



<u>Decision Ref:</u>	2020-0063
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Savings Account
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner Delayed or inadequate communication Failure to provide adequate security measures
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the administration of an account held by the Complainant with the Provider, a credit union.

The Complainant's Case

The Complainant submits that she opened a new credit union account and instructed the Provider to transfer her shares to her new account. She also instructed the Provider to close the old account. In addition, the Complainant had requested that a new account book be posted to her temporary address in a confidential manner.

The Complainant submits that on 9 December 2015, her shares were transferred to her new account and to the best of her knowledge and assurance her old account was closed, in accordance with her instructions.

The Complainant asserts that in July 2017, her estranged husband escorted her under duress to the Provider's branch which held her old savings account. During this time the Complainant was told that the account which she had previously requested to be closed was in fact still open, so she again requested that it be closed. The Complainant submits *"I asked the teller to check my file I had assured her I closed my account. I had informed her I had sent a letter asking for confidentiality and pleaded with her to check my file"*. The Complainant asserts that during this time she *"was not being afforded the correct privacy and confidentiality"* by the Provider's staff member.

The Complainant submits that upon closing the account on this day in July 2017, the Provider's staff member offered to provide her the remaining shares in cash or cheque. The Complainant submits that her estranged husband requested for her remaining shares to be transferred into his account and that this request was actioned by the Provider, which the Complainant states she signed off on under duress of her estranged husband. The Complainant submits that her estranged husband verbally abused her at the counter and she *"felt demeaned, embarrassed, violated and indeed robbed"*. The Complainant submits that she was *"escorted from the credit union by a very angry man who wanted access to all of my shares"*.

The Complainant submits that letters of complaint, which she sent to the Provider on 2 August 2017 and 5 September 2017, the latter of which she sent by registered post, were ignored. The Complainant also submits that a letter of complaint sent to the Provider on 7 November 2017 by the Complainant's solicitor was not responded to until 13 December 2017. The Complainant submits that this was in breach of the 40 day turnaround for complaints handling under the Consumer Protection Code (CPC) and no updates relating to the Complainant were issued by the Provider. The Complainant submits that she tried to discuss the matter with the Provider's branch manager but was advised *"not to come as an auditor had arrived on that day"*. The Complainant also submits that the Provider requested that she enter by a side door rather than the main entrance upon arrival, to discuss the complaint.

The Complainant submits that the Provider attempted to discredit her by writing from the Board of Management that *"items such as dividend and dirt are automatically added by the system i.e. no person is physically present"* when the Complainant noted what she stated to be irregularities on the account.

The Complainant states that that the Provider failed to close her account when requested, breached its duty of care to her, and failed to engage with her when she made a complaint.

The Complainant states in her Complaint Form:

"I am asking for your assistance to investigate, prosecute and compensate. My husband had refused to sign any divorce documentation and is blackmailing me by refusing to sign unless all of my previous shares are given to him".

She also states:

"I want the people who breached confidentiality sanctioned, I want the teller to be called to account for not following my instructions and not allowing me privacy and confidentiality. I want what is effectively theft and blackmail to be investigated and stopped and the perpetrator punished".

The Complainant rejected an offer of €5,000 made by the Provider as a *"gesture of goodwill"*.

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The Provider's Case

The Provider has accepted that, due to an administrative error, the Complainant's account was not closed when the Complainant requested that it be closed. The balance was cleared and a cheque issued to the Complainant, but the account remained open.

The account, in remaining open, accumulated dividends and had DIRT deducted from it, leaving it with a balance of €36.86 by the time the Complainant and her estranged husband went into the branch on 17 July 2017.

The Provider submits that these dividends and DIRT transactions would have been applied automatically, as opposed to having been applied as a result of a customer/third party transacting on the account personally.

The Provider submits that its teller did notice some tension between the Complainant and her estranged husband when they came into the branch on 17 July 2017, but did not hear anything that would suggest duress being applied to the Complainant when carrying out the transactions complained of and signing for the fund withdrawal.

The Provider submits that it would not be unusual to allow customers to enter through the side door rather than the front door, and in this case the manager was attempting to be helpful in suggesting the Complainant enter through the side door in order to prevent her having to risk seeing a relation of the Complainant's estranged husband (who worked in the branch). It submits that the reason for asking the Complainant to enter through the side door was to attempt to facilitate the Complainant and not cause her any stress.

The Provider points out that during the history of the account the Complainant's husband would have carried out transactions on the account, albeit not withdrawals.

The Provider also points out that the Complainant was issued with a new account book on foot of her notification to the Provider that the original book had been lost when she was moving house, as opposed to it having been stolen or kept by her estranged husband.

In its response to this Office, the Provider stated *"as a gesture of goodwill and subject to the complaint being withdrawn, an offer of €5,000 compensation is being made"*.

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.

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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 17 January 2020, outlining my preliminary determination 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.

Following the issue of my Preliminary Decision, the Complainant made a further submission under cover of her e-mail to this Office dated 27 January 2020, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

Having considered the Complainant's additional submission and all of the submissions and evidence furnished to this Office, I set out below my final determination.

This Office is confined to investigating the conduct of a regulated financial service provider. Therefore, any complaint relating to data breaches is more appropriately addressed to the Data Protection Commissioner. In addition, any allegations made by the Complainant in respect of the conduct / behaviour of her estranged husband does not fall within the jurisdiction of this Office to investigate. I note the Complainant, in her post Preliminary Decision of 27 January 2020, acknowledges that this office cannot deal with this matter. I must also point out that it is not the role of this Office to sanction or prosecute any person or organisation.

The Complainant had an account with the Provider. By letter dated 29 January 2015 the Complainant wrote to the Provider in the following terms:

"I have moved address from [old address] to [new address]. I have lost my credit union book in the process. Please send a new one to me and a statement also [...]. I would like this correspondence to be private and confidential."

On 2 February 2015 the Provider responded to this letter by sending a new "passbook" to the Complainant's new address, together with a statement. The Provider also suggested *"If it is more convenient, you could transfer your account to one nearer your present address"*. The letter ended with *"As always any correspondence is treated in the strictest confidence"*.

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The Provider describes the attempted closure of the Complainant's account as follows:

"A transfer of membership request was received and a cheque for shares to the value of [amount] was issued dated 7/12/15. It was at this point that an administrative error occurred and the account was not closed. It was human error as at that time the computerised system did not automatically close an account as it does now..."

This failure to close the account appears to have precipitated a sequence of events for which the Complainant seeks to hold the Provider fully responsible.

The Complainant asserts that her estranged husband was transacting on the account without her knowledge after she understood that it had been closed.

It appears that the original passbook which the Complainant advised had been lost during a move, was in fact retained by her estranged husband. The Provider was not informed of this.

The transactions on the account from 7 December 2015 (when the Complainant sought to close the account) to 17 July 2017 (when the Complainant attended in branch with her estranged husband) are two credits described as "Div – Reg. Shares" and two debits described as "DIRT". The Complainant suggests that the account was "updated for him" on 27 January 2016 and 2 February 2017. These dates correspond with the dividend and DIRT transactions.

I accept the Provider's explanation that these were automatic transactions that did not involve any third party. They occurred solely by reason of the account not being closed, and not due to any interference by a third party.

The usual arrangements for account lodgements and withdrawals with a credit union are that anyone can lodge funds to an account, but only authorised signatories can make withdrawals. Specifically in the context of this complaint, this would mean that the Complainant's estranged husband would be able to make a lodgement but not a withdrawal on the account. The disputed withdrawal in this complaint is that of 17 July 2017 (for €36.86) which was withdrawn and lodged to the Complainant's estranged husband's account. There is no evidence of any other disputed withdrawals.

In essence, the Complainant states that she was forced by her estranged husband to withdraw these funds (€36.86) and sign documentation effecting a transfer of these funds into his account. The teller who effected this transaction has provided a short statement of her recollection of events. In essence, she states that the Complainant instructed her to transfer the funds in her account to the account of (what the teller describes as) her partner.

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The Provider points out that the Complainant advised it that the passbook had been lost, and it had no notice of a marital breakdown. The Complainant notes that her estranged husband's relation is a member of the Provider's staff, and in a small town such as that where the Provider is located it would be impossible for the Provider to not know that her marriage had broken down.

I accept that the Provider cannot be found to have been on notice of a marital breakdown and could not operate on the basis of hearsay or rumour. Therefore it was not under any higher duty of inquiry when the Complainant and her husband attended in branch simply by virtue of being located in a small town. The Provider could only be found to have been on notice of a marital breakdown if the Complainant had notified it of this fact. There is no evidence before me that she did so.

The Complainant, in her original submission and in her post Preliminary Decision submission of 27 January 2020, points out that she had gone to the Provider's branch unwillingly that day and states she was afforded no space to discuss privately what was happening.

I have been provided with no evidence upon which I can find that the Provider's teller was aware that the Complainant was under duress. While there are certain circumstances where a teller ought to be aware that a customer is not acting under his or her own free will, I have not been provided with any evidence to find that the branch visit of 17 July 2017 was such a situation.

The Complainant telephoned the Provider on 20 July 2017 to discuss the events of 17 July 2017. The Complainant was told that she could come in to the branch to discuss matters. The Complainant takes exception to the fact that it was suggested she enter by the side door rather than the front door. I accept the Provider's explanation, and am satisfied that this offer was made in order to assist the Complainant, rather than to hamper or somehow humiliate her.

On 27 July 2017 the Complainant advised the Provider that she was going to call into the branch that day. She was told that auditors were present. She states that she was "instructed" not to come in. While I am not in a position to listen to the phone call (the Provider does not keep such records), I think it reasonable to assume that the particular day simply did not suit the Provider's manager, and the Complainant was informed of this. While this might have been inconvenient for the Complainant, it is not unreasonable to expect that an appointment should be made on reasonable notice, for the benefit of both parties.

The Complainant submitted a complaint in writing to the Provider on 2 August 2017. The Provider responded with what is generally referred to as a "holding letter" on 4 September 2017. On 5 September 2017 the Complainant wrote to the Provider stating that she was still awaiting a response – it seems clear that this letter crossed in the post with the Provider's letter of the previous day. At the beginning of November 2017 the Complainant, and then her solicitor, sent correspondence to the Provider. The Provider responded on 11 December 2017. A Final Response Letter issued on 22 January 2018.

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The Provider failed to acknowledge receipt of the complaint dated 2 August 2017 for over one month. Furthermore, the Provider then failed to write again to the Complainant until another two months later – on 11 December 2017. Finally, the Final Response letter was forthcoming some five months after the complaint had been submitted. I accept that this constitutes an excessive delay on the part of the Provider in responding to the complaint.

The Provider failed to process an instruction correctly in failing to close the Complainant's account in December 2015 as instructed. Furthermore, the Provider failed to respond to the complaint in a timely fashion.

The balance of the Complainant's complaint primarily concerns allegations against her estranged husband that are outside of the remit of this Office.

Apart from the failures set out above, I cannot hold the Provider responsible for the alleged action of the Complainant's estranged husband.

In its response to this Office dated 28 January 2019, the Provider offered €5,000 as a *"gesture of goodwill"* and *"subject to the complaint being withdrawn"*.

However, I note the Complainant, in an e-mail dated 11 February 2019 rejected this offer as follows:

"The complaint is not being withdrawn. It is a valid complaint and 5000 euro is not adequate compensation and should not be subject to any conditions. I feel I have been wronged, and now also vilified as the forceful one in an event where I was not at fault".

I note the Complainant, in her post Preliminary Decision submission dated 27 January 2020 states that this *"amounted more to a bribe to silence me than an acknowledgement of the Provider's bad treatment of me as a customer"*.

I do not agree with the Complainant in this regard. This Office encourages providers, when they make errors or provide poor service, to accept they have done so and seek to rectify the matter. I believe the Provider's offer of €5,000 for the errors it made was reasonable, and indeed generous, in the circumstances.

On the basis that this offer was received prior to the matter proceeding for adjudication by this Office, and on the basis that I believe it was a very reasonable attempt by the Provider to resolve the complaint, 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.

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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**

25 February 2020

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.