An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0278
Sector:	Banking
Product / Service:	Opening/Closing Accounts
Conduct(s) complained of:	Maladministration
Outcome:	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Provider's management of the Complainant Company's accounts, and its communication, customer service and complaints handling throughout.

The complaint is that the Provider:

- Wrongfully stated that the Complainant Company (hereinafter referred to as the Complainant) held an *"outstanding debt"* with the Provider, and advised that the Complainant's accounts could be transferred to a third party entity as a result;
- Wrongfully took a decision to close the Complainant's accounts, and;
- Proffered poor communication, customer service and complaints handling throughout.

The Complainant Company's Case

The Complainant contends that it received a letter from the Provider's 'Problem Debt Management' unit dated **29 April 2016** advising that the Complainant's *"outstanding debt"* was due and that its loans, or *"economic interest"* could be sold to a named third party entity. The Complainant also contends that the Provider subsequently stated that the Complainant's banking facilities were being withdrawn, and that its Euro bank account would be closed in December 2016. The Complainant submits that it does not hold *"credit facilities of any sort"* with the Provider, and that the *"problem debt"* alleged by the Provider *"does not exist"*. Furthermore, the Complainant states that the Provider has *"never issued [it] with a statement showing the quantum of such debt"*.

The Complainant also asserts that the Provider has failed to reply to correspondence regarding these matters that it made *"groundless claims"* that the Complainant held a *"problem debt"* with the Provider, and that the Provider stated it was closing the Complainant's accounts *"with no basis for doing so"*. The Complainant contends that as a result of the Provider's letter stating that it should make alternative banking arrangements, *"much management time was spent organising banking"* with another Financial Service Provider. The Complainant submits that it received the Provider's Final Response Letter on **16 December 2016**, and states:

> *"Thus [the Provider] notified the…. Customers on the Account Closure Date, i.e. the exact date from which they were required to have closed the accounts in question and transferred the credit balances elsewhere, that they would not after all be required to close these accounts"*.

The Complainant also states that the Provider has failed to address *"the damage caused by [its] utter failure to attend to [the Complainant's] communications and the disruption to [the Complainant's] business, and costs incurred, as a result of [the Provider's] failure to respond substantively to communications"* and describes an offer of compensation from the Provider as *"risible"*.

The Provider's Case

The Provider issued its Final Response Letter (FRL) to the Complainant on **14 December 2016**, which acknowledges that it issued a letter to the Complainant on **29 April 2016** that referred to *"outstanding debt"* and that this letter issued in error as the Complainant *"had no borrowings"* with the Provider. The Provider also acknowledges in its FRL that a letter issued to the Complainant on **14 October 2016** stating the Provider's intent to withdraw the Complainant's banking facilities and giving the Complainant 60 days' notice to make "*alternative banking arrangements*".
The Provider states that its policy is to *"aggregate certain loans…. who may have familial or business relationships within 'connections'"*. The Provider further states that it is *"not at liberty to disclose the relationships within [the Complainant's] connection that caused these letters to issue….. in the first place"*.

The Provider submits that it fully acknowledges that the Complainant's accounts *"operate in a satisfactory manner, have no borrowings with [the Provider] and are not 'experiencing financial stress'", and states that the Complainant's accounts will remain "open and operational"*.
The Provider also acknowledged in its FRL the shortfalls in communication, fully upheld the Complainant's complaint and offered a compensatory payment *"in light of the inconvenience caused"*.

The Complaint for Adjudication

The Complaint for Adjudication is that the Provider:

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- Wrongfully stated that the Complainant held an *"outstanding debt"* with the Provider, and advised that the Complainant's accounts could be transferred to a third party entity as a result;
- Wrongfully took a decision to close the Complainant's accounts, and;
- Proffered poor communication and customer service throughout.

The Complainant has also complained about the *"damaging and defamatory disclosure"* of its identity to a *"buyer of delinquent loans",* despite the accounts being in credit at all times. While this adjudication will examine whether the alleged disclosure of the Complainant's identity to a third party entity was unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainant, it is not for this office to consider whether defamation of the Complaint occurred as that is a matter for the courts.

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 22 August 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, the final determination of this office is set out below.

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Evidence

Business Banking Terms and Conditions

The terms and conditions governing the Complainant's relationship with the Provider include the following:

> *"[The Provider] may, without giving a reason close an Account"*
>
> *"[The Provider] will give the Customer not less than 60 days' written notice to close an Account".*
>
> *"The Customer can contact [the Provider] by contacting its Relationship Manager or [The Provider Group Centre]".*
>
> *"If the Customer wishes to make a complaint or claim, they should contact their Relationship Manager in the first instance".*
>
> *We do not disclose your information to anyone outside [the Provider] except…. Where we are required or permitted to so by law or…. Where we may transfer rights and obligations under this agreement".*

Letter to the Complainant from the Provider dated 29 April 2016

> *"The purpose of this letter is to inform [the Complainant] that [the Provider] is in the process of completing a review of its lending within its Problem Debt Management unit. This review is part of [the Provider's] continuing strategy to work with and support customers in financial difficulty whilst also strengthening the balance sheet of [the Provider] for all [its] customers".*
>
> *"…. There are three possible outcomes for your outstanding debt. These are:*
> 1. *Full repayment of your outstanding debt.*
> 2. *Full refinance of your debt with another bank.*
> 3. *Possible disposal by [the Provider] of your debt (or the economic interest therein) to a third party".*
>
> *"…. Your relationship manager is available to discuss this with you".*
>
> *"Should you wish to discuss this further please do not hesitate to contact your relationship manager [named] on [telephone number] or [email address] or by mail at the address above as soon as possible".*

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Email to the Provider from the Complainant dated 18 May 2016

"….. [We have] received a letter from [the Provider], mystifyingly referring…. to 'three possible outcomes for your outstanding debt'. Will you please explain what debt [the Provider] is referring to as the abovementioned entities [i.e. the Complainant] have no borrowings with [the Provider]?"

Out of Office Auto Reply to Complainant from Relationship Manager dated 18 May 2016

"I am currently out of the office today and I will reply to your email on my return. This email will not be forwarded. Thank you".

Letter to the Complainant from the Provider dated 14 October 2016

"The purpose of this letter is to inform you of the completion of our review of customers experiencing financial stress affecting their lending exposures and associated accounts under management within the Problem Debt Management Unit…. [of the Provider]"…. Following this review [the Provider], on 08 October 2016, agreed to transfer part of its loan book to a purchaser who is ultimately owned by investment funds that are managed by or on behalf of [named third party entity] or its related affiliates (the 'Purchaser'). As part of that exercise, [the Provider] is no longer in a position to provide you with [banking facilities]".

"Please note that in accordance with the relevant termination provisions that apply to your Facilities, it is [the Provider's] intention to terminate your Facilities no earlier than 16 December 2016 ('Account Closure Date') i.e. no less than 2 months from the date of this letter. Consequently, to accommodate the receipts, payments and other services that are normally processed and facilitated by [the Provider], you will need to make alternative arrangements…. We will continue to operate the Facilities until the Account Closure Date".

The above letter from the Provider included a section entitled 'What do you need to do?', which stated the following:

- *"If you require current account facilities and do not have a current account with another [provider], you should commence the process to open a current account with another [provider] immediately such that the new account is opened prior to the Account Closure Date.*
- *Provide new…. account details to any party who currently makes payments into your [Provider] current account.*
- *Ensure any existing payment instructions, direct debits, standing orders or electronic transfers are set up on your new account with another bank or your existing account with another bank.*
- *In advance of the Account Closure Date, we recommend that you download and save your account statements in a secure place for future reference".*

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Email to the Provider Relationship Manager (new) from the Complainant dated 19 October 2016

In this email, the Complainant states that it has never had any loan facilities with the Provider, and that all its accounts are kept in credit. The Complainant further states:

> *"References to transferring loans to [named third party entity] cannot apply as there are no such loans".*
>
> *"Will you please call me ASAP at [phone number] to discuss the meaning of your letter. I note that some months ago I replied by mail to a letter from [the Provider] referring to problem loans, and got no reply".*
>
> *"I have tried to contact you today at the phone number stated in your [letter] but you are unavailable and no message is possible. I have left a message for your colleague [name]. Our most recently advised relationship manager [named] appears to have left [the Provider] and we have not been advised of any replacement".*

Letter to the Provider from the Complainant dated 20 October 2016 (marked 'URGENT – BY HAND)

> *"We are disappointed by your lack of any response, in spite of the gravity of the situation described therein".*

Email to the Provider from the Complainant dated 20 October 2016

> *"We take a very serious view of the express and implied allegations of account delinquency set out in [the Provider's] letters….. It is outrageous that [the Provider's] internal control systems are so deficient or dysfunctional that it can issue the subject correspondence to customers who in fact owe nothing to [the Provider], where [the Provider] has provided no evidence whatsoever to support its allegations of non-existent debts, and where [the Provider] has failed to reply to our communications about this situation. We note that in reply to annual audit letters, [the Provider] has confirmed our credit balances in accord with our own records, and has never asserted that other 'debts' are due".*
>
> *"….. [the Provider's] complaints procedure may take up to 40 days to resolve. That is no use to us – if our accounts are, as stated by [the Provider] to be unilaterally closed by [the Provider] at any time from 16/12/16 we need to act immediately to start the process of establishing alternative account facilities at an alternative [provider] and advise counterparties accordingly. This process is likely to take several months…… If [the Provider] is really going to close our accounts we cannot risk it actually going through with this action, and need to start working on setting up new banking services within days".*

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Email to the Provider from the Complainant dated 28 November 2016

"I refer to my email of 28/10/16…. I requested therein immediate contact details for the Compliance Officer of [the Provider]….. [a] month has now passed, and I have not received a response to this request".

Letter to the Complainant from the Provider dated 14 December 2016 – Final Response Letter

"[The Provider] fully acknowledges that facilities held by [the Complainant] operate in a satisfactory manner, have no borrowings with [the Provider] and are not 'experiencing financial stress'. On this basis I am happy to note that your Relationship Manager [name] has now excluded [the Complainant] from the requirement to arrange alternative banking arrangements and your accounts will remain open and operational".

"I also note your frustration that when you attempted to query the matter with [previous Relationship Manager] on 18/05/2016 and received no reply given [she] had left the bank. I understand that [this Relationship Manager's] out of office message stated she would 'reply to your email on her return'. We acknowledge that it would have been good business practice to detail an alternative contact on her out of office message and also ensure the email was dealt with by another staff member".

"I understand your frustration that you have been unable to contact your [current Relationship Manager] when you attempted to query the matter and I am sorry that this situation occurred".

"In light of the above your complaint is fully upheld….. If you have incurred any additional costs as a result of this issue please contact me so we can discuss".

"Please let me know if you remain dissatisfied by either phoning me on the above number or writing to me".

Letter to the Provider from the Complainant dated 19 December 2016

"[The Provider] notified [the Complainant] on the Account Closure Date, i.e. the exact date from which [the Complainant] was required to have closed the accounts in question and transferred the credit balances elsewhere, that they would not after all be required to close these accounts".

"It is intolerable that the continuance of the [Complainant's] accounts, which are now (after over 6 months of delay) admitted to have no borrowings, are apparently conditional on and subject to [the Provider's] relationship with other parties. Such conditionality was not part of the terms of [the Complainant's] accounts when opened in 2009".

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"[The Provider's] recent letter altogether fails to address the damage caused by [the Provider's] utter failure to attend to our communications and the disruption to our business, and costs incurred, as a result of [the Provider's] failure to respond substantively to communications, and inexcusable failure to respond to multiple requests for contact details for its Compliance Officer".

"The offer of …. compensation [in the Provider's] recent letter is risible and no reflection of the internal and external costs that we have incurred as a result of [the Provider's] failures".

Letter to the Complainant from the Provider dated 30 January 2017

"I note your comments that you received our letter of 14/12/2016 on 16/12/2016. I am sorry that this letter coincided with the date of 16/12/2016 which was the expiry of the notice period for 60 day closure. We wanted to investigate the matter fully for you which took some time and get approval to remove your accounts from the requirement to arrange alternative banking arrangements".

"I note your dissatisfaction regarding [the Provider's] policy to manage accounts on a connected basis which is normal banking practice. It is a commercial decision to manage facilities in this manner and there is no requirement or onus on [the Provider] to detail this within our terms and conditions".

"I also note your request for the details of our Compliance Officer…… I note from our records you had previously requested this and I am sorry this was not previously provided to you".

"I can confirm that [the Complainant's name was provided] to the Buyer…. Please note it was advised of the positive position of [the company, that there was no debt owing, a nil balance at 19/12/2016 and overdraft facilities were not in use]. Given that there was no debt outstanding, no further action would be taken by [named third party entity]. Any information provided to the Buyer was provided on the basis of a Non-Disclosure Agreement and strictly confidential basis".

Provider's formal response to this office dated 5 January 2018

"…… the Problem Debt Management Unit is a specialist Unit within [the Provider] which manages a range of customers in respect of their borrowings with [the Provider]".

"[The Provider] endeavours to maintain management of connected parties with one team for a simplified and better service; however this resulted in the accounts of the [Complainant] being incorrectly captured in the datatape for an intended loan sale in late 2016. [The Provider] at this point had made the decision to sell the loans of parties connected to the [Complainant]. The intention of [the Provider] was that, as connected parties, the [Complainant's] current accounts would be closed, not sold.

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[The Provider's letter] of 14 October 2016 sets out this intention and these letters were appropriately issued".

"When [the Complainant] e-mailed the then relationship manager…. on 18 May 2016 [the Complainant] received an Out of Office Auto Response message, advising that [the named Relationship Manager] would reply to the email on her return, and informing [the Complainant] that the email was not forwarded…. Please note that [the named Relationship Manager] had left the employment of [the Provider] at that point".

"…. [the Provider] acknowledged that it would have been good business practice to detail an alternative contact on the Out of Office message, to ensure that [the Complainant] had the details of another member of staff with whom [concerns could be raised]".

"…. [the Provider] has not identified evidence of any disruption to the regular banking transactions conducted over [the account]…. [the account remains] open and operational".

"…. There is no obligation on [the Provider] to provide a service to any borrower indefinitely. In these circumstances the bank sent the appropriate 60 day notice and agreed to maintain the account when [the Complainant] requested it".

The Provider contended that though the Complainant's name was furnished to the buyer of part of the Provider's loan book, the buyer was also advised of the *"positive position"* of the Complainant, that the Complainant had no "debt" with the Provider, and that *"overdraft facilities were not in use"* by the Complainant. The Complainant *"was also assured that any information provided to the Buyer was provided on the basis of a Non-Disclosure Agreement and done on a strictly confidential basis".*

Submission from the Complainant dated 12 February 2019

In this submission, made after reviewing the Provider's formal response, the Complainant highlighted the Provider's *"utter failure to provide any workable channel of communication"*. It also outlined its reasons for not taking *"immediate action to make alternative banking arrangements"*, citing a) its Relationship Manager's 'out of office' email which had indicated that she would reply on her return to the office, and b) the fact that the letter received from the Provider on **29 April 2016** was *"based on an obviously false and non-factual premise"* (i.e. that there was an "outstanding debt" relating to the Complainant's accounts).

With regard to the Provider's assertion that it had the right, under the terms and conditions of the accounts, to close the Complainant's accounts *"without giving a reason"*, the Complainant submitted the following:

"In this case [the Provider] did give a reason, manifestly a false reason i.e. the existence of some unspecified debit balances owed…. This was not the closing of [the

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Complainant's] accounts without giving a reason; [the Provider] gave a reason, manifestly false".

The Complainant contended that the Provider's complaints process was *"little use in rectifying what appeared to be a simple basic error or misunderstanding of facts on [the Provider's] part"* due to the fact that the 40 working-day period allowed for this process ran concurrently with the 60 days' notice given for closure of the Complainant's accounts. The Complainant also submitted that it is a separate legal entity that has *"never provided any security, guarantee or assurance whatsoever to the Provider or to anyone else in respect of any other party's debts"*.

> *"At no stage in the opening of [the Complainant's] accounts… in 2009 or subsequently was [the Complainant] informed that the availability of banking services depended on the behaviour of other customers of [the Provider]. If [the Complainant] had been so advised, it is likely that [it] would never have opened accounts with [the Provider] in the first place, and chosen other banking relationships"*.
>
> *"…. We remain in the dark as to why [the Complainant's] accounts – in credit – were transferred to a problem debt unit and why such transfer could be claimed to somehow mitigate the reputational damage to which [the Complainant] was exposed by [the Provider's] actions"*.
>
> *"…. During the 60-day wind–down period in late 2016, and waiting for [the Provider's] complaints process, [the Complainant] spent considerable management time opening a range of accounts at [named third party financial service provider] so as to take over [the Complainant's] operational banking from 16/12/2016….. On the very day on which the 60 days' notice was due to expire, [the Complainant] received [the Provider's] 14/12/2016 letter of apology. Consequently the arrangements [the Complainant] had made to transfer all its banking…. Was not implemented; this was not due to any satisfaction with [the Complainant's dreadful and stressful treatment by [the Provider], or any acceptance of [the Provider's] multiple excuses and apologies, but rather to avoid further disruption in third party financial arrangements"*.
>
> *"Saying sorry is not an adequate remedy for the reprehensible behaviour of [the Provider] in this matter, and its failure to provide any workable channel of communication whereby [the Complainant] could get it to deal with the consequences of [the Provider's] own admitted errors"*.

Submission from the Provider dated 26 March 2019

> *"Due to historic linkages between [the Complainant] and a third party, [the Complainant] was incorrectly considered to have an aggregable connection to certain borrowings within [the Provider]. This was incorrect. When this was brought to [the Provider's] attention this was corrected and [the Complainant] details were removed from the loan sale data room"*.

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"… [the Provider] was contractually entitled to issue the second letter (14 October 2016), requesting closure of the specified [Complainant accounts] within 2 months/i.e. 60 days…. When the complaint came to [the Provider's] attention and was investigated, [the Provider] agreed to maintain the operation of the [Complainant's] account. The account remains open to this date".

Submission from the Provider dated 22 May 2019

"The connection was made when the accounts were opened with [the Provider] around 2009. No correspondence issued to the [Complainant] in this regard. It was not and is not [Provider] policy to advise customers of its aggregation assessments, particularly when there is not a significant borrowing element".

"The [Complainant's] account came under the management of the Bank's Problem Debt Management unit in June 2012. The [Complainant] was not formally informed when the management of the account came under this unit of [the Provider]…. The [Complainant] account was maintained in credit. Therefore, this did not necessitate specific interaction from Relationship Managers with the [Complainant] with regard to the operation of the account. The first item of correspondence which issued from the Bank's Problem Debt Management unit to the [Complainant] was that of 29 April 2016".

"[The Provider] did not and does not provide details of its internal credit policies to customers as this is classified as internal and market-sensitive information".

"…. it is not [Provider] policy to advise customers of its aggregation assessments and accordingly the 'connection' was not advised to [the Complainant]… On examination of the relevant Codes, [the Provider] is of the view that there is no reference in the Consumer Protection Codes to indicate that a regulated entity must provide information to a consumer with regard to such connections".

"[The Complainant] was not notified that its Relationship Manager was no longer employed by [the Provider]. [The Complainant] was not furnished a specific letter outlining that its RM had changed or which gave the contact details for its new RM when the replacement occurred. It is not [Provider] policy to formally notify each customer upon the departure or appointment of RMs".

"[The Provider is satisfied that the Complainant accounts maintained a credit balance throughout the period of the subject matter under dispute and is therefore confident that no adverse reporting was made to the ICB or CCR".

"Accordingly, [the Provider] is satisfied that the [Complainant] Irish Credit Bureau and Central Credit Register records were not affected by [the Provider's] classification of its accounts as 'connected' or by the fact that the Complainant's accounts were being managed by the Provider's Problem Debt Management unit. No reports were issued to the Irish Credit Bureau or the Central Credit Register with regard to the [Complainant's business current account]".

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"[The Provider] recognises and apologises for the service issues experienced by [the Complainant]….. We recognise and appreciate the distress this matter has caused [the Complainant]…. That said, we wish to re-state that there was no error in implementing [the Provider's] aggregation policy and [the provider] considers that there was no reputational damage to [the Complainant] as a result of [the Provider's] actions. Nor was there any adverse impact on [the Complainant's] ICB or CCR records, as outlined above".

Submission from the Provider dated 30 May 2019

"…. [the Provider's] aggregation/connection of certain loans is as a result of its internal credit policy and risk assessment and [is] not in place in order to comply with any specific regulation".

Submission from the Complainant dated 4 June 2019

"We take issue with the description of [the Provider's] egregious behaviour including false assertion of delinquent credit facilities as merely involving service issues".

"[The Provider] had no right to offset [the Complainant's] credit balances against some other party/parties' liabilities to [the Provider] so we are left in the dark as to why this episode occurred, and why the [Complainant's] accounts were transferred to [the Provider's] Problem Debt Management Unit when these accounts were always in credit".

The Complainant also questions why the Provider did not communicate the important information that the Complainant's accounts came under the management of the Provider's Problem Debt Management Unit in 2012. The Complainant contends that this was "highly relevant" information, particularly when the Complainant's creditworthiness was central to its business.

The Complainant further states that the Provider's contention that there was no *"reputational damage"* to the Complainant is inaccurate as the Provider disclosed the Complainant's name to the loan buyer in 2016, and the Complainant was also required to *"approach other banks about account facilities, and to take legal advice"* as a result of the Provider's decision to close the accounts.

Submission from the Provider dated 10 June 2019

"A limited number of prospective buyers were notified of information outlining:

1) *The positive position of Complainant accounts*
2) *Neither Complainant Company had any debt owing to [the Provider]*
3) *No overdraft facilities were in use by the Complainant*
4) *Any information provided was done on the basis of a Non-Disclosure Agreement and was strictly confidential".*

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Analysis:

In its formal response to this office, the Provider acknowledges that the Complainant should not have received the letter dated **29 April 2016** from the Provider's 'Problem Debt Management' unit. This letter offered the Complainant *"three possible outcomes"* for its accounts:

1. *"Full repayment of your outstanding debt.*
2. *Full refinance of your debt with another [provider].*
3. *Possible disposal by [the Provider] of your debt (or the economic interest therein) to a third party".*

Given that the Provider has stated that:

- The Complainant *"did not have any borrowings with [the Provider] or outstanding monies due to [the Provider]"*;
- "*… [the Complainant] should not have received [the letter] dated 29/04/2016 [that was] issued in error";*
- It apologises for *"the distress this has caused"*,

I accept that the Provider has acknowledged that it made an error in writing to the Complainant about its *"outstanding debt"* where none existed.

The Provider wrote to the Complainant again in October 2016, advising that the Complainant's accounts would be closed in 60 days. The Provider has pointed out that the account terms and conditions allow for the closure of accounts *"without giving a reason"*. While I acknowledge that under the account terms and conditions the Provider is not required to give the Complainant a reason for the account closures, the Provider advised the Complainant in its Final Response dated **14 December 2016** that the notice of closure of its accounts was issued because of a *"connection"* to other accounts. This connection, which the Provider has stated was made in 2009, was not disclosed to the Complainant until December 2016 when the Provider issued its Final Response Letter. In my view, the Provider's contention that it was *"contractually entitled to issue the second letter closing the account"* is unreasonable in circumstances where the Complainant's accounts were operating in a satisfactory manner, had no borrowings with the Provider and were not *"experiencing financial stress"*. I take the view that it was the Provider's actions in connecting the Complainant's accounts ("*links"*) with others in 2009 which ultimately led to the account closure notice incorrectly being issued to the Complainant in October 2016. The Provider would appear to concur with this viewpoint, stating:

> *"Due to historic linkages between [the Complainant] and a third party, [the Complainant] was incorrectly considered to have an aggregable connection to certain borrowings within [the Provider]. This was incorrect. When this was brought to [the Provider's] attention this was corrected and [the Complainant] details were removed from the loan sale data room".*

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The Provider states that the *"connection"* of the Complainant's accounts to other accounts was made when the accounts were opened *"around 2009"*. Furthermore, the Provider has stated that:

> *"No correspondence issued to [the Complainant] in this regard. It was not and is not [Provider] policy to advise customers of its aggregation assessments, particularly when there is not a significant borrowing element"*.

While I accept that the Provider may not be obliged to inform customers of its aggregation assessments, I take the view that it certainly should inform customers that such assessments can take place and the possible consequences of those assessments for account holders. In the Complainant's case, though there was *"not a significant borrowing element"*, the consequences of the Provider's aggregation assessments included:

- The Complainant's accounts coming under the management of the Provider's 'Problem Debt Management' unit in 2012;
- The Complainant receiving a letter from the Provider in April 2016 outlining "*three possible outcomes for [its] outstanding debt"* (when in fact there was no *"debt"*);
- The Provider issuing a notice of closure for the Complainant's accounts in October 2016.

In my view, it is unacceptable that the Provider did not advise the Complainant at any time up to December 2016 that it routinely carried out *"aggregation assessments"* and of the potential consequences of such assessments. Had the Complainant been on notice of this practice, it would have been in a position to make an informed choice, either to continue banking with the Provider or to explore other banking options elsewhere and thus avoid *"being incorrectly captured in the datatape for an intended loan sale in late 2016"*. The Provider contends that it is internal policy to "*manage facilities in this manner and there is no requirement or onus on [the Provider] to detail this within our terms and conditions".* I consider that it would have been helpful if the account terms and conditions included some reference to the Provider's aggregation practice. The Provider acknowledges that this internal policy is *"not in place in order to comply with any specific regulation"*, and I consider that the Provider's decision not to advise the Complainant of the existence of this practice is unreasonable in the circumstances.

The Provider, in its submission to this office in May 2019, acknowledges that the Complainant's accounts came under the management of the Provider's 'Problem Debt Management' unit in June 2012, and that the Complainant *"was not formally informed when the management of the account came under this unit of [the Provider]"*. The Provider describes this unit as: "*a specialist Unit within [the Provider] which manages a range of customers in respect of their borrowings with [the Provider]".* I note the Provider's submission that the Complainant's accounts *were "maintained in credit"* and that *"this did not necessitate specific interaction from Relationship Managers with the Complainant with regard to the operation of the account"*.

I find it unacceptable that the Provider did not advise the Complainant (which the Provider acknowledges had no *"borrowing element"*) at the earliest opportunity that its accounts

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were under the management of a unit tasked with handling problem debt. The Provider's submission that it *"did not and does not provide details of its internal credit policies to customers as this is classified as internal and market-sensitive information"* does not, in my view, absolve the Provider of its responsibility to furnish its customers with material information concerning their accounts. I consider the Provider's failure to disclose to the Complainant the fact that its accounts were under the management of the Provider's 'Problem Debt Management' unit to be entirely unreasonable, particularly in circumstances where the Complainant's accounts had no *"borrowing element"*.

The parties agree that when the Complainant received the Provider's letter dated **29 April 2016**, the Complainant contacted its Provider Relationship Manager (as advised in the Provider's letter) to ascertain why the Complainant had been contacted about its *"debt"* when its accounts were in credit. The Complainant received an out of 'out of office' reply to its email, stating:

> *"I am currently out of the office today and I will reply to your email on my return. This email will not be forwarded. Thank you".*

The Complainant did not receive further contact from the Provider until October 2016, when the Provider wrote again to advise that it was closing the Complainant's accounts:

> *"The purpose of this letter is to inform you of the completion of our review of customers experiencing financial stress affecting their lending exposures and associated accounts under management within the Problem Debt Management Unit…. [of the Provider]"…. Following this review [the Provider], on 08 October 2016, agreed to transfer part of its loan book to a purchaser who is ultimately owned by investment funds that are managed by or on behalf of [named third party entity] or its related affiliates (the 'Purchaser'). As part of that exercise, [the Provider] is no longer in a position to provide you with the Facilities set out above".*

The Provider submits:

> *"[The Complainant] was not notified that its Relationship Manager was no longer employed by [the Provider]. [The Complainant] was not furnished a specific letter outlining that its RM had changed or which gave the contact details for its new RM when the replacement occurred. It is not [Provider] policy to formally notify each customer upon the departure or appointment of RMs".*

While I accept that it may not be the Provider's policy to formally notify each customer upon the departure or appointment of Relationship Managers, it was unfortunate, given the Provider's error in capturing the Complainant's accounts "*in the datatape for an intended loan sale in late 2016*", that the Complainant did not have the contact details of other staff members with whom it could have communicated. It is also regrettable that the Provider did not ensure that the electronic mailbox of the departed Relationship Manager was not monitored; the Complainant was entitled to a reply to its query, having contacted its Relationship Manager as suggested in the Provider's letter. Though I acknowledge that the Provider has apologised for its *"service issue"* in this regard, I am of the view that the

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Complainant was entitled to more than what the Provider refers to as *"good practice"* (ensuring that the Complainant had contact details for another staff member) in light of its actions up to that point.

The Provider has also acknowledged the difficulties the Complainant had in contacting a subsequent Relationship Manager and the *"failure to respond to multiple requests for contact details for its Compliance Officer":*

> *"I understand your frustration that you have been unable to contact your [current Relationship Manager] when you attempted to query the matter and I am sorry that this situation occurred".*
>
> *"I also note your request for the details of our Compliance Officer…… I note from our records you had previously requested this and I am sorry this was not previously provided to you"*

The Complainant has submitted that the requirement to set up alternative banking arrangements came *"at the cost of considerable disruption"* to its business. In its formal response to this Office, the Provider has submitted that it *"has not identified evidence of any disruption to the regular banking transactions conducted over the…. accounts"*. From the submissions, it is quite clear that the *"disruption"* referred to by the Complainant stemmed from the time that the Complainant was required to spend "*organising banking"* with another financial service provider due to the Provider's incorrect issue of the notice of account closures. The Provider's assertion that the Complainant was not inconvenienced because its accounts remained open shows a very serious lack of understanding on the part of the Provider of the impact of its conduct on the Complainant. This is most disappointing. The Complainant would naturally have sought to minimise disruption to itself and its customers in circumstances where it did not need to transfer its banking business to another provider:

> *"[The Provider] notified [the Complainant] <u>on the Account Closure Date</u>, i.e. the exact date from which [the Complainant] was required to have closed the accounts in question and transferred the credit balances elsewhere, that they would not after all be required to close these accounts".*

The Complainant submits that its decision to continue banking with the Provider:

> "*…. was not due to any satisfaction with [the Complainant's dreadful and stressful treatment by [the Provider], or any acceptance of [the Provider's] multiple excuses and apologies, but rather to avoid further disruption in third party financial arrangements".*

It is clear to me that the Provider's conduct caused serious inconvenience to the Complainant.

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The Provider submits that the Complainant's name was furnished to the buyer of the loan portfolio referenced in the submissions:

> "*Please note it was advised of the positive position of the [Complainant] … and overdraft facilities were not in use…… Any information provided to the Buyer was provided on the basis of a Non-Disclosure Agreement and strictly confidential basis".*

In light of the Provider's acknowledgement that the Complainant's accounts were "*incorrectly captured in the datatape for an intended loan sale in late 2016",* it is my view that the fact that a "*limited number of prospective buyers"* were furnished with details of the Complainant's accounts by the Provider was inappropriate. While I acknowledge the Provider's assertion that the *"information provided was done on the basis of a Non-Disclosure Agreement and was strictly confidential",* these disclosures were made based on a mistake of fact (i.e. that the Complainant's accounts were to form part of the loan sale) by the Provider. I note too that the terms and conditions pertaining to the accounts state that:

> *"We do not disclose your information to anyone outside [the Provider] except…. Where we are required or permitted to so by law….. [Or] where we may transfer rights and obligations under this agreement".*

As the Complainant's accounts had been *"incorrectly captured"* for inclusion in the *"loan sale"*, it would appear that the Provider did not comply with the account terms and conditions when it disclosed information about the accounts to the *"prospective buyers"*.

The Complainant has raised the matter of the Provider's handling of its complaint, stating that the complaints process was *"little use in rectifying what appeared to be a simple basic error or misunderstanding of facts on [the Provider's] part"* due to the fact that the 40 working-day period allowed for the complaint process ran concurrently with the 60 days' notice of account closures. While I accept that the Provider met its obligations under the Consumer Protection Code with regard to its handling of the complaint, I believe that its efficiency in doing so made little practical difference to the Complainant who was required to ensure for the operation of its day-to-day business that it would have access to banking facilities elsewhere by the end of the 60 day notice period for the closure of its accounts.

The Provider has stated that it is *"confident that no adverse reporting was made to the ICB or CCR"* for the Complainant's accounts. This would be entirely appropriate in circumstances where the accounts maintained a credit balance throughout. Were it otherwise, it would be most serious.

I acknowledge the Provider's offers of compensation to the Complainant (approximately €2,000), while also noting the Complainant's submission that this offer is *"no reflection of the internal and external costs that [the Complainant] has incurred as a result of [the Provider's] failures".*

The Provider states in its formal response to this office that it does not accept that the conduct complained of was unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainant, as *"the letters"* were issued as a result of a

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"connection" which existed with the company accounts. However, the Provider also submits that the Complainant was incorrectly considered to have an *"aggregable connection to certain borrowings"*. Once this was corrected, the Complainant's details were *"removed from the loan sale data room"*. While the Provider acknowledges that the wording of the letter sent to the Complainant in April 2016, referring to *"outstanding debt"* was *"confusing and upsetting to [the Complainant]"* and accepts that it proffered poor customer service, it rejects the assertion that its conduct was improper. From my examination of the documents before me, I cannot agree with the Provider's view of its conduct throughout the period subject to this complaint.

I am at a loss to understand the Provider's assertion that there is *"no requirement or onus"* on it to detail its policy of managing accounts on a connected basis which is *"normal banking practice".* While I accept that it is a commercial decision to manage accounts in this manner, I consider that the lack of transparency around this practice is not in the best interests of the customer. In this case, the Complainant's accounts were *"connected"* with others shortly after they were opened in 2009, and the Complainant was not advised of this until it made a complaint in 2016, over seven years later. The Complainant's accounts, which had no loan facilities, were also assigned to the Provider's 'Problem Debt Management' unit in 2012 without this change being communicated to the Complainant by the Provider. I note that the Complainant was only made aware of this fact in May 2019, through a submission to this office by the Provider, almost seven years later. As a result of the Provider's errors, the Complainant's accounts were incorrectly included in a loan sale for a period of time, and, as part of this process, details of the accounts were shared with a number of prospective buyers.

Given the potential negative impact of this lack of transparency on customers, I have brought this practice by the Provider of aggregating accounts without informing the account holder to the attention of the Central Bank of Ireland for any action it deems necessary.

I also take issue with the Provider's contention that it did not identify evidence of "*any disruption to the [Complainant's] regular banking transactions"* and its observation that the accounts remain *"open and operational".* The withdrawal of banking facilities is a serious matter for a business, undoubtedly causing inconvenience, and I acknowledge the Complainant's submissions in this regard. I also accept that the Complainant would have sought expert advice during this period, and incurred added expense as a result.

Having regard to the particular circumstances of this complaint, in particular the failings that have been noted above, it is my decision to uphold the complaint and I direct the Provider to make a compensatory payment of €15,000 (fifteen thousand euro) to the Complainant.

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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 upheld, on the grounds prescribed in ***Sections 60(2)(b), (c), (e) and (f).***

- 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 Complainant in the sum of €15,000 to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant 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 September 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.