



<u>Decision Ref:</u>	2019-0343
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Multiple Products/Services
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

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

Background

This complaint relates to the customer service received by the Complainant in its attempts to apply for credit facilities with the Provider.

The complaint has been taken by a private limited company and it shall be referred to hereafter as the Complainant Company. There is only one director/owner of the Complainant Company and he represents its interests. Therefore, for the purpose of this Preliminary Decision, the director/owner will be referred to as the Complainant.

The Complainant's Case

The Complainant is unhappy with the level of customer service he received following an application for two different credit facilities on behalf of the Complainant Company.

The Complainant contends that he applied, in branch, for a credit card facility in **June 2017**. Not having all the necessary documentation for this application, the Complainant states that he was advised by the Provider's representative to return a few days later and he could proceed with the application. The Complainant asserts that he duly returned with the outstanding "*letters from the accountant and proof of the share transfer*" as well as a copy of his passport. Expecting to hear the outcome of the application and not having done so, the Complainant contends that he enquired with the Provider's representative as to the

progress of his application a week later and was told that the “*compliance team didn’t come back*”.

The Complainant asserts that he enquired multiple times following this as to the status of his application and that by the end of **August 2017**, the Provider had ceased to answer his telephone calls. He contends that he texted the Provider’s representative on **31 August 2017** at 3pm and, again, received no response. There are several instances throughout the Complainant’s encounters with the Provider that, he alleges, he was told someone would telephone him back but did not. The Complainant asserts that on **25 October 2017** he telephoned the Provider’s credit card team and during a follow-up call the next day he was advised that no application in relation to a credit card existed in either his name or in the name of the Complainant Company.

In addition, the Complainant called the Provider on **15 September 2017** to apply for a business loan in the sum of €15,000. He completed the application in branch on **21 September 2017** and, he contends, he was told he would hear the outcome of this application within 48 hours. The Complainant telephoned the Provider on **4 October 2017** in relation to the business loan application and was told that the delay in processing his application was because there was a spelling mismatch between his name on the application and the name which appeared on the Complainant Company’s annual return. The Complainant submits that he was told his “*name was not Irish*”. He further submits that he was to receive a follow-up telephone call the next day but did not. The business loan application was granted on **10 October 2017**. The Complainant asserts that he was asked to sign a “*grantee letter*” on **12 October 2017** but was allegedly told that the money would not be transferred into his account until such time as the Provider’s compliance team had gotten back to the Provider on some outstanding issue. The Complainant asserts that he was asked questions at this time relating to the change of ownership of the Complainant Company.

The Complainant is also aggrieved that on **17 October 2017**, when he approached a branch manager of the Provider to complain about interactions he had with other representatives of the Provider, this branch manager defended the actions of the other representatives. As a result of this the Complainant contends that the branch manager was “*related to*” the other representatives. He contends that around this same time, he telephoned and emailed the branch manager twice but received no response. The Complainant is also aggrieved that the complaints he made to the branch manager on **17 October 2017** were not submitted to the Provider’s complaints team. The Complainant states that the complaints team confirmed to him by way of telephone conversation on **23 October 2017** that the complaints had not been submitted.

Finally, the Complainant is concerned about a telephone call he alleges he received from a representative of the Provider on **8 November 2017** which he contends amounts to intimidation. This telephone call followed a previous telephone call on **3 November 2017** wherein the Complainant rang the Provider and recounted his experiences to date to the Provider’s representative who allegedly assured him that she would investigate it and “*sort*”

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the problems". The Complainant contends that this representative stated that she would update the Complainant as to her findings.

On **8 November 2017**, the Complainant then contends that he received a phone call from a private number wherein the Provider's representative told him that the colleague of hers that the Complainant was complaining about *"was not [racist] and you can't say [things] like that and lots of other things regarding to [this] subject. And she started to defend [another representative of the Provider] and the branch manager also"*. The Complainant maintains that the reason why the representative telephoned him from a private number was because *"she cannot say what she said to [him] on an official call"*. He added that he believes *"she was trying to intimidate"* him.

Ultimately, the Complainant would like his complaint *"just to be fairly resolved"* and *"to get [his] rights"*.

The Provider's Case

The Provider states that the Complainant attended one of the Provider's branches on **14 June 2017** and inquired about applying for a business credit card. The Provider's representative allegedly advised the Complainant that this application could not be moved forward as the Complainant was not listed on the company mandate. The Provider's representative asked the Complainant to provide proof of ID, a completed company mandate and a stock transfer form.

On **17 June 2017** the Provider states that the Complainant Company account was inputted on the Provider's customer identification system due to the change of ownership of the Complainant Company as advised by the Complainant. A few days subsequent to this, the Provider states that the Complainant attended the branch with supporting documentation i.e. proof of ID, the company mandate and the stock transfer form.

The Provider states that on **21 August 2017** the Complainant visited a branch of the Provider and a credit card application form was completed by the Complainant on this date. On **14 September 2017** approval for this credit card application was received.

On **21 September 2017**, a meeting between the Provider's representative and the Complainant took place wherein the Complainant applied for a business loan in the amount of €15,000. The loan was applied for online and the supporting documentation was supplied by the Complainant as requested. On **25 September 2017** the Business Agri Department of the Provider contacted the Complainant and stated that the Provider would need a personal letter of guarantee signed by him because the business was a limited company. The Provider's customer service representative advised that it would normally take 24 hours for a decision as to whether the loan would be approved.

On **2 October 2017**, the Complainant contacted the Provider looking for an update as to his business loan application. On **4 October 2017**, the Provider's customer service representative returned the Complainant's call and stated that money laundering checks

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were being carried out by the Provider and that there was a small anomaly in the documentation submitted to the Provider.

This anomaly consisted of a misspelling of the Complainant's surname in an annual return submitted to the Companies Registration Office.

On **9 October 2017**, the Complainant contacted the Provider and expressed his dissatisfaction with the delay in dealing with his loan application. On **10 October 2017**, the €15,000 loan facility was approved in principal once KYC approval had been received from the Provider's compliance department. The facility letter was issued to the Complainant and it was signed and accepted by the Complainant on the same date.

On **13 October 2017**, the Provider contacted the Complainant and outlined the necessary compliance requirements it required before the loan could proceed further. On **17 October 2017**, a meeting between the branch manager and the complainant occurred and the supporting documentation necessary was provided. The branch manager advised the Complainant that he would be in touch with the Complainant once he had an update from the compliance department in respect of the loan. On **20 October 2017** and **23 October 2017**, the Complainant sent an email to the branch manager requesting an update in relation to the loan application as he had supplied all supporting documentation. The Provider acknowledges that neither of these emails were responded to and submits that this was because no update had been received from the compliance department at those times. On **23 October 2017**, the Provider accepts that the Complainant made a complaint as to how his application had been handled. On **24 October 2017**, the Complainant contacted the Provider's group complaints department inquiring as to who would reply to his complaint. The Provider states that the Complainant's complaint at this time was that he was being discriminated against because of his name.

On **25 October 2017**, the Complainant contacted the Provider's personal lending department in relation to his business credit card application and his disappointment with how he was treated by the Provider. He also contacted the Provider separately in respect of the business loan application and wondered why the loan application was still ongoing and also what was the status of his complaint regarding discrimination.

On **26 October 2017**, a customer service agent of the Provider contacted the Complainant in relation to his business loan application. The customer service agent had a query regarding the shareholders on the annual report of the Complainant Company as submitted to the Companies Registration Office. The Complainant told the customer service agent that all the necessary documentation was with the branch manager and the customer service agent advised he would contact the branch manager and follow up on the documentation.

On **1 November 2017**, the Complainant contacted the Provider's customer complaints department advising that he had not received a letter from them in relation to his complaint.

On **3 November 2017** and **6 November 2017**, the Provider states that the Complainant received phone calls from a customer service agent discussing his complaints and the investigations surrounding it.

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On **10 November 2017**, the Business Agri Department dealing with the Complainant's business loan application contacted the Complainant and told him that the branch manager had sent the department the necessary documentation and that the reason for the hold up of the loan approval was due to confirming the company structure, change of ownership and delays with the updating of company information by the Companies Registration Office.

On **16 November 2017**, the compliance department approved the business loan application of the Complainant and the €15,000 loan facility was drawn down.

On **29 November 2017**, the Provider's branch manager sent an email to the Complainant asking him to clarify the address for his business credit card as it differed from the business current account address. On **7 December 2017**, the Complainant replied to the email and the business credit card application was submitted. On **8 December 2017**, the business credit card facility was approved for a credit card limit in the amount of €1,000.

The Provider acknowledges that there was a fall down in customer service by the branch in the handling of the Complainant's case. In the Provider's letter dated **20 September 2018**, the Bank made an offer of compensation to the Complainant of €500, as a gesture of goodwill, which he declined. The Provider has confirmed that this offer still remains open to the Complainant to accept.

The Provider rejects the assertion by the Complainant that there was any "intimidation" from the Provider's representative in any phone calls to the Complainant in November. There is no direct mention by the Provider of a phone call made on **8 November 2017**.

By way of explanation of its conduct in its final response letter dated **21 December 2017**, the Provider states that pursuant to the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 ('the 2010 Act') it is obliged to apply an enhanced level of customer due diligence in all cases where a customer relationship is considered to be higher risk of Money Laundering or Terrorist Financing. In taking the steps to comply with this requirement of enhanced due diligence, the Provider states that it did not conclude that any such acts had occurred nor did it treat the Complainant less favourably but rather it complied with its obligations pursuant to the legislation.

The Provider states that as a regulated entity it has a number of legal obligations in respect of combatting money laundering or terrorist financing risk including (but not limited to) the obligation to review and carry out customer due diligence on an on-going basis throughout the duration of every customer relationship.

As such, the Provider states that it regularly reviews the customer relationships that it has and makes decisions as to whether it is satisfied that it is able to continue to comply with its legal and regulatory obligations whilst servicing those customer relationships.

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

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Furthermore, the Provider states that when assessing its customer relationship with the Complainant, it complied with its legal and regulatory obligations as well as the Provider's own risk profile (and appetite) and that failure to perform enhanced due diligence on all new and existing customers meeting the above criteria may result in potential breaches of EU legislation by the Provider which could lead to the imposition of significant penalties.

The Provider also notes that the Complainant's loan application was ultimately approved by the Provider following receipt of the necessary documentation and completion of the required due diligence process.

Finally, the Provider states that the enhanced due diligence procedures that it applied to the Complainant was not prohibited conduct and was fair, proportionate and objectively justified having regard to the Complainant's circumstances as well as being required pursuant to the 2010 Act and international guidance.

The Complaints for Adjudication

The primary complaint for adjudication in this instance is that the Provider provided poor levels of customer service to the Complainant, especially in relation to the level of communication surrounding the Complainant's business credit applications.

There are also further complaints in respect of the Provider failing to submit the Complainant's application for a credit card facility & his initial complaint regarding the alleged poor customer service as well as the Provider's representative subjecting the Complainant to an intimidating telephone call.

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.

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A Preliminary Decision was issued to the parties on 7 October 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.

In relation to jurisdiction, the Complainant has provided evidence that the annual turnover of the company is less than €3 million per year and that it is not a member of any group of companies. Therefore, it falls within the definition of a consumer for the purpose of taking a complaint to this Office.

It is important to note at this point that the Workplace Relations Commission is the designated authority that adjudicates upon claims of discrimination and therefore a decision as to whether the Complainant was discriminated against by the Provider is outside the jurisdiction of this Office.

It is not clear what information was required from the Complainant Company in order to open its account with the Provider and whether the Complainant's account was opened prior to or post the implementation of the 2010 Act.

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

“AN ACT TO PROVIDE FOR OFFENCES OF, AND RELATED TO, MONEY LAUNDERING IN AND OUTSIDE THE STATE; TO GIVE EFFECT TO DIRECTIVE 2005/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 26 OCTOBER 2005 ON THE PREVENTION OF THE USE OF THE FINANCIAL SYSTEM FOR THE PURPOSE OF MONEY LAUNDERING AND 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 ideally 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 procedures contained therein is to protect all customers and the general public from the effects of criminality.

Based on the above, I accept that the Provider was justified and indeed was required to adopt enhanced due diligence measures in order to review the Provider's relationship with the Complainant Company.

I further accept that this process can take a significant length of time as the Provider must satisfy itself that the Complainant Company does not pose an unacceptable risk to the Provider and meets the conditions outlined by the Provider as part of the enhanced due diligence process. I also accept that the enhanced due diligence process as carried out by the Provider was fair, proportionate and objectively justified.

In relation to the Complainant's complaint that the Provider gave a poor level of customer service in relation to its business credit applications, the Provider has accepted that there was a fall down in the level of service offered in the handling of the Complainant's applications. This Office further notes that the Provider failed to respond to two emails dated **20 October 2017** and **23 October 2017** from the Complainant.

I accept that there was an unexplained delay in processing the credit card application of the Complainant by the Provider. However, I note that not all of the delay in the processing of the credit card application was due to fault on the part of the Provider. There was significant documentation that needed to be collated between the Provider's branch manager, the Provider's compliance team and the Companies Registration Office. Confirmation of a company structure including change of ownership documentation takes time. Furthermore, the misspelling of the Complainant's surname in an annual return submitted to the Companies Registration Office and the delays with the updating of company information by the Companies Registration Office certainly contributed to the period of delay in processing the Complainant's business loan application and business credit card application.

I also accept that a proportion of the responsibility for the delay in processing the credit card application and the failure to adequately note the Complainant's initial complaint regarding customer service must be borne by the Complainant himself. The Complainant sent/made a large number of emails, phone calls and text messages to the Provider as well as appearing in-branch on several occasions in relation to the dispute. This led to a significant amount of the Provider's time and resources being spent collating the information provided by the Complainant in various different mediums to various different departments of the Provider and goes some way to explaining how the business credit card loan application and the initial complaint regarding customer service were not dealt with as expediently as they should have been.

As no audio recording of any phone call dated **8 November 2017** has been submitted to this Office, I am not in a position to make a finding as to whether an intimidatory phone call was made to the Complainant by a representative of the Provider.

Furthermore, I note that both the business loan application and the business credit card application by the Complainant were ultimately approved with no adverse financial effects suffered by the Complainant or the Complainant company.

Finally, I note that that an offer of €500 was made by the Provider to the Complainant in recognition of the fall down in customer service in relation to this dispute. I believe this offer of €500 by the Provider to the Complainant is reasonable in all the circumstances.

In light of the entirety of the foregoing, in particular that the Provider accepts that there was a fall down in customer service by the branch in the handling of the Complainant's case in general and bearing in mind the offer of €500 to the Complainant, and on the basis that this offer is still available to the Complainant, I do not 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 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

30 October 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.