



<u>Decision Ref:</u>	2020-0071
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Opening/Closing Accounts
<u>Conduct(s) complained of:</u>	Maladministration Dissatisfaction with customer service Failure to provide notification /reason for closure Failure to consider vulnerability of customer
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant has been a personal customer of the Provider for some 40 years. He held a personal account with the Provider, and in **September 2008**, he and his sister opened a joint account with the Provider, which was used to pay for the Complainant's mother's nursing home and living expenses.

The Complainant drew down a loan from the Provider in **July 2011**, but fell into arrears on this loan in **April 2013**.

In **August 2015** the Provider issued a notice of closure in respect of the joint account but did not do likewise, in relation to the Complainant's personal account. It seems that, at the time this notice was issued, the Provider had not identified the Complainant's long-standing personal account. The Complainant states that the Provider targeted his mother by closing the joint account. The Complainant has also raised a number of issues with the manner in which the Provider dealt with him, since the loan went into arrears.

The Complainant's Case

The Complainant states that he has been a personal customer of the Provider for 40 years and "... during that time received mortgages, loans etc from [the Provider] and repaid all without missing a payment." The Complainant states that his company also conducts business with the Provider and in **2013** it completed repayments on a loan of €740,000

“... on time and without missing a single payment. My business has also taken out and repayed numerous loans and leasing from [the Provider] all of which have been repayed in full and on time.”

The Complainant also refers to the overdrafts both he and his company have had with the Provider.

The Complainant states that in **2005/2006** he borrowed €60,000 from the Provider to assist with the development of lands to facilitate the growth of his business. The Complainant states that the repayment agreement was that he would repay an agreed sum consisting of interest together with a portion of the principal sum. The Complainant decided to abandon his development plans in **August 2007** due to his concerns regarding the financial crisis. The Complainant submits that he continued to make the agreed repayments. The Complainant states that *“[a]ll during this time I was a customer of [the Provider] both with my business (with an approved overdraft of 40,000, never exceeded) and as a personal customer.”* The Complainant further states that *“I had no personal debt except this loan (outlined above) with [the Provider] as I had paid off my mortgage (with [the Provider]) in circa Nov/2007.”*

The Complainant states that in **October 2008** his mother was admitted to hospital following a protracted serious illness. He says that

“[i]n order to provide transparency for the day to day expenses incurred by my mother ie nursing home fees, clothing, medical etc the family agreed to set up a joint account to service my mother’s financial commitments with myself and my sister ... as co signees to the account.”

The Complainant explains that

“[w]e transferred my mother’s own money from her [account] (in [the Provider]) to this joint account from time to time in order to pay her nursing home fees etc. It was entirely all my mother’s money that was transferred to this joint account. This account was solely used for managing my mother’s care needs.”

He says that

“[i]n circa 2016 [the Provider] wrote to me demanding the immediate repayment of the loan, the balance was 52,000 approx. ... I had no way of paying that amount of money so I immediately contacted my financial adviser / accountant ... as he had been communicating on my behalf, with the [Provider] for a number of years on this issue.”

The Complainant states that these negotiations had gone on for 2 to 3 years with different personnel within the Provider. The Complainant states that during this time he was making the agreed repayments and did not miss any repayments. Referring to a letter from the Provider dated **15 August 2015**, the Complainant states that the Provider informed him that it was closing his joint account because of the unsatisfactory relationship between the

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parties and that the Provider was no longer prepared to offer the Complainant banking facilities. The Complainant states that the Provider further advised that if he didn't clear the funds in the account within 60 days, any money in the account, which was his mother's money, would be offset against his outstanding debt.

The Complainant says that he was

"... deeply hurt, annoyed and embarrassed by this action, which was in my opinion totally unnecessary and designed by [the Provider] to use a woman in a nursing home (my mother) as bait to use against me in order to force the situation."

The Complainant points out that this was happening at a time when his accountant was in negotiations with the Provider regarding his outstanding debt.

In addition to this, the Complainant states that

"... to release details of my financial situation/problems to my sister was unforgiveable and was/is acutely embarrassing for me. Also the acute embarrassment caused to me having to tell my family members details why this account was closed and also having to detail my personal financial problems was one of the worst things I have ever experienced in my life."

The Complainant states that from the date the joint account was closed he had to pay for his mother's expenses from his personal account, which caused further difficulties for him.

In respect of the Provider's decision to close the joint account, the Complainant asks

"... why did the [Provider] not choose to close my personal account or even my business account? Instead they picked on a defenceless woman in a nursing home in order to pursue my debt problem."

The Complainant submits that the Provider would have known from the transactions taking place on the joint account that it was being used solely for his mother and that all of the money in the account was hers. The Complainant states that he and his sister were only administering their mother's money and managing the account on her behalf and for her benefit as she was unable to do so. In a further submission to this Office dated **21 November 2017** the Complainant re-emphasises his complaint in relation to the Provider's actions in respect of the closure of the joint account. The Complainant also states that his complaint relates to the actions of the Provider and

"... the modus operandi they chose to adopt in harassing me despite an agreement in place which I was adhering to at all times – never missing a re-payment."

He refers to a letter dated **29 January 2014** in support of this aspect of his submission.

The Complainant has provided a copy of a loan agreement dated **19 September 2016** which was entered into between the Complainant and the Provider during the negotiation period.

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The Complainant submits that the Provider

"... agreed to a new loan to my company (an associated account) used for the purpose of paying off the outstanding loan. This is the same [Provider] that said I had an 'unsatisfactory relationship' in the letter. This in my opinion shows a complete contradiction on the [Provider's] behalf. How can I be an unwanted 'unsatisfactory' customer one month and a few months later (Sept 16) they are willing to loan me money to pay off the outstanding loan?"

Finally, the Complaint states in this submission that there is also

"... a breach of my privacy with a release by the [Provider] of my personal financial position to my sister who was not in any way connected to the outstanding loan."

In the final paragraph of this submission the Complainant requested an oral hearing for this complaint.

The Provider's Case

The Provider states that the Complainant had a number of banking facilities with it including a term loan. The Provider states that the Complainant breached the terms of his loan account and in view of this unsatisfactory relationship, the Provider's policy dictates the withdrawal of all banking facilities prior to the commencement of enforcement action.

The Provider states that when a customer is in default it will seek to remove any banking facilities held by that customer. This would include all accounts held by a customer irrespective of whether they are sole or joint accounts and/or the facility in default relates directly to the account. The Provider submits that in accordance with the relevant terms and conditions (clause 22.2), it must notify any person named on an account of the intention to close that account. The Provider submits that clause 22.2 does not stipulate the grounds on which it must exercise its right of termination and it is therefore entitled to close the Complainant's joint account without stating a reason. On **15 August 2015**, the Provider states that it issued the Complainant with correspondence confirming its decision to withdraw banking facilities from the joint account and requested that the account be cleared and closed within 60 days.

The Complainant's personal account

"... had not been identified at the time the above notices issued"

because the account

"...had not been linked via the [Provider's] internal system to his Term loan, which therefore led to a delay in the termination of this account."

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The Provider states that it issued a notice to close this personal account on **23 February 2016**. The Provider states that after this, the Complainant engaged with it to address the loan account during which time it allowed the account to remain open. The Provider states that the Complainant's loan was paid in full on **1 November 2016** following which there was no requirement to close the account.

The Provider submits that the Complainant is dissatisfied with its decision to close the joint account. The Provider states that the Complainant confirmed that this account was opened with his sister for the purpose of paying nursing home bills and expenses for their mother and the incorrect closure of this account has caused him undue stress and embarrassment. The Provider states that it did not identify the joint account as being held on behalf of the Complainant's mother at the time the account closure notice issued and the Complainant did not revert to it identifying this account as being held for a specific purpose. The Provider states that it

"... would like it noted that the Complainant did not revert or respond to the closure of the joint account during the 60 day notice period. Had he done so, the [Provider] may have been able to adopt a different approach in relation to that account."

In its submissions to this Office, the Provider has set out a timeline of events beginning with the opening of the joint account on **29 September 2008** followed by the drawdown of the Complainant's loan on **14 July 2011** to the loan account. The Provider states that the loan was drawn down for 60 months with 21 repayments of €383.93 and then 39 repayments of €1,447.95 until the loan was repaid in full. The Provider states that the loan was in the sole name of the Complainant. The Provider submits that the loan fell into arrears on **30 April 2013** as the Complainant had not increased the repayments to €1,447.95 after the first 21 repayments had been made. The Provider refers to the contact made with the Complainant regarding the arrears and also refers to its CACS notes.

The Provider refers to its CACS notes and a call received from the Complainant's accountant on **19 August 2015** in response to the notification letter advising the Complainant that the joint account was going to be closed in 60 days. The Provider states that this letter issued on **15 August 2015**. From **March 2016** the Provider states that it continued to negotiate with the Complainant's accountant to try and find a workable solution for the outstanding debt. The Provider states that in **September 2016** it offered the Complainant a restructure facility for his existing loan. The Provider states that this restructure did not however formalise as the Complainant did not sign and return the requisite documents.

The Provider wishes to reiterate that the terms and conditions of the joint account reserve the right to terminate a contractual relationship with an existing customer subject to the provision of two months' notice to the customer. The Provider submits that it is under no obligation to provide a reason for the account closure. The Provider states that in this instance, owing to the difficulties with the Complainant's loan account it took the decision to refer the Complainant's file for legal action and potential enforcement. As part of that process the Provider notifies a customer of its intention to close the accounts which are linked to that customer.

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The Provider states that in accordance with the terms and conditions associated with the Complainant's accounts, it is required to notify any person named on the account of the intention to close the account. The Provider states that on **15 August 2015** it issued the Complainant with correspondence confirming its decision to withdraw banking facilities and requested that the joint account be cleared and closed within 60 days. This account was then closed on **22 October 2015**. The Provider states that the Complainant's other account was not identified as part of that review and not included in the requests for closure. The Provider states that the Complainant's personal account was identified in **December 2015** and notice for closure issued on **23 February 2016** in line with the next review. The Provider states that the Complainant and his accountant re-engaged with it to resolve the issues surrounding the outstanding loan.

The Provider states that the process by which relevant accounts are identified does not review transactions which take place on the accounts or the purpose for which a particular account was opened. The Provider states that as part of its procedure, it was intended to close all accounts held by the Complainant. The Provider accepts that the Complainant's personal account was missed and later identified. In response to the Complainant's submission that it targeted his mother's account the Provider states that this was not the case. The Provider states that when the Complainant's personal account was identified at a subsequent review, the requisite notice issued. The Provider states that all accounts, held solely or jointly, are closed prior to commencing enforcement action.

The Provider states that the Complainant is also relying on an agreement dated **29 January 2014** wherein the Provider agreed to a reduced repayment arrangement for a period of 6 months. The Provider submits that the terms of this arrangement were for a defined period of time as stated in the agreement. The Provider does not accept that the Complainant had an agreement for reduced repayments following the expiry of that 6 month period.

The Provider states that while it requested the closure of the Complainant's joint account, he continued to have an outstanding loan that was in serious arrears for which the Provider continued to work with him and his accountant to have the debt repaid. The Provider states that it was not its intention to offer new borrowings to the Complainant but to reach an arrangement that would ensure repayment of the outstanding loan.

The Provider states that in closing the joint account it acted within the account terms and condition, the *European Communities (Payment Services) Regulations 2009* and the *Consumer Protection Code, 2012* in providing two months' notice to the Complainant following the decision to close the joint account and this afforded the Complainant sufficient time to arrange alternative banking facilities.

The Provider states that it did not seek to close Complainant's company account because as a limited company it is a separate legal entity.

The Complaint for Adjudication

The complaint is that the Provider:

1. wrongfully and/or unreasonably closed the Complainant's joint account;
2. harassed the Complainant despite the existence of an agreed repayment arrangement in respect of the Complainant's loan, which he was fulfilling;
3. breached his privacy by disclosing his financial position to his sister; and
4. behaved in a contradictory manner by closing the Complainant's joint account on the basis of an unsatisfactory relationship and subsequently offered the Complainant a further loan in **September 2016** to address his outstanding debt.

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 Complainants were 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 8 January 2020, 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.

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

After the preliminary decision had issued to the parties on 8 January 2020, the Complainant made a submission suggesting a number of errors on the part of this office. The Complainant was of the view that the FSPO had totally misrepresented or misunderstood the nature of his complaint.

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The Complainant advised that although he had complained about the closing of the joint account, it was *“the admitted error of not finding/locating [his] long-standing personal account, and the issues that flowed from that action by the [Provider]”* which was *“the main issue”*.

The Complainant referred to his detailed earlier submissions made when he originally made the complaint to the Financial Services Ombudsman and referred in particular to the details he had supplied with his Complaint Form. At that time, in response to a query as to the *“name and type of product/service you are complaining about”* the Complainant confirmed that it was the **“Actions of Bank re joint account”**. When asked when the advice or service he was complaining about had taken place, he confirmed **23 February 2016** as the relevant date. This was not the date of the letter sent by the Provider in August 2015, regarding the joint account, but rather the date of the subsequent letter the Complainant eventually received from the Provider, in relation to his personal account, which the Provider had not identified 6 months earlier.

It is clear however that the elements of the complaint which are identified on page 7 above, are very much interlinked. It is because of the Provider’s failure to locate the Complainant’s long-standing personal account, in August 2015, when it gave him 2 months’ notice of its intention to close the joint account, that led the Complainant to believe that the Provider had *“targeted”* the account which was used to make payments to his mother’s nursing home costs. It is clear that the Complainant does not accept that it was an error by the Provider, that caused his long-standing personal account to be overlooked, and not included as an account to receive 2 months’ notice of closure. Rather, he believes that the Provider’s approach to his financial affairs was designed to maximise the pressure upon him by *“targeting”* the separate account used for his mother’s care costs.

Opening of Accounts

- **Joint Account ending 546**

The Complainant and his sister signed an account opening form dated **26 September 2008**. I note on this form both the Complainant and his sister have provided separate addresses.

- **Personal Account ending 588**

The Provider has furnished an account opening application form signed in the sole name of the Complainant. Above the Complainant’s signature it states:

“By signing this page, you confirm and acknowledge that we have given you a complete set of product documentation for the product you have selected in hard copy or by emailing it to you in Portable Document Format (PDF). If you wish, we can show you the relevant product documentation now (before you sign). The following is a list of the product documentation for the products we offer provided to you:

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- Terms and Conditions - Terms of Business - Schedule of Fees and Charges - Overdraft Interest Rates - [Provider] Data Protection Sheet

The Provider has also furnished a copy of its terms and conditions for the joint account dated **July 2014**. Clause 22.2 of these terms and conditions state:

"We may end these terms and conditions and close your Account by giving you two months' notice."

- **Loan Account ending 842**

The Complainant signed a credit agreement in his personal capacity dated **8 July 2011** wherein the Provider agreed to advance to the Complainant the sum of €55,000 for the purpose of restructuring an existing facility subject to the following repayment terms as set out at paragraph 12:

"... The loan is repayable in full within 60 months from date of restructure. Monthly interest & part-capital payments of €383.93 at the current indicative interest rate will apply for a period of 21 months from date of restructure. Monthly repayments of capital and interest will commence following this period at a rate sufficient to redeem the Loan within the remaining repayment term of 39 months."

This loan was drawn down on **14 July 2011** to the Complainant's loan account.

Arrears and Account Closure

The Complainant's loan fell into arrears around **30 April 2013**. From about **11 May 2013** the Provider began sending the Complainant arrears letters. Subsequent letters advised the Complainant that if the arrears were not addressed the entire amount of the loan would become immediately payable. The Provider's letters then began to advise that legal proceedings may be commenced to recover the money advanced on foot of the credit agreement.

By letter dated **29 January 2014**, the Provider agreed the following interim payment arrangement:

"To continue to lodge €384.00 each month from 31/01/2014 for 6 months (the "Waiver Period") to the above account.

...

Interest will continue to accrue during the Waiver Period on the outstanding balance of the Account at the current rate.

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For the avoidance of doubt any portion of capital or interest repayment not paid during the Waiver Period that would otherwise have been due but for this interim payment arrangement will still remain payable on the termination of the Waiver Period.

In this regard after the Waiver Period and unless a further alternative repayment arrangement is arranged in accordance with the Code you agree that the Bank will have the discretion to adjust the amount or frequency of your repayments in order to ensure that the loan is repaid by the scheduled repayment date of the loan or such later date as the Bank may decide. ...”

I note that this 6 month interim arrangement expired in **July 2014**, after which the Complainant was again in default. By letter dated **2 June 2015** the Provider advised the Complainant that the arrears on his loan stood at approximately €26,500.

The Provider sent the Complainant an account closure notification letter in respect of the joint account dated **15 August 2015**. This letter states as follows:

“We regret to advise you that, because of the unsatisfactory relationship with [the Provider], the [Provider] with effect from 60 days of the date of this letter, is no longer prepared to offer you banking facilities. Please arrange to clear and close your account as soon as possible.

*If the account is not closed within 60 days, the [Provider] will close your account and **if there is any outstanding balance this will be offset against your outstanding debt.** Any residual balance remaining at that time will be forwarded to you. In addition all cards, direct debits and standing order instructions held by the branch (if any), will be cancelled and all cheques, direct debits and other debits on the account will be returned unpaid, unless there are sufficient cleared funds in the account to meet such items...”*

[my emphasis]

By letter dated **31 August 2015**, the Provider advised the Complainant that the arrears stood at almost €30,000. The joint account was closed on **22 October 2015**. Following the closure of the Complainant’s joint account, he received further correspondence from the Provider dated **30 November 2015** advising him that his loan was approximately €32,500 in arrears.

By letter dated **23 February 2016** the Provider, referring to the Complainant’s personal account, wrote to the Complainant in the following terms:

“We regret to advise you that, because of the unsatisfactory relationship with [the Provider], the [Provider] with effect from 60 days of the date of this letter, is no longer prepared to offer you banking facilities. Please arrange to clear and close your account as soon as possible. ...”

In a letter of offer dated **19 September 2016**, 7 months later, the Provider agreed to advance a loan facility to the Complainant’s company. The purpose of this loan was:

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“... to assist with the restructure and current account facility referenced in a previous offer letter ... issued by the [Provider] to the Borrower relating to Current Account No. ... and Loan Account No. ...

The Borrower acknowledges that one of the purposes of this Offer Letter is to restate and amend the Existing Offer Letter in relation to a loan or loan (the “Loan”) that has or have already been drawn down.”

The loan account being referred to is the account to which the Complainant drew down the loan advanced on **8 July 2011**.

The Provider wrote to the Complainant by letter dated **1 November 2016** informing the Complainant that it has not received any communication from the Complainant indicating that he was accepting the offer contained in the Provider’s letter of **19 September 2016**.

The Complainant discharged the full amount outstanding on the loan on **1 November 2016**.

The Provider’s CACs

The Provider’s CACs also provide a picture of the efforts being made by both parties to this complainant to recover/repay the outstanding loan. In the Provider’s CACs dated **23 October 2013** it is noted that the Complainant had *“... some interest in the sale of [a] site.”* The CACs indicate that this was the primary means by which the Complainant was going to discharge his loan. Subsequent CACs chronicle the progress made in respect of the sale of this site. In a subsequent CAC dated **15 July 2015** the following note is made in respect of an outgoing call to the Complainant:

“... Gave update that sale close to going thru – we hold a letter of undertaking from solr that proceeds of sale will cif loan – as per NAM [Network Area Manager] note alot of interest & expected to get e110k – ... I advised dbtr we could not wait for sale much longer as seems he is waiting for property prices to go up – dbtr said sale is imminent ... If no solid progress made or nothing in writing I advised we would need to go a different route (i.e. R/S or legal) dbtr understood ...”

In a further CAC dated **14 August 2015** the Provider attempted to contact the Complainant by telephone to get an update on the sale of the site. The Provider was unable to speak to the Complainant on this occasion. Following this, the closure letter issued the following day to the Complainant in respect of the joint account. On **19 August 2015** the Complainant’s accountant contacted the Provider in response to the notification of closure letter. The entry in respect of this conversation states:

“... I advised that we need to get solid proposals in place as case has been going on too long – Dbtr continues to pay e384 p/m towards T/L which is unsustainable in the long term – Still awaiting sale of property which dbtr & accountant proposes to use proceeds to cif T/L.”

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Analysis

The First Element of the Complaint

The terms and conditions governing the parties' relationship permit the Provider to close the Complainant's joint account following two months' notice. Such a course of action is permitted by regulation 56(3) of the ***European Communities (Payment Services) Regulations 2009*** (S.I. No. 383/2009). It is important to note that this Office will not interfere with the commercial discretion of a financial services provider unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainant.

The Provider advanced a loan to the Complainant in **July 2011** with defined repayment terms. While the Complainant was making some repayments under the loan, he failed to make the required repayments from April 2013 and fell into arrears. Following this, the Provider took the decision to cease to provide banking facilities to the Complainant. The consequence of this was the closure of the Complainant's accounts.

The Provider issued the Complainant with a letter dated **15 August 2015** notifying him that his joint account was scheduled to close in 60 days. In the period between the time the Complainant first fell into arrears on his loan repayments and the date the joint account was closed, as the above discussion demonstrates, efforts were made by the parties to resolve the Complainant's arrears.

However, at the time the Provider notified the Complainant of its intention to close the joint account, two and a half years had passed since the loan had fallen into arrears and no resolution had been achieved. Furthermore, the Complainant was making significantly reduced repayments, which had not been formally agreed to by the Provider and arrears on the loan stood at approximately €30,000.

At the time the account closure notice issued in respect of the joint account, the Provider states that it was not aware of the Complainant's long standing personal account as it had not been "linked" to the Complainant, via its internal system. This account was identified by the Provider in **November 2015** and a notice of closure issued in respect of this account in **February 2016**.

When one considers the timeline of events leading up to the notice of closure in respect of the joint account and the point at which negotiations had reached, I accept that the Provider reached its decision to close the joint account in a reasonable manner. Owing to the Provider's bizarre failure to identify the Complainant's long-standing personal account at the branch, it is understandable that the Complainant felt that his mother's position was being targeted. His personal account had been in place for an extensive number of years but no closure notification was issued in respect of that account. Rather, the account which the Complainant and his sister together used to manage their mother's nursing home needs, was the subject of a closure notification.

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In my opinion, however, this was not a deliberate attack on the Complainant's mother's position, but rather it was a poorly executed and somewhat sloppy measure taken by the Provider to notify the pending closure of all of the Complainant's accounts, except that his personal account ending 885 was in fact overlooked. This caused very considerable upset and confusion to the Complainant. The Provider was however, entitled to call for closure of that joint account irrespective of the purpose of the account, because it was an account held in the Complainant's name (in this case, jointly). If the error in question had not happened, and if the Complainant had been notified in August 2015 by the Provider that his personal account was also then on 2 months' notice of closure, it seems likely that this would have caused additional problems for the Complainant, rather than in some way improving his position.

I note that once the Complainant's personal account was subsequently identified, the Provider issued a closure notice in respect of this account also. Taking these matters into consideration I do not accept that the Provider wrongfully and/or unreasonably closed the Complainant's joint account. In my opinion, adequate notice was given to enable alternative arrangements to be made, and to ensure that the contents of the account would not be exposed to being diverted towards the Complainant's debt. I note in that respect that the Provider's letter giving 2 months' notice of closure warned that:

"... if there is any outstanding balance this will be offset against your outstanding debt ..."

If the account had not been closed within the 2 month notice period, the Provider seems likely to have moved to itself close the account, and the Provider may have sought to apply any remaining funds within the account, towards the reduction of the Complainant's remaining debt. Whilst I note that the Complainant is of the very firm view that the money within the account belonged to his mother, and one can clearly understand why he was of that opinion, that money was nevertheless held in the joint names of the Complainant and his sister, rather than held in his mother's name, and the money was therefore at risk of being applied towards his debt, if the account had not in fact been closed within the 2 month period.

The Second Element of the Complaint

The Complainant says that the Provider harassed him despite the existence of an agreed repayment arrangement in respect of the Complainant's loan. The repayment terms of the loan are set out in the credit agreement referred to above. By letter dated **29 January 2014** an alternative repayment arrangement was entered into between the Provider and the Complainant. This arrangement was to last for a 6 month period commencing on **31 January 2014**.

The Complainant has not furnished any evidence to demonstrate that this arrangement was to continue beyond the 6 month period and neither has he produced evidence of any further alternative arrangement entered into with the Provider. In those circumstances, there is no

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evidence to suggest that the Provider harassed the Complainant during the period of the alternative repayment arrangement or after it expired in July 2014.

The Complainant was in arrears on his loan since **April 2013** and the communications between the Provider and the Complainant/the Complainant's accountant focused on addressing the arrears and discharging the loan. There is no evidence in this complaint to suggest that the Provider harassed the Complainant at any point from when the loan fell into arrears until it was discharged. I would also note that the Complainant has not identified any specific instances of harassment by the Provider.

The Third Element of the Complaint

The Complainant states that the Provider breached his privacy by disclosing his financial position to his sister. The source of this breach is the closure letter issued on **15 August 2015**. In a submission to this Office dated **15 May 2018** the Complainant states that the Provider has omitted "... to state that they issued this closure letter to me and my sister ..., her name was on the top of the letter." In a submission dated **24 May 2018**, the Provider

"... acknowledges the salutation was to [the Complainant's sister]. As the address the letter issued to is that of [the Complainant] and only one letter issued ... [T]here was no information contained within the letter relating to any other account other than that of the account the [Provider] wished to have closed. The First named Complainant has not provided any evidence to suggest that a second letter issued directly to [the Complainant's sister]."

The letter dated **15 August 2015** relates to the closure of the joint account. This letter is correctly addressed to the Complainant. His name, followed by his address, is typed at the top of the letter. However, the salutation above the main body of the letter refers to the other joint account holder, the Complainant's sister. I note from the evidence that this letter was received by the Complainant. In particular, in a call which took place between the Provider and the Complainant's accountant on **19 August 2015**, the accountant makes reference to the Complainant having received this letter. The Provider states that this letter was not sent to the Complainant's sister. I note that the Complainant has not produced any evidence to suggest that this letter was in fact sent to, or received by, his sister.

The letter does not contain details of the Complainant's personal account or the Complainant's loan account. The letter appears to be pro-forma in nature and outlines, in a general manner, the Provider's account closure process. However, while the letter states that

"... if there is any outstanding balance this will be offset against your outstanding debt ..."

I do not accept that the letter sufficiently refers to, discusses or discloses the Complainant's financial position such that the Provider's conduct in the particular circumstances, would be considered contrary to the provisions of **section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017**. Furthermore, it is important to bear in mind that, irrespective of the

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contents of this letter, the Complainant has not demonstrated that it was sent to his sister by the Provider.

The Fourth Element of the Complaint

The Complainant says that the Provider behaved in a contradictory manner by closing the Complainant's joint account on the basis of an unsatisfactory relationship and subsequently offered the Complainant a further loan in **September 2016** to address his outstanding debt. It is important to note that this Office can investigate the procedures and conduct of the Provider but it will not investigate the commercial decision of the Provider to extend loan facilities which is a matter for the Provider and the Complainant and does not involve this Office whose role is an impartial adjudicator of complaints. This Office will not interfere with the commercial discretion of a financial services provider unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainant.

A loan was offered to the Complainant's company in **September 2016**. The Complainant's company is a separate legal entity. While there may have been discussions between the parties about extending this or a similar facility to the Complainant in his personal capacity, the loan was not offered to the Complainant in his personal capacity. However, regardless of whether the loan was offered to the Complainant or to the Complainant's company, I do not accept that the Provider acted in a manner that was unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainant. Any measure offered by the Provider to the Complainant which might have assisted his financial position, was potentially therefore of benefit to the Complainant, if he chose to proceed in that way.

Ultimately, I note that the Complainant was in a position to access funds in order to fully discharge the loan which had been in arrears, thereby ending the difficulties he had encountered with the Provider. I also note that the Complainant's personal account has remained open, notwithstanding a closure notification issued to the Complainant in February 2016, and even though his loan account was not redeemed in full until November 2016. Although the Provider has suggested that it "*agreed*" to keep that account open, this comment has caused the Complainant further aggravation, as he points out that there was no such "*agreement*" reached.

It is unfortunate that after a long number of years of a satisfactory relationship between the Complainant and the Provider, the Complainant's inability to meet his loan repayments in the way which had been set down in the 2011 loan documentation, ultimately led to a very much soured relationship by 2015. In my opinion, this was contributed to in no small measure by the Provider's notification of closure of the Complainant's joint account used for his mother's nursing home costs, whilst leaving his personal account open, as it created the impression with the Complainant that the provider was "*targeting*" his mother.

The Provider was however entitled to act in the manner in which it did, because the Complainant was not making the full amount of the repayments which were falling due. Consequently, although the Complainant's frustrations are somewhat understandable, for

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the reasons outlined above, there is no reasonable basis upon which it would be appropriate to uphold this complaint as the evidence discloses no significant wrongdoing on the part of the Provider.

Certainly, the Provider made an error in failing to include the Complainant's personal account when the notification of closure was sent to him in August 2015, regarding the joint account used to manage the Complainant's mother's nursing home costs. I cannot accept however that this error led to the Complainant being prejudiced in any way. Indeed, the Provider's error was arguably to the Complainant's benefit, as he continued to be able to operate his separate personal account for a number of additional months, before the Provider noticed its error and then sent a letter giving him 2 months' notice of the Provider's intention to close that account.

For the reasons detailed above, and on the basis of the evidence before me, I do not consider that the various elements of the Complainant's complaint can be upheld.

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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

17 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.