



<u>Decision Ref:</u>	2019-0315
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Opening/Closing Accounts
<u>Conduct(s) complained of:</u>	Disputed transactions
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant is a limited company whose business is the sale of second hand tractors and construction machinery from Ireland to a number of export markets worldwide.

Following identification of transactions with an account with links to the Sudan, the Provider sought assurances from the Complainant over the handling of money relating to that country and subsequently closed the Complainant's bank accounts.

The Complainant's Case

The Complainant applied to open a new account with the Provider, on **3 February 2015**. Shortly thereafter, in March 2015, the Complainant was approved by the Provider for a stocking loan of €15,000.00.

The Complainant submits that, in June and August 2015, customers in other countries attempted to make payments into the Company's business account, but the Provider refused to process these payments. The Complainant was advised by the Provider that this was because The Complainant was trading with Sudan and that Sudan was considered a "high risk country".

On **10 August 2015**, the Complainant Company was requested by the Provider to sign the Provider's Sanctions Declaration, acknowledging the Provider's risk appetite with respect to

Sudan, and declaring that all funds or profits deriving from any existing or future trade with Sudan would at all times remain segregated from any account with the Provider.

The Complainant Company declined to sign this declaration, and was subsequently advised that the Provider was no longer prepared to offer the Complainant Company banking facilities, and that its accounts would be closed following the expiry of a two month notice period.

The complainant's view is that the Provider wrongfully and without notice refused to process certain electronic payments in to the Complainant Company's account in June and August 2015, from customers in the UK, Poland and Egypt.

The complaint is also that the Provider wrongfully required the Complainant to close all four of its accounts with the Provider on or before **13 October 2015**.

The Complainant states that its main business is the sale of tractors and plant machinery, purchased domestically in Ireland, to export markets worldwide.

The Complainant, which had previously operated in the capacity of a sole trader and had a sole trade account with the Provider, became a limited company in February 2015. The Complainant states that it applied to open a new business account with the Provider, as a limited company, on **3 February 2015**.

The Complainant Company states that it applied to the Provider for a stocking loan in the sum €15,000.00, on **10 February 2015**, to be used to purchase stock for export sale, and that this application was approved by the Provider.

The Complainant submits that it never made a secret of the fact that it had trade links with Sudan, Egypt and Australia, as well as the Far East and Malaysia. The Complainant states that it had discussed the nature of its business, including the countries to which it sold second hand machinery, with the Provider's Business Adviser in its local branch office on several occasions. The Complainant submits that it was never advised nor had it brought to its attention by the Provider, upon applying to open the new business account, or upon applying for the loan, that its trade links with Sudan, or indeed any other sanctions sensitive country, would be problematic for the operation of the account.

The Complainant queries why it was not until August 2015, when the Provider had already refused without notice to process certain payments from other countries into its business account, that it was asked to sign the Provider's Sanctions Declaration, acknowledging the Provider's risk appetite with respect to Sudan, and declaring that all funds or profits deriving from any existing or future trade with Sudan would at all times remain segregated from any account with the Provider.

The Complainant states that the nature of its business prevented it from signing this Declaration.

/Cont'd...

The Complainant states that it was left in “*an awful situation*” as a result of the Provider’s actions, having purchased stock with a view to exporting it to Sudan, but was then unable to complete the sales process, due to the Provider’s refusal to accept customer payments into the Complainant’s account. The Complainant states that it was also unable to complete a number of purchase agreements it had entered into, due to a consequential restriction in its cash flow. The Complainant Company states that its account was virtually frozen and that its business suffered significant financial loss as a result.

The complaint is that the Provider wrongfully and without notice refused to process a number of electronic payments in to the Complainant’s account in June and August 2015, from customers in the UK, Poland and Egypt.

The complaint is also that the Provider wrongfully requested the Complainant Company to close all four of its accounts with the Provider on or before **13 October 2015**.

The Provider’s Case

The Provider rejects the complaint in respect of the processing of payments and the closure of accounts.

The Provider states that there are comprehensive EU sanctions against Sudan and that, because of this, it is contrary to the Provider’s sanctions policy to provide financial services to existing or potential customers who are resident in, incorporated in, or trading with Sudan or where funds originate in or are ultimately destined for use in Sudan. The Provider submits that this includes inbound and outbound payments in any currency and applies both to commercial activity and personal remittances.

The Provider submits that, as a regulated entity, it has a number of legal and regulatory obligations including (but not limited to) the requirements to:

- conduct an appropriate level of due diligence when it opens accounts:
- review and carry out further due diligence on an ongoing basis, throughout the course of the customer relationship.

The Provider states that, as such, 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 in respect of sanctions whilst servicing those customer relationships.

The Provider states that an enhanced level of due diligence is required in all cases where a customer relationship is considered to be of higher risk of Money Laundering or Terrorist Financing or the potential for sanctions breaches. The Provider submits that factors which

/Cont’d...

influence the perceived risk associated with any such relationship include dealings with sanctions sensitive countries, e.g. Sudan.

The Provider states that accounts cannot be opened for persons resident in, incorporated in, or trading with Sudan or where the primary source of funding of the account is indicated as being from Sudan.

The Provider submits that, in line with its Business Account Opening Procedures for non-personal customers, staff review all new account applications for indications as to whether the applicant has any business dealings/trade with certain sanctions sensitive countries (including Sudan) and whether the applicant has any trading partners who deal with/trade with certain sanctions sensitive countries.

The Provider states that, in the absence of any adverse indications in a customer application to open a new account, it is the Provider's practice to accept a verbal/written negative response to questions in good faith and not to seek any additional confirmations.

The Provider states, however, that in the event that there were Sudanese links detailed in the customer application, for example nationality, place of residence, trade links and the like, the non-personal applicant is also required to complete a Sanctions Declaration as part of the Business Account Opening application process wherein the customer declares that any funds arising from its trade with Sudan is at all times segregated from any account with the Provider.

The Provider notes that the Complainant Company alleges in its complaint that the Provider's financial advisor was aware that it was trading with Sudan. The Provider rejects this allegation and submits that the Complainant Company had advised its local Provider Business Advisor that it *"sourced second hand tractor units and machinery in Ireland and that he re-sold to the Domestic, European, UK, Malaysian and Asian Markets"*.

The Provider states that it was not aware at account opening that any such products would be exported to Sudan and refers to the "Account Opening Application Form – Limited Company", completed by the Complainant Company. The Provider refers to a copy of an extract from the application form signed by the Complainant Company on **3 February 2015**, in this regard. The Provider states that, in response to the question *"Countries with which you trade outside the EU"*, the Complainant Company wrote, *"Far East and Malaysia"*.

It is the Provider's position that the Complainant Company failed to disclose its trade links with Sudan in its Account Opening Application Form and that this misrepresentation by the Complainant Company (i) denied the Provider the opportunity to accurately assess the risk associated with entering into a customer relationship with the Complainant Company and (ii) resulted in Enhanced Customer Due Diligence not being applied to the Complainant Company's accounts with the Provider.

The Provider submits that, had these links been disclosed to the Provider at account opening, the Sanctions Declaration would have been a pre-requisite for the Account Opening Application to proceed and, in the event of the Complainant Company refusing to

/Cont'd...

complete the Sanctions Declaration, the Provider would not have entered into the customer relationship.

Similarly, the Provider submits that, had the Complainant Company's trade links with Sudan been disclosed to the Provider as part of its Stocking Loan Application, the Provider would not have approved the loan application in the absence of those additional documentary requirements deemed necessary by the Provider, as part of the Enhanced Due Diligence process.

The Provider acknowledges that the Complainant is disappointed by its decision to close the accounts in question, but states that it is satisfied that the management of potential risk in this case was fair and unbiased and that the closure of the Complainant's accounts was completed (i) in full accordance with the Terms and Conditions of the Complainant Company's Account, and (ii) after having afforded the Complainant Company every opportunity to meet the Provider's requirements in respect of those legal and regulatory obligations.

The Complaints for Adjudication

The complaints for Adjudication are that the Provider unreasonably required the Complainant to sign a Sanctions declaration Form, without notice refused to process a number of electronic payments in to the Complainant's account in June and August 2015, from customers in the UK, Poland and Egypt and wrongfully required the Complainant to close all four of its accounts with the Provider on or before **13 October 2015**. All of these actions caused financial loss and hardship to 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.

/Cont'd...

A Preliminary Decision was issued to the parties on 13 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, I set out below my final determination.

Before moving to the heads of complaint, it will be helpful to set out the governing legislation in this area.

EU Council Decision 2014/450/CFSP restricts trade and access to Sudan for a variety of reasons. These primarily involve the export of military equipment and spare parts which can be used in that context.

EU Council Regulation EC 747/2014 also applies directly in this complaint with reference to brokering the sale of goods and services to Sudan.

The Regulations based on Article 215 TFEU and the Decisions adopted in the framework of the Common Foreign and Security Policy also apply.

The Criminal Justice Act, 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 terrorist 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.

I note that the Provider’s Group Sanctions and Counter the Financing of Terrorism Policy is an internal document which contains information commercially sensitive to the Provider. For that reason it has not been disclosed to this office. I accept the need to keep this

/Cont’d...

document confidential in the circumstances. Furthermore, I do not believe I need access to this document to investigate and adjudicate on this complaint.

There are comprehensive EU sanctions against the Sudan and it is therefore the Provider's policy not to provide banking services to existing or potential customers who are resident in, incorporated in or trading with Sudan or where funds originate from Sudan. This includes inbound and outbound payments in any currency and applies both to commercial activity and personal remittances.

The Provider is regulated by the Central Bank of Ireland and as such is required to conduct an appropriate level of due diligence when it opens an account and continue to conduct such due diligence during the lifetime of the customer relationship. I accept there is an enhanced level of diligence required where there is a higher level of risk of sanctions breaches. I also accept that factors which influence these decisions are higher when a country is identified as 'sanctions sensitive,' which includes the Sudan.

Refusal to Process Payments

This complaint relates in part to the Provider's refusal to process certain inbound payments into the Complainant Company's business current account in June and in August 2015, and the Provider's decision to close all of the Complainant Company's accounts.

At the time of the conduct complained of, the Complainant Company held four accounts with the Provider, on behalf of its business.

The complaint is that the Provider wrongfully and without notice refused to process certain inbound electronic payments to the Complainant Company's current account, in June and August 2015:

- on **19 June 2015** from a customer in the UK;
- on **24 August 2015** from a customer in Egypt;
- on **24 August 2015** from a customer in Poland.

The payment of 19 June from the UK triggered a number of 'matches' on the sanctions database and caused the Provider to decline the payment since the Sudan is a sanctions sensitive country.

International payments are screened for references to countries appearing on the list of sanctions sensitive countries. The **19 June 2015** payment made from the UK was 'flagged' in relation to the sanctions regime and that payment into the Complainant's account was blocked on **25 June 2015**. The Provider states this is a legal obligation. The Provider submits that the Complainant informed the Provider that the author of the transaction was a Sudanese student who sought the export of six tractors. *"This person is a Sudanese student and is acting on behalf of Sudanese family members in Sudan to insure that tractors are in*

/Cont'd...

good condition also to insure that the sale of the tractors goes as agreed including dismantle and loading into container for shipment to port Sudan.” [sic.]

The Provider states that such an event triggers a level of Enhanced Due Diligence on its part, including a need for express confirmation of acceptability on all cross border payments, no matter what their country of origin. This would include the subsequent attempted payments from Poland and Egypt. The Provider submits, in a letter to this Office dated **11 December 2017**, that *“once [it] was put on notice of the Complainant’s trade links with Sudan, it took steps to implement its legal obligation to perform enhanced due diligence on the Complainant Company’s account(s).*

The provision of this information therefore required the Provider to apply enhanced due diligence to all cross border payments, including express confirmation for all of them that there was no Sudanese element to the transaction. This resulted in the subsequent delay and refusal of the two further payments from Egypt and Poland on 24 August.

The Provider has furnished this Office a copy of the Department of Finance Guidelines which describe Enhanced Customer Due Diligence and why it is applied. The relevant passages at Appendix 8 state, among other things, at paragraph 55;

“Country / Geographic Risk

Countries subject to sanctions, embargoes or similar measures issued by, for example the UN or European Union. In addition countries subject to sanctions similar to those issued by bodies such as the UN, but which may not be universally recognised, may be given credence by a designated person because of the standing of the issuer and the nature of the measures.”

Paragraph 120 states, in describing the actions required to conduct Enhanced Customer Due Diligence, *“Designated persons should apply an enhanced level of ongoing monitoring to their business with the customer, as appropriate to their assessment of the risk of money laundering or terrorist financing arising from the business with that customer and should review the level of that monitoring on a regular basis to ensure that it remains risk-appropriate.”*

As a result of the Enhanced Due Diligence, the payments on **24 August 2015** from a customer in Egypt and on **24 August 2015** from a customer in Poland could not be processed by the Provider. This was a consequence of the requirement for express confirmation that there was no link to a Sanction Sensitive country. In the absence of that confirmation, it was not possible for the Provider at that time, following a meeting on **10 August** where the Complainant was unwilling to sign the Sanction Declaration form, to process those payments. Consequently I do not uphold this aspect of the complaint.

Requirement to sign Sanctions Declaration Form

When opening the account, the Provider accepted in good faith the responses to questions posed and did not seek additional proofs.

I note the original application, completed by the Complainant in which he details the countries with which he does business as, 'The far East, Malaysia.' It is the Complainant's view that in all its dealings with the Provider, it never made a secret of the fact that it had trade links with Sudan, Egypt and Australia, as well as the Far East and Malaysia. The Complainant Company states that it discussed the nature of its business, including the countries to which it sold second hand machinery, with the Provider's Business Adviser in its local branch office on several occasions. The Complainant Company submits that it was never advised or brought to its attention by the Provider, upon applying to open the new business account, or upon applying for the stocking loan, that its trade links with Sudan, or indeed any other sanctions sensitive country, would be problematic for the operation of the account.

A copy of the account opening declaration has been furnished to this office and I note that in response to a specific question relating to countries outside the EU with which it intended to trade, the Complainant listed, 'Far East, Malaysia'.

On **27 October 2017**, this Office sought clarification from the Provider asking, *"The steps taken by staff to advise and alert applicants to the significance of the answer provided to the following question: 'Countries with which you trade outside the EU' "*

In response on **15 November 2017**, the Provider stated *"The bank must ensure that it has obtained adequate information regarding any customer or service to form a basis for a reliable and accurate assessment of the risks arising. It is simply not credible for the Bank to be expected to advise or otherwise guide, any new or existing customer in respect of how to answer an application question which would either impact the risk classification of that customer relationship from a money laundering or terrorist financing perspective or have the result of an incorrect risk rating being applied.*

All new and existing customers are obligated to take reasonable care not to make a misrepresentation of any matters of fact on any account opening application. It remains at all times the responsibility of any applicant to ensure the accuracy and completeness of the information contained therein.

It is important to the Bank that all information provided to it by any customer at either customer on-boarding or over the duration of any customer relationship is factually accurate and correct and the Bank has a reasonable expectation that all new and existing customers act honestly and with full transparency at all times in respect of all dealings with the Bank."

The Provider further stated, *"The Far East is an alternative geographical term in English.....that usually refers to East Asia (including Northeast Asia), the Russian Far East (part of North Asia) and Southeast Asia. It is not held to refer to Sudan or any other countries located on the African continent. It is simply not credible that the Complainant Company*

/Cont'd...

omitted significant information as to its trade links with a comprehensively sanctioned [country] solely by virtue of there being, 'no available space on the form to list more countries'. ”

Once the Provider became aware of the Complainants trade link with a sanction sensitive country, I believe it was legitimate for the Provider to require the Complainant to sign the declaration form. I note that, in offering the form for signature, the Provider was giving the Complainant an opportunity to continue its client relationship with the Provider. When the Complainant declined to sign the form, that avenue was then closed.

I do not consider the requirement to sign the Sanction Declaration form to be arbitrary, unreasonable or oppressive. For those reasons I do not uphold this aspect of the complaint.

Closure of the Accounts

The complaint is also that the Provider wrongfully requested the Complainant Company to close all four of its accounts with the Provider on or before **13 October 2015**; two Current Accounts, one Loan Account, and a Visa Business Card Account.

The Provider invited the Complainant to a meeting on **10 August 2015**.

At the meeting on **10 August 2015**, the Complainant confirmed with the branch that he was trading with a sanctions sensitive country. The Complainant stated that the Provider had been aware he had been doing so for some time. The Provider asked the Complainant to sign a standard [Provider] Sanctions Declaration form in respect of the 'Prohibited Countries' that the Complainant traded with. This may have allowed the Complainant to continue to operate its accounts with the provider within the limitation set out by the regulatory framework. The Complainant declined to sign the declaration.

As a result, on **11 August 2015**, the Provider wrote to the Complainant informing it that the Provider was, “No longer prepared to offer you banking facilities.....please close your accounts on or before 13 October.” The Provider referred to Clause 10.2 of the Terms and Conditions of the account which states, ‘The [Provider] may terminate this agreement at any time on two months’ notice to the customer.’

In a letter to this office of **1 December 2016**, the Complainant stated, *“I made no secret of who I was trading with and do not accept the [Provider’s] position that I didn’t make this clear during [the] account opening stage or at any stage. As I said previously, I had several face to face meeting with [the Provider’s agent] and discussed this. In response to the [Provider’s] reply that when I was asked to which countries I traded outside the EU, yes, I would have stated Malaysia, Far East. I would also have listed Egypt, Vietnam, Australia, Sudan. I didn’t see any available space on [the] application form to list more countries.”*

It is the Provider’s position that, once it was put on notice of the Complainant Company’s trade links with Sudan, the actions taken in respect of the Complainant Company’s bank

/Cont’d...

account, which are the subject of this complaint, were taken *“in line with its legal and regulatory obligations in respect of sanctions”*.

At the meeting at the Complainant’s local branch on **10 August 2015**, the Provider informed the Complainant of its requirement that he sign their Sanctions Declaration form. This would have segregated any and all funds related to the Sudanese transaction. The Complainant declined to sign the form. It is the Provider’s position that had the Complainant completed the application forms for the bank account properly, it would have been aware of the trading links to Sudan. The Provider rejects the Complainant’s account that their agent in the branch had been made aware of the links. In this respect, I note the application form which listed, ‘Far East, Malaysia’ as the countries with which the Complainant traded.

The Provider’s position is that the Complainant failed to disclose its trade links with Sudan in the opening of his account and in doing so, denied the Provider the opportunity to assess the level of risk to which it was being exposed. The Provider states that had the links been declared, he would have had to sign the Sanctions Declaration and all other international payments would have been subjected to enhanced diligence.

It is not in dispute that the Complainant intended to trade with a sanctions sensitive country. It would appear that the Provider was unaware of the Complainant’s trade links with Sudan. While I note the Complainant’s insistence that a member of the provider’s staff was aware of those links, no evidence has been presented which supports this. Furthermore, I note that the Complainant failed to include Sudan on the list of countries outside the EU it intended to trade with, in response to a specific question on the Account Opening form. As soon as the Provider became aware of the trade links, it acted in accordance with its own policy by declining the transactions and seeking to resolve the issue with the Complainant by requesting its acquiescence to the Sanctions Declaration. Once the Complainant had refused to do so, the Provider decided to close the accounts as dictated by policy and its appetite for risk.

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.

Clause 10.2 of the Terms and Conditions of the account states, *“The [Provider] may terminate this agreement at any time with two months’ notice to the customer”*. I accept, that the Provider was entitled to take this action.

For the reasons set out above, I do not consider the Provider’s actions to be incorrect or unreasonable. As there is no evidence before me of any element of wrongdoing, in relation to the closure of the accounts, I do not uphold this aspect of the complaint.

Taking all the above into consideration and for the reasons set out, I do not uphold this complaint.

/Cont’d...

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**

5 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.