to allow the Complainant meet the requirements of the Provider.

The Provider points to s39 of the 2010 Act which provides designated persons (such as the Provider) with a discretion to apply additional enhanced customer due diligence measures and further states that it has a positive obligation under s54 of the 2010 Act to adopt policies and procedures in relation to its business to prevent and detect the commission of money laundering and terrorist financing and in particular policies and procedures to be followed by persons involved in the conduct of its business that specify its obligations, including the assessment and management of risks of money laundering or terrorist financing. The Provider states that the 2010 Act is not prescriptive in respect of the content of such policies and procedures, nor is it prescriptive in how or when the Provider must apply additional measures.

The Provider states that pursuant to the Terms & Conditions applicable to the Complainant's accounts, the Provider may make a decision to terminate its agreement to provide banking services to the Complainant at any time on the provision of two months' notice to the Complainant. The Provider asserts that it is under no obligation to provide any commercial rationale in these instances nor does the Provider accept that it has an obligation to engage with the Complainant in this regard or to provide sufficient detailed reasons so as to allow the Complainant to meet the requirements of the Provider.

The Provider expressly states that the Complainant's accounts were closed in full accordance with the Terms & Conditions applicable thereto and the Provider clarifies that it has not engaged with the Complainant so as to provide it with a better understanding of the Provider's decision to close its accounts as this remains a 'risk appetite decision' of the Provider.

Furthermore, the Provider states that when the Complainant opened its bank account with the Provider in 2010 this was at a time when the legal landscape in which the Provider operated was very different to that which now applies and that the Provider's policies and procedures in respect of anti-money laundering at that time differed to those which currently apply.

The Provider rejects the assertion that it did not deal with the Provider's complaint within the timelines of the Provider's own published complaints procedure and states that as per chapter 6, section 124 of S.I. No.6/2018 – European Union (Payment Services) Regulations 2018, it is obliged to respond within 15 business days to a complaint. The Provider also points to its complaints process as published on its website which states if the complaint relates to a payment service, the Provider will write to the Complainant within 15 business days of receipt of the complaint and that period of time will be extended to 35 days in the case of exceptional circumstances. The Provider asserts that the complaint was logged on its internal system on **18 January 2018** and responded to on **1 February 2018**, 14 calendar days from the date the complaint was lodged. The Provider acknowledges and apologises that this letter was undated but claims that the Provider's internal complaint system records the date in which the letter was issued.

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Finally, the Provider states that it has handled the Complainant's complaint pursuant to the provisions of the Consumer Protection Code 2012.

The Complaint for Adjudication

The complaint for adjudication is that the Provider wrongfully closed the business accounts of the Complainant without proper explanation and without giving the Complainant an opportunity to engage with the Provider, and that the Provider delayed in responding to the complaint raised by the Complainant.

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 11 July 2019, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

The Complainant opened the first of its accounts with the Provider in **2010**.

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The Act at the centre of this dispute came into force on the **15 July 2010** and its long title contains the following information:

> *"AN ACT TO PROVIDE FOR OFFENCES OF, AND RELATED TO, MONEY LAUNDERING IN AND OUTSIDE THE STATE; TO GIVE EFFECT TO DIRECTIVE 2005/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 26 OCTOBER 2005 ON THE PREVENTION OF THE USE OF THE FINANCIAL SYSTEM FOR THE PURPOSE OF MONEY LAUNDERING AND TERRORSIST FINANCING […] AND TO PROVIDE FOR RELATED MATTERS"*

The Act requires certain measures to be put in place by financial service providers, such as the Provider. Those measures are designed to hinder and prevent money laundering and the funding of terrorism and other illegal activities. It is one piece of the sweeping worldwide measures which have been implemented over the last two decades to curb the funding of criminality. The overarching objective of the legislation and the provisions contained therein is to protect all customers and the general public from the effects of criminality.

Having reviewed the terms and conditions applicable to the Complainant's accounts, it is clear that under these terms the Provider is entitled to terminate the agreement, at any time, on notice to the Complainant. I accept that two months' notice was given, having regard to the letter dated November 2017. Therefore, I find that the Provider did not breach the terms and conditions of the agreement by closing the accounts and was entitled to do so.

Prior to the dispute and indeed since the initial email sent by an employee of the Provider to the Complainant on **3 March 2017**, the Provider does not appear to have provided any clear, coherent explanation as to what documentation it requires from the Complainant to demonstrate compliance with the 2010 Act, what the perceived deficiencies with regards to the AML procedures employed by the Complainant are and why the Complainant has been targeted for closure of its business accounts when other organisations which employ similar AML procedures have been allowed to maintain their accounts with the Provider.

The Provider is not required to provide details of the documentation it requires. I must point out that the relationship between the Provider and other customers does not form part, nor influence the outcome, of this complaint.

The Provider has, in numerous instances in its response to the complaint, responded that *"this remains a risk appetite decision of the Provider"* and this is particularly apparent when the Provider has been requested to explain why it has not engaged with the Complainant so as to provide it with a better understanding of the Provider's decision to close its accounts.

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It is surprising that the Provider holds no recordings or transcripts of any telephone conversations between the Provider, its servants or agents and the Complainant relevant/pertinent to the complaint.

Similarly, it is surprising the Provider has no contemporaneous notes, records, minutes, memoranda etc. prepared by the Provider from **March 2017** to **27 August 2018**, the date of its response to the complaint, regarding the subject matter of this dispute.

I note the Provider's position that it is not in a position to provide copies of its policies and procedures governing the making of a decision to close a customer's account on the basis that such documents are commercially sensitive. The only insight the Provider has given on the step-by-step process it undertook to come to the decision to close the Complainant's accounts is by making reference to the Terms & Conditions applicable to the Complainant's accounts which the Provider states allow it to terminate its agreement with the Complainant after the expiry of a two month notice period.

I accept that the closure of these accounts was capable of business disruption, embarrassment and inconvenience for the Complainant and I note the Complainant is not satisfied with the explanation given by the Provider as to why it took the decision to withdraw the banking facilities. However, it is evident that the Provider gave the appropriate notice as required under Clause 10.2 of the Terms and Conditions of the account.

In relation to the manner in which the Provider dealt with the Complainant's complaint, I accept that the complaint was properly classed as a Payment Services Directive 2 complaint pursuant to S.I. No.6/2018 – European Union (Payment Services) Regulations 2018 and therefore, pursuant to its website and the statutory guidelines themselves, the Provider had at the latest 15 business days to reply to the verbal complaint lodged by the Complainant on **18 January 2018**. It is accepted by the Complainant that the letter in response to the complaint, although undated, was received by it on **5 February 2018** and thus I find that the complaint was responded to by the Provider within the proper timeframe.

I understand the Complainant's disappointment on learning that its banking facilities were to be withdrawn, as the accounts were no longer consistent with the Provider's risk appetite. I accept however, that the Provider was entitled, pursuant to Clause 10.2 of its Terms and Conditions of the account, to take this action. For the reasons set out above, I do not consider the Provider's actions to be wrongful. As there is no evidence before me of any element of wrongdoing, in relation to the closure of the accounts, I take the view that it would not be appropriate to uphold this complaint.

Therefore, for the reasons outlined above, I do not uphold this complaint.

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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

6 August 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.