



<u>Decision Ref:</u>	2019-0319
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service
<u>Outcome:</u>	Partially upheld

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

Background

The Complainant submits that between 31 December 2010 and 22 June 2012 he incurred €78.46 in fees and charges on his bank account. He submits that the Provider introduced a new fee structure effective from 21 February 2011, at a time whilst he was living abroad. He submits that he was not made aware of this by the Provider and that this, coupled with technical difficulties he encountered whilst using the Provider's online banking service, resulted in his incurring additional fees. The Complainant wants the Provider to refund the fees/charges in question.

The Complainant's Case

The Complainant submits that he does most of his banking online as he lives overseas for much of the year, and that in April 2011 when he returned to Ireland, he noted that fees and charges had been applied to his current account by the Provider. Between the dates 31 December 2010 and 22 June 2012 he incurred €78.46 in fees and charges.

He submits that the Provider's response when he queried these fees was that information about a new fee charging structure had been "*advertised on the newspapers*", but the Complainant submits that as he was abroad at the time, "*this [information] was not*

available to me". He further submits that the information regarding the new fees and charges did not appear on the Provider's online banking site.

The Complainant also contends that on many occasions he was unable to log on to the Provider's online banking facility "*because of technical difficulties*", and that as a result his account incurred extra charges. He has submitted screenshots of an "*Error*" message, which appeared when he attempted to use the online banking facility in December 2010, March 2011, March 2012 and April 2012.

He submits that the Provider's overall communication systems are inadequate. By way of illustration, he refers to a time in 2007 when the Provider "*sent [him] a letter telling [him] if [he] needed help [he] should phone 1890xxxxxx. Note this number will not work if one is on holidays in Spain, France, Australia or Thailand*". He submits that he raised this matter with his Bank and that the Bank has since corrected this, which he contends indicates that "*the Bank were not satisfied with the letter they posted to me in 2007*".

The Provider's Case

The Provider submits that it has no record of the Complainant living abroad in **2010** and **2011**. On **26 June 2012**, the Complainant instructed the Bank to amend his correspondence address to an address abroad.

The Provider says that it does not communicate differently with its customers who live abroad and that it does not advertise changes to its fees and charges via its online banking service.

The Provider confirms that changes to fees and charges to current accounts, which commenced on **21 February 2011** were communicated to its customers on **22 December 2010**, by way of a press notice in two national newspapers and that the information was also made available on its website. In addition to this, a leaflet detailing the amendment was inserted into three monthly statements informing its customers of the change. The Provider says it is not in a position to refund fees retrospectively, where the fees were correctly applied and that it is satisfied that the fees and charges were appropriately charged in this instance.

Fees and Charges Applied by the Bank

Date	Amount	Details	Schedule of Fees and Charges Applicable
31/12/2010	3.92	Current A/C fees	Sep 2010 pages 2,3,4,5
	3.56	Interest	
25/03/11	3.90	Interest	Jan 2011 – page 7
	3.08	Current A/C fees	Jan 2011 – pages 2 and 5
27/04/11	3.50	Overlimit Item	Jan 2011 – page 8
24/06/11	3.36	Current A/C fees	May 2011 – pages 2, 5 and 7
	9.05	Interest	May 2011 – page 4
23/09/2011	4.20	Current A/C fees	May 2011 – pages 2, 5 and 7
30/12/2011	5.24	Interest	May 2011 – page 4
01/03/2012	3.50	Overlimit Item	May 2011 – page 19
23/03/2012	4.16	Interest	May 2011 – page 4
27/03/2012	3.50	Overlimit Item	May 2011 – page 19
03/04/2012	12.70	Unpaid Fee	May 2011 – page 19
22 June 2012	11.29	Interest	May 2011 – page 4

On **24 August 2012** the Provider issued its Final Response letter to the Complainant, which stated:

Our Personal Current Account Free Transaction offer was amended to reflect the start of the fee quarter which commenced on 21 February 2011. Our customers were notified of this change on 22 December 2010 by a press notice in two national newspapers and the information was also available on our website [address]. In addition to this, a leaflet detailing the amendment was inserted into three monthly statements informing our customers of the change.

The amended criteria are as follows:

Over the course of a fee quarter, lodge at least €3,000 to your Personal Current Account AND make 9 debit payments from that account using [the Provider's] Phone and/or Online

OR

Maintain a minimum credit balance of €3,000 in your Personal Current Account throughout the full fee quarter.

On meeting these criteria customers will automatically qualify for free quarterly transaction fees.

As you did not meet the qualifying criteria for our free transaction offer, I regret that we are not in a position to refund any fees charged.

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I regret that you were unable to access our [Provider's] Online service while you were in [location]. You do not give details of the date you attempted to access the service. However if you wish for us to investigate this matter further, you will need to provide the dates and we can endeavour to establish if there was a problem with the system on the dates in question.

A further Final Response Letter issued on **30 September 2015**. This stated:

I refer to the Bank's full response letter dated 24 August 2012 which details the new fee charging structure which commenced 21 February 2011. I note that you state that you were overseas and this information was not available to you. I wish to re-iterate that this information was available on [website] and in addition to this; a leaflet detailing the amendment was inserted into three monthly statements which would have been issued to your address on file.

The Central Bank of Ireland sets down a clear set of guidelines to ensure customers are informed of changes in relation to charges. I confirm that the Bank adheres to these guidelines at all times.

I note your dissatisfaction in respect of the [Provider's online banking] platform while you were travelling in [location]. As advised in the Bank's response of the 24 August 2012, you do not give details of the date you attempted to access the service. If you wish us to investigate further you will need to provide the dates and we can endeavour to establish if there was a problem with the system on the dates in question.

In relation to the technical difficulties which the Complainant submits he encountered, the Provider has responded that it requested details of these from the Complainant so as to investigate the matter but that the Complainant did not follow up to furnish the details requested, despite the requests set out in its letters dated **24 August 2012** and **30 September 2015**.

The Complaint for Adjudication

The complaint is that the Provider:

1. Did not adequately communicate changes in the structuring of the fees/charges applicable to the Complainant's account, to the Complainant;
2. Has wrongfully and/or unreasonably refused to refund to the Complainant the fees/charges that were applied to his account, between December 2010 and June 2012, in the amount of €78.46;
3. Provided an unreliable online banking service.

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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 05 September 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.

I note that although there was a change to the terms and conditions applicable to the transaction fees in February 2011, the Complainant's account had been the subject of fees and charges prior to that time, the basis for which were set out in the Schedule of Fees and Charges applicable at the relevant times. From the copy statements furnished as part of the evidence in this complaint, I note that the Complainant had incurred the following transaction fees, as follows:

€3.92 during the period 24 August 2009 and 20 November 2009,
€3.08 during the period 22 November 2010 and 18 February 2011,
€3.36 during the period 21 February 2011 and May 2011.

I have had regard to each of the sets of terms and conditions governing the Complainant's Account at the times relevant to this complaint, dated **June 2010, January 2011, April 2011, March 2012**. Each set of terms and conditions contain provisions regarding the fees and

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charges, which may be charged by the Provider. The terms and conditions also confirmed that the Provider could make changes to the account transaction fees and service charges.

I note that the terms and conditions applicable to the Complainant's account in January 2011 provided that the Provider could make changes to the fees applicable:

18.0 Changes to the these terms and conditions, Account Transaction Fees and Service Charges

18.1 *We may add to or change these terms and conditions at any time. We may add new fees and charges or change existing fees and charges at any time.*

18.2 *We will tell you in advance if we add to or change these terms and conditions or if we add new fees and charges or change existing ones. The amount of notice that we will give you will follow the laws and regulations that apply at that time. We will choose the way that we tell you: we can do it by letter, electronic mail, telephone (including recorded message) or by advertisement in an Irish daily or weekly newspaper.*

18.3 *If we change or add to these terms and conditions, you may end this contract and close your Account but first you must pay us any money, interest, fees charges or Government Duty that you owe us in relation to your Account.*

18.4 *If you do not ask us to end this contract under Clause 18.3, you are deemed to accept the changes which we tell you about under Clause 18.2 on their effective date.*

[emphasis added]

I have also had regard to the Schedule of Fees and Charges, dated **22 September 2010, 01 January 2011, May 2011**, which set out details of the fees and charges applicable at the relevant times.

The January 2011 Schedule outlined the "current account transaction fees" and set out that there would be a change to the criteria applicable to the Provider's "free transaction offer", from the fee quarter beginning on **21 February 2011**. The amended criteria introduced, in order to avoid incurring transaction charges, was that €3,000 must be lodged in the account per quarter and at least nine payments made by phone or over the internet, or a minimum of €3,000 kept in said account as a credit balance.

Regarding the revised criteria for the "free transaction offer" which the Provider applied to the offer of free transactions, as implemented in February 2011, having regard to section 18.2 of the terms and conditions, I am satisfied that the Provider acted reasonably and in accordance with its terms by publishing a notice in two daily newspapers, and issuing an inserted leaflet into 3 monthly statements.

The Complainant has stated that the Provider should have put details of any change to such charges on its online banking site, rather than on its main website, as customers use the

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latter site to conduct internet banking and that information is more likely to come to their attention this way.

However, I do not consider it unreasonable that the Provider published these details on its main website rather than on its online banking site: the information on its online banking site is accessible only to those customers who operate online banking, and relates to online banking issues, rather general account information.

Section 44(b) of the Consumer Protection Code 2006, in place at the relevant time, stipulated that:

44 A regulated entity must, where applicable:

b) advise affected consumers of increases in charges, or the introduction of any new charges, at least 30 days before the change takes effect;

In accordance with this and section 18.2 of the terms and conditions, set out above, the Provider published a notice in two daily newspapers and it also notified its customer by way of a publication on its website, over 30 days prior to the change and issued leaflets as an insert into 3 monthly statements. I am satisfied that the means applied by the Provider to notify consumers of the change to the criteria applied to its free transaction offer was sufficient and reasonable and was in keeping with the terms and conditions governing the account.

I do not find therefore that the Provider failed in its duty to take reasonable steps to notify the Complainant of the relevant transaction fees and charges applicable to his account.

I note, however, that the majority of the charges incurred by the Complainant during the period in question did not comprise "*transaction charges*" but rather consisted of Interest, Overlimit and Unpaid Fee charges, which seem likely to not have been affected by the "*free transaction offer*", in any event.

The Provider issued a Final Response Letter to the Complainant on **24 August 2012**. This stated:

Our Personal Current Account Free Transaction offer was amended to reflect the start of the fee quarter which commenced on 21 February 2011. Our customers were notified of this change on 22 December 2010 by a press notice in two national newspapers and the information was also available on its website

In addition to this, a leaflet detailing the amendment was inserted into three monthly statements informing our customers of the change.

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The amended criteria are as follows:

Over the course of a fee quarter, lodge at least €3,000 to your Personal Current Account AND make 9 debit payments from that account using [the Provider's] Phone and/or Online

OR

Maintain a minimum credit balance of €3,000 in your Personal Current Account throughout the full fee quarter.

On meeting these criteria customers will automatically qualify for free quarterly transaction fees.

As you did not meet the qualifying criteria for our free transaction offer, I regret that we are not in a position to refund any fees charged.

A further Final Response Letter issued on **30 September 2015**, in which the Provider referred to its letter of **24 August 2012**, "*which details the new fee charging structure which commenced 21 February 2011.*" The letter went on to state, "*I note that you state that you were overseas and that this was information that was not available to you...*"

Having had regard to all of the evidence, it is not clear to me why the Complainant's failure to meet the criteria applicable to the free transaction offer was given to the Complainant as the Provider's explanation as to why it could not refund the fees. It appears to me that the bulk of the fees imposed upon the Complainant's account did not consist solely of "*transaction fees*" but, rather, were charges such as unpaid fees, which had been applied in accordance with the Schedule of Charges. The Provider's response does not however address this point. Whilst I am satisfied that the fees were correctly imposed, the basis for same was not adequately explained and I believe that some confusion may have been caused by the Provider focusing solely on the change in criteria applicable to its free transaction offer, in its communications with both the Complainant and this Office.

If communication on the part of the Provider had been to a higher standard, I consider that the complaint may have been concluded at an earlier stage.

The second part of the Complainant's Complaint is that the Provider provided an unreliable online banking service, which resulted in his incurring further fees and charges.

Online Banking Difficulties

The Complainant has submitted that he spends a lot of time working at a location abroad, which is 7 hours ahead and that on many occasions he was unable to use internet banking facilities because of technical difficulties he encountered with the site. He has submitted

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that this resulted in his account *“going into debit and resulted in fees charged.”* He has submitted that he was informed by a software engineer who wrote software for the bank that it was common for banks to take internet banking offline after midnight *“while they were changing software”*.

The Complainant has submitted screenshots of an “Error” message, which appeared when he attempted to use the online banking facility in December 2010, March 2011, March 2012 and April 2012. He contends that, *“this happened many times and prevented me from making transfers to my accounts”*.

I note that whilst the Provider offered to investigate these technical difficulties, the Complainant did not furnish any further information in this regard, to facilitate an investigation into these issues.

Whilst I accept that the Complainant encountered an “Error” message on certain occasions whilst using the Provider’s online banking services, having had regard to all of the evidence before me it is not clear what the cause of these error messages were, or the duration of these technical issues. Whilst I accept that technical issues occurred, from the evidence and submissions of each of the parties I do not find any grounds to uphold the complaint, that that these constituted an *“unreliable service”* on the part of the Provider. Neither do I have any evidence before me, which supports the Complainant’s contention that these technical issues were the direct cause of the Complainant incurring fees or charges on his account.

However, on the basis that I accept that there were failings in the standard of communication which could reasonably have been expected of the Provider, I consider it appropriate to partially uphold this complaint.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(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 €200, 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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

27 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.