



<u>Decision Ref:</u>	2019-0396
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Opening/Closing Accounts
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication Fees & charges applied Failure to provide notification /reason for closure
<u>Outcome:</u>	Upheld

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

Background

The complaint relates to the closure by the Provider of the Complainant's mortgage offset account.

The Complainant's Case

During **2008**, the Complainant opened a mortgage account with the Provider's predecessor. The Complainant also opened an 'offset account' in or around this time. During **2009**, the accounts were transferred to the current Provider.

The Complainant contends that, in or around **November 2013**, the Provider informed her "*without notification, authorisation or agreement*" that it was closing down her offset account. The Complainant contends that this "*breaks the agreement*" she had with the Provider and, in denying her the benefit of the offset account, increases the interest which she will be charged on her mortgage.

The Complainant seeks the return of the full off-set mortgage facility, the reimbursement of losses (including loss of interest and bank charges), compensation and legal costs.

The Provider's Case

The Provider maintains that, following a review of the Complainant's banking arrangements, it concluded that it could "no longer provide these facilities". The Provider relies on terms and conditions of the account which it maintains entitles it to take the action it took.

The Provider expressly relies on the following:

We may require You to close the Account. Where your Account is a Payment Account, We will give You not less than 60 days' notice. Where Your Account is a non-Payment Account, We will give You not less than 30 days' notice prior or such period of notice You would have to give us in order to close Your Account, whichever is longer. We may do this by writing to You indicating the period within which You are required to comply with this request. If, at the end of that period, You have not closed the Account, We will be entitled to refuse to accept any more payments into the Account (except such payments as are necessary to repay any debt and outstanding interest and charges on the Account) and may return any existing balance to You at the last address You have intimated to us as Your home address. We do not have to give You a reason for our decision.

The Complaint for Adjudication

The complaint is that the Provider wrongfully closed the Complainant's offset account.

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 3 October 2019, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that

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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.

Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

By letter dated the 11th of November 2013, the Provider wrote to the Complainant indicating that, following review, a decision had been taken to close three accounts belonging to the Complainant namely an offset mortgage account, a current account and regular savings account. The Complainant was advised to make alternative arrangements within 60 days of the date of the letter. The Complainant was further advised that the Provider would “*not be able to provide references*” to the Complainant.

It would seem that the current position is that the savings account has been closed but the current account and the offset mortgage account remain open. The offset facility was provided, in the Complainant’s case, via the credit balances held in her current account. When the Complainant submitted her complaint to the Financial Services Ombudsman she advised as follows:-

“Without notice, authorisation or agreement [the Provider] informed me they were closing down my account, thereby depriving me of the off-set mortgage facilities which had been the sole motivation/rationale on which I was advised and urged to open an off-set account – the Current Plus Account.

[The Provider] have refused to explain, elaborate or justify its decision to my satisfaction and I fear their actions have been improper or illegal.

The bank have not closed down my account, despite its indications that it would but have deprived me of access and off-set mortgage benefits, while still notifying me of charges and interest accruing, even still notifying me of potential mortgage savings with an account I cannot avail of due to their actions. I reserve the right to furnish additional particulars of this dispute at or before hearing or evaluation.”

The Complainant maintains that the lack of access to the offset account “*breaks the agreement*” she had with the Provider. In her email of 26 November 2013, the Complainant stated the following:

I believe this decision breaches the terms and conditions that both the bank and I agreed upon when opening the offset account and it affects me negatively.

Notwithstanding the foregoing, the Complainant does not point to any particular terms or condition which she maintains have been breached by the Provider. In fact, a letter written on the Complainant’s behalf by her solicitor on 13 January 2014, requested that the Provider, in addition to providing an explanation for its conduct, would set out authority for the action it proposed taking. Thereafter, in its final response letter of 24 January 2014, the

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Provider quoted the terms of the account (reproduced above) on which it claimed to be relying in closing the account(s). In terms of the reasons for closing the account, the Provider did not provide anything further by way of explanation other than to repeat that a decision had been taken that the facilities could no longer be provided.

In its response to this office the Provider, it appears for the first time, adverted to certain reasons for the decision to close the accounts. In particular, the Provider stated that the Complainant failed to respond to letters issued in **May** and **June 2013** regarding the “*source of funds on her accounts*”. The response also referred to the necessity for the Provider to be satisfied as to the “*authenticity of any transactions being conducted by our customers*”. The Provider relies on this failure to engage by the Complainant, as grounds for closing the account.

The Complainant, in her letter of **26 November 2017** (at page 4 thereof) very clearly disputed ever receiving any such correspondence.

The closure of the accounts can be analysed from two viewpoints. In the first part, the conduct of the Provider can be examined from a strictly legal or contractual point of view to establish whether the Provider is entitled to close the accounts by reference to the terms and conditions of same. Secondly, it is possible to examine the practice employed by the Complainant from an overall ‘fairness’ point of view given the provisions of **Section 60(2)(c)** of the **Financial Services and Pensions Ombudsman Act 2017** which provide as follows:

(2) A complaint may be found to be upheld, substantially upheld or partially upheld only on one or more of the following grounds:

(c) although the conduct complained of was in accordance with a law or an established practice or regulatory standard, the law, practice or standard is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant;

With regard to the purely legal or contractual position, the Provider plainly has the ability to close the accounts on the appropriate notice, by reference to the terms and conditions quoted above. The contractual position is, in fact, that the Provider can close the account without the need for the provision of any explanation whatsoever. That is not the end of the matter however.

In this case, the Provider has, albeit belatedly, provided an explanation for the closure of the accounts, namely a failure on the part of the Complainant to address queries regarding “*her source of wealth*”. I am entitled to have regard to Section 60(2)(c) in analysing this conduct on the part of the Provider.

Although the Provider expressly relies on the Complainant’s failure to respond to two letters in May and June 2013, and though the Complainant disputes receiving the correspondence, the Provider has omitted to furnish this office with copies of the said letters. In this regard, in correspondence to this office dated 18 December 2017, the Provider acknowledged that it has been unable to locate the letters. Whilst the concern invoked by the Bank is clearly, in

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the general sense, a reasonable one, I am of the view that, in relying on this concern as grounds to close the accounts, it was incumbent on the Bank to produce the correspondence said to have been ignored. I would also have expected that any such correspondence should have warned, on its face, the risk of closure of the accounts in the absence of a satisfactory response. I am unable to verify this.

In addition, I consider it most unsatisfactory that the Provider's letter of 11th of November 2013 and its Final Response Letter of 24 January 2014 both entirely omitted any reference to this reason for closing the accounts. This obviously greatly inhibited the Complainant in her ability to challenge or appeal the Provider's decision, given that she had no way of knowing the actual reason for the decision.

The foregoing, in my view, constitutes conduct that falls within Section 60(2)(c); though the conduct is strictly permissible by reference to the terms and conditions of the account, in the circumstances I am satisfied that the conduct was unreasonable.

This decision should not be taken as any kind of impediment on a provider in taking appropriate action in the face of genuine 'wealth source' concerns. In this instance, it is rather the process of the Provider with which issue is taken. The Provider should remain able to take appropriate action in appropriate circumstances. That includes a situation where the Provider's concerns turn out to be well grounded. In this instance, it may be that at page 9 of her letter of 26 November 2017, the Complainant has provided all the detail required to 'authenticate' her earnings/wealth, but this is a matter for the Provider.

In circumstances where the Complainant's current account and the offset mortgage account remain open, those accounts should continue to remain open unless and until the Provider writes to the Complainant again seeking whatever information it deems appropriate to seek indicating that a failure to respond may result in closure of the accounts unless and until the Complainant responds satisfactorily. Any new decision to close the accounts should properly document the reasons for same. For the moment however, the Complainant should be at liberty to increase the balance in her current account, should she so wish, thereby regaining the benefit of the offset facility. The foregoing should not impact on any other valid reason the Provider may have to close the accounts, providing always that proper process is followed.

The final matter that I must address is that of compensation. I believe that the failure in process on the part of the Provider which I have identified warrants compensation. When the Preliminary Decision was issued, I indicated my intention to direct compensation in the amount of €4,000.00 and I noted that this figure was to include an amount to offset the fees and interest generated on the Complainant's current account since she stopped using it, and an amount towards the increased mortgage interest payments to which the Complainant was subjected as a result of being wrongfully denied the benefit of the offset facility. Whilst the Complainant has suggested that the compensation level should be higher, I consider that figure to be appropriate, in all of the circumstances, and taking into account the content of both parties' submissions to this office since the Preliminary Decision was issued on 3 October 2019.

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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 **Section 60(2)(c)**.
- 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 €4,000, 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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

25 November 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.