



<u>Decision Ref:</u>	2020-0192
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

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

The Complainants held a joint personal current account with the Provider. In **December 2016**, the Provider requested that the First Complainant provide it with certain documentation pursuant to its obligations under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the **2010 Act**). On **4 July 2017**, the Complainants' current account was closed by the Provider on the basis that the First Complainant failed to provide the requested documentation.

The Complainants' Case

The First Complainant states that he received two telephone calls from the Provider asking him how he was living. He states that nothing was explained to him during these calls. The First Complainant states that the Provider's [Branch A] asked that he bring in certain documentation which he states he did immediately. The First Complainant states that neither Complainant heard anything further from the Provider until the First Complainant was told that his account was closed. The First Complainant states that this account was used to pay for food and bills and at the time the account was closed it had a balance of approximately €700. The Complainants state that they could not access their money for over a week and no explanation was given as to why this was the case. The First Complainant states that he received no letter or telephone call from the Provider explaining what had happened except for infrequent calls from the Provider's [Branch B].

The Complainants state that they were upset and stressed by the situation. The First Complainant states that he was so worried about what he had been told that he went to the immigration office. The Second Complainant states that the Complainants were told by the immigration office that the account was closed due to the First Complainant's country of origin being a high-risk country. The First Complainant states that he missed two days of work because he found the situation so worrying. The Complainants state that none of their calls to the Provider explained why their account had been closed. The First Complainant is of Middle Eastern origin and states that it was suggested to the Second Complainant that this was the reason for the closure of their account.

The First Complainant states that significant disruption has been caused to the Complainants' lives. The First Complainant states that his joint business account and the Second Complainant's personal account (both held with the Provider) remained open and that he was able to pay the cheque he received from the Provider in respect of the monies contained in his closed account into the joint business account. The First Complainant states that he was subsequently able to open a new account with another provider without any trouble.

The Second Complainant states that the Provider did not inform the Complainants that all legal requirements were not satisfied when they opened the account in **October 2015**. She further states that there was no problem with the documentation provided when the account was opened. She states that the First Complainant did not understand the implications of the questions he was being asked by the Provider during their telephone conversations because they were not explained by the Provider. She states that she did not receive any telephone calls or letters asking her for further information. It is further stated that no requests were received for further information until the [Branch A] requested additional documentation.

The Second Complainant states that there was no acknowledgement from the Provider informing the Complainants that their documentation was received or that it was insufficient. The Second Complainant states that there was no answer from the Provider to their numerous calls regarding the closure of their account. The Second Complainant states that she spoke to the manager of the [Branch B] who then raised an internal complaint and to customer services who also raised an internal complaint. The Complainants state that they went above and beyond to give the Provider the documentation sought.

The Complainants state that they did not receive the Notice to Close letter dated **25 April 2017**. In response to the Provider's statement that the Complainants' position that their address was updated in **March 2017**, the Complainants state that their correct address appeared on a February statement following a meeting at the Provider's [Branch B].

The Complainants state that they complained to the Provider's branch managers and it took over a week to investigate their complaint. The First Complainant states that the Provider's conduct has damaged his good name. The Complainants state that at no point did they refuse to give the Provider information. They state that they feel discriminated against and victimised by the Provider.

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Finally, the Complainants state that two other financial service providers were aware that their account had been blocked.

The Provider's Case

The Provider states that the 2010 Act requires it to apply an enhanced level of customer due diligence in all cases where a customer relationship/potential customer relationship is considered to be of a higher risk of money laundering or terrorist financing.

The Provider states that it has a positive obligation under section 54 of the 2010 Act to adopt policies and procedures to prevent and detect money laundering and terrorist financing. The Provider states that the 2010 Act is not prescriptive in respect of the content of such policies and procedures nor is it prescriptive as to how or when a provider must apply additional measures. It states that each regulated entity must adopt a risk based approach which is aimed at mitigating the risk of money laundering and terrorist financing. The Provider states that it has a number of obligations in this regard, including the obligation to:

- Review and carry out customer due diligence on an on-going basis;
- Identify the customer and verify their identity and residential address; and
- Verify source of funds and source of wealth.

The Provider states that its risk management of the Complainants was objective, fair and unbiased.

The Provider states that the Complainants' account was classified as being of a higher risk of money laundering or terrorist financing and as such was subjected to an enhanced due diligence review on an annual basis pursuant to its legal obligations under the 2010 Act. The Provider states that as part of this process in **December 2016** it requested documentary evidence in respect of the Complainants' source of funds into the account together with clarification of visa status.

The Provider states that it deemed clarification as to the visa status of the Complainants as being a necessary component of its due diligence requirement. The Provider states that the request for additional information demonstrates that the Provider undertook a level of due diligence appropriate in the circumstances.

It states that in line with its procedures a 21 day notice period was specified in this correspondence. It states that several requests were made to obtain the required documentation, including the granting of a 21 day extension. It states that no documentation was provided by the Complainants to support or verify their source of funds. As a result, the Provider was unable to comply with its legal obligations under the 2010 Act and it proceeded to close the account.

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The Provider states that the Complainants ultimately refused on **25 April 2017** to provide the requested documentation. The Provider states that a 60 day Notice to Close letter issued to the Complainants and the account was closed on **4 July 2017**.

The Provider states that pursuant to the terms and conditions applicable to the Complainants' account, it may terminate its agreement with the Complainants at any time on two months' notice. It further states that it is under no obligation to provide any reason in such instances. It is the Provider's position that the account was closed in full accordance with the terms and conditions applicable to the account. The Provider refers to clause 16 and clause 22 of its terms and conditions in this regard.

The Provider states that while telephone calls are not recorded at branch level, its personnel at the branches the Complainants dealt with recall multiple telephone calls/interactions with the Complainants during the period to which this complaint relates.

With respect to the Second Complainant's personal account the Provider states that this account was subjected to due diligence at account opening and is subject to a separate and distinct due diligence review cycle to that applied to the account the subject of this complaint. The Provider makes a similar argument in respect of the Complainants' joint business account.

In addressing the blocking issue raised by the Complainants, the Provider states that it did not make other financial institutions aware that the Complainants' account was blocked. The Provider further states that it is not appropriate for it to comment on matters which are outside its knowledge or control which include actions taken by third party providers. It rejects any inference that it influenced or was responsible for the decision of third party providers in this regard.

The Provider states that it rejects any assertion that the rationale behind the issuance of the 60 day Notice to Close letter was one of ethnicity and further denies that the Complainants were discriminated against or victimised under the Equal Status Acts 2000 to 2015.

With respect to the change of address, the Provider states that it received a request from the Second Complainant to change the Complainants' address on **23 February 2017**. It states that it issued separate correspondence to the Second Complainant and First Complainant on **23 February 2017** and **28 February 2017** respectively; as it required the consent of both account holders to effect the change (copies of these letters have been furnished by the Provider). The Provider states the Complainants' address was changed on **15 March 2017**.

The Complaint(s) for Adjudication

The Complainants have raised a number of points and asked a series of questions in respect of the Provider.

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I must firstly point out that any complaint relating to the Equal Status legislation is a matter for the Workplace Relations Commission and will not form part of this investigation.

Furthermore, it is important to note that pursuant to section 44(1)(a) of the **Financial Services and Pensions Ombudsman Act 2017** (the **2017 Act**) this Office is empowered to consider complaints in respect of the provision of, an offer to provide, or a failure to provide a financial service.

Taking this into consideration, the complaint for adjudication is that the Provider:

1. Wrongfully closed the Complainants' joint personal account;
2. Failed to communicate with the Complainants regarding the requested documentation and the closure of their account;
3. Caused disruption, anxiety, stress and upset to the Complainants and damage to the First Complainant's good name;
4. Failed to correctly handle the Complainants' complaints.

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 28 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.

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Following the issue of my Preliminary Decision, the parties made the following submissions:

1. Letter from the Complainants to this Office dated 27 January 2020 (received 30 January 2020).
2. E-mail from the Complainants to this Office dated 11 February 2020.
3. E-mail from the Complainants to this Office dated 12 February 2020, together with enclosures.
4. Letter from the Complainants to this Office dated 14 February 2020.

Copies of the above submissions were transmitted to the Provider for its consideration.

The Provider has not made any further submission.

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

The Complainants throughout their post Preliminary Decision submissions request for a full disclosure by the Provider of all information. They also submit that the Provider has failed to disclose everything after a freedom of information request.

At the outset I must state that any matters relating to access to data under data protection or freedom of information legislation are matters for the Data Protection Commissioner and the Information Commissioner respectively.

I am satisfied that I received the necessary information to complete a robust investigation and arrive at my decision.

The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the 2010 Act).

The conduct complained of by the Complainants emanates from the Provider's actions pursuant to its obligations under the 2010 Act. I have had regard to the 2010 Act and I propose to set out certain of its provisions.

In particular, I note section 33 of the 2010 Act which deals with the identification and verification of customers, states:

“(1) A designated person shall apply the measures specified in subsections (2) and, where applicable, (4), in relation to a customer of the designated person—

(a) prior to establishing a business relationship with the customer,

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(b) prior to carrying out an occasional transaction with, for or on behalf of the customer or assisting the customer to carry out an occasional transaction,

(c) prior to carrying out any service for the customer, if, having regard to the circumstances, including —

- (i) the customer, or the type of customer, concerned,*
- (ii) the type of any business relationship which the person has with the customer,*
- (iii) the type of service or of any transaction or product in respect of which the service is sought,*
- (iv) the purpose (or the customer's explanation of the purpose) of the service or of any transaction or product in respect of which the service is sought,*
- (v) the value of any transaction or product in respect of which the service is sought,*
- (vi) the source (or the customer's explanation of the source) of funds for any such transaction or product,*

the person has reasonable grounds to suspect that the customer is involved in, or the service, transaction or product sought by the customer is for the purpose of, money laundering or terrorist financing, or

...

2) The measures that shall be applied by a designated person under subsection (1) are as follows:

(a) identifying the customer, and verifying the customer's identity on the basis of documents (whether or not in electronic form), or information, that the designated person has reasonable grounds to believe can be relied upon to confirm the identity of the customer, including—

- (i) documents from a government source (whether or not a State government source), or*
- (ii) any prescribed class of documents, or any prescribed combination of classes of documents;*

(b) identifying any beneficial owner connected with the customer or service concerned, and taking measures reasonably warranted by the risk of money laundering or terrorist financing—

- (i) to verify the beneficial owner's identity to the extent necessary to ensure that the person has reasonable grounds to be satisfied that the person knows who the beneficial owner is, and*

(ii) in the case of a legal entity or legal arrangement of a kind referred to in section 26, 27, 28 or 30, to understand the ownership and control structure of the entity or arrangement concerned.

(3) Nothing in subsection (2)(a)(i) or (ii) limits the kinds of documents or information that a designated person may have reasonable grounds to believe can be relied upon to confirm the identity of a customer.

...

(8) A designated person who is unable to apply the measures specified in subsection (2) or (4) in relation to a customer, as a result of any failure on the part of the customer to provide the designated person with documents or information required under this section—

(a) shall not provide the service or carry out the transaction sought by that customer for so long as the failure remains unrectified, and

(b) shall discontinue the business relationship (if any) with the customer.”

Section 39 deals with enhanced due diligence in cases of heightened risk:

“Where a designated person has reasonable grounds to believe that the circumstances relating to a customer, beneficial owner, service, product or transaction may present a heightened risk of money laundering or terrorist financing, the designated person shall, as respects that customer or beneficial owner, apply additional measures to those specified in this Chapter.”

Finally, section 54 deals with internal policies and procedures:

“(1) A designated person shall adopt policies and procedures, in relation to the designated person's business, to prevent and detect the commission of money laundering and terrorist financing.

(2) In particular, a designated person shall adopt policies and procedures to be followed by persons involved in the conduct of the designated person's business, that specify the designated person's obligations under this Part, including—

(a) the assessment and management of risks of money laundering or terrorist financing, and

(b) internal controls, including internal reporting procedures for the purposes of Chapter 4.

(3) The policies and procedures referred to in subsection (2) include policies and procedures dealing with—

(a) the identification and scrutiny of complex or large transactions, unusual patterns of transactions that have no apparent economic or visible lawful purpose and any other activity that the designated person has reasonable grounds to regard as particularly likely, by its nature, to be related to money laundering or terrorist financing,

(b) measures to be taken to prevent the use for money laundering or terrorist financing of transactions or products that could favour or facilitate anonymity,

[(c) measures to be taken to keep documents and information relating to the customers of that designated person up to date,

(d) additional measures to be taken in accordance with section 39 and the circumstances in which such measures are to be taken, and

(e) measures to be taken to prevent the risk of money laundering or terrorist financing which may arise from technological developments including the use of new products and new practices and the manner in which services relating to such developments are delivered. ...”

Terms and Conditions

The Provider has furnished a copy of its terms and conditions dated **July 2014**. Clause 16 states:

“16.0 Identification

16.1 We have legal duties under laws concerning money laundering, financing of terrorism and taxation. You agree to give us the following information to allow us to fulfil these duties:

(a) Proof of your identity and your address;

*(b) How you got the money that you wish you pay into your Account;
and*

(c) Facts about the person, business or group to whom you wish to pay money from your Account.

Clause 22 states:

“22.0 Ending this Agreement and Interruption to Services

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

...

22.4 *We may close your Account immediately or block any payment from it if:*

...

(iv) you have failed security checks;

...

(vi) we are required to do so by law, regulation or direction from an authority we have a duty to obey;

...

(vii) you have breached these terms and conditions.

22.5 *We do not have to notify you beforehand if we close or block your Account for any reason listed in Clause 22.4. We are not liable to you or anyone else if we close or block your Account for any reason listed in Clause 22.4. ..."*

Correspondence

A number of documents have been submitted in evidence by the parties to this complaint. I now propose to set out details from some of these. In a letter from the Provider to both Complainants dated **25 April 2017** it states:

"We urgently need proof of your identity, address and funds

Dear [First Complainant & Second Complainant]

*I previously wrote to you requesting additional documentation from you. We haven't received this documentation yet and this matter is now urgent. Please now provide the following documents **as a matter of urgency**:*

One proof of identity for yourself

...

One proof of address for yourself

...

Proof of source of funds/wealth

An original copy of a document detailing the source of funding for the account, for example:

- *A payslip*
- *Bank statement showing your income*

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- A letter from your employer confirming employment and salary
- Salary Certificate
- Social Welfare receipt(s).

...

Important – Notice of Account Closure

If the required information/documentation detailed above is not provided to us within two months from the date of this letter, [the Provider] will no longer be in a position to offer you banking facilities. The [Provider] may close or block your account as of the 26th June 2017 and if it does so will forward any balance due to you at that time. After that date no lodgements will be accepted.

This Notice of Account Closure is given to you in compliance with the Termination clause in the [Provider's] Account opening Terms and Conditions. ..."

In its final response letter dated **25 July 2017**, the Provider states:

"... Beginning in December 2016, the [Provider] contacted you on a number of occasions and requested updated information in relation to [the First Complainant's] employment status, an up to date Visa, along with details of source of funds and/or source of wealth. ..."

As the documents provided by you did not allow the [Provider] to meet the above mentioned obligations and further requests for additional documentation was not responded to by you, the [Provider] issued a letter to you on 25 April 2017 advising that unless the documentation requested was provided, the [Provider] would have no option but to close your account within 60 days ..."

Statements furnished by the Provider

The Provider has furnished three statements prepared by its staff at the various branches involved in this complaint. I will now outline certain parts of these statements.

The first statement is that of the Customer Service Manager of the [Branch B].

This individual states that they received an email from the Provider's Network Office to complete enhanced due diligence and to contact the First Complainant to obtain documents in relation to source of wealth and source of funds, evidence of employment and a copy of an up to date visa. The Provider's agent states that on **20 December 2016** numerous attempts were made to contact the First Complainant but these were unsuccessful.

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This agent states that on **23 January 2017**, contact was made with the First Complainant and it was explained to him that the Provider was updating its records and required the above mentioned documents. The agent states that the First Complainant confirmed that he was not working at that point in time however, he was preparing to start his own business with the Second Complainant. The First Complainant also stated that he did not have an up to date visa.

The Provider's agent also states that the First Complainant informed them that he was on his own at the time and did not fully understand everything being said to him and that he would return the call or call in to the branch.

Later the same date the First Complainant returned the agent's call and the Second Complainant was in the background. In addition to reiterating the above, the agent states that the First Complainant stated that he had a 5 year work permit. The First Complainant was advised to bring the relevant documents to the [Branch B] however, since he no longer resided in that county it was agreed that he would bring them to the local [Branch A] in the coming days.

The agent then states that by **3 February 2017**, no documents were received and he tried to contact the First Complainant but there was no response. The agent spoke with the First Complainant on **16 February 2017** who confirmed he would provide the relevant documents.

The agent states that the Second Complainant contacted them on **20 February 2017** and expressed her annoyance that the Provider was requesting these documents one year after the account was opened. The Second Complainant confirmed that she would bring the documents to the [Branch A] and also change the correspondence address on the account to reflect the Complainants' new address.

The agent states that on **23/24 February 2017**, the Complainants brought certain documents to the [Branch A] which were then forwarded to the relevant department. The agent states that on **7 March 2017** no documents were received at the branch or Network Office and unsuccessful attempts were made to contact the Complainants. On **16 March 2017**, the agent states that some documents were received but none relating to source of funds/source of wealth. The Complainants state that their neighbours delivered documents to the Provider's [Branch A] on **14 March 2017**. The agent states that they informed the Network Office on **25 April 2017** that despite numerous telephone calls the Complainants had failed to provide the additional information.

The second statement has been provided by the Provider's Customer Service Manager at the [Branch A].

This agent states that on **27 February 2017**, the Second Complainant dropped in passports, address verification and some other documentation which were then forwarded to the Network Office. In the timeline provided by the Provider it states that on **23 February 2017** the First Complainant's passport and visa were furnished to its [Branch B].

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On **10 July 2017**, the Second Complainant contacted this agent to inform them that her account had been closed. Following this, on **11 July 2017**, the agent [from Branch B] faxed a copy of the letter dated 25 April 2017 to this agent which was then given to the Second Complainant.

The third statement has been provided by the Provider's Manager in the [Branch C]. In a very short statement this agent states that around the end of July and the beginning of August 2017, the Second Complainant called on a number of occasions to explain the issue she was having with the Provider wanting to close her joint account because the First Complainant had not provided the necessary documentation.

Consumer Protection Code

A number of the provisions of the Consumer Protection Code 2012 (the **Code**) are of relevance to this complaint. In particular, I note the following.

"A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

2.1 acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;

2.2 acts with due skill, care and diligence in the best interests of its customers;

...

2.8 corrects errors and handles complaints speedily, efficiently and fairly;

...

2.11 without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services;"

In terms of telephone contact and the provision of information to customers the Code states:

"3.40 A regulated entity may make telephone contact with a consumer who is an existing customer, only if:

a) the regulated entity has, within the previous twelve months, provided that consumer with a product or service similar to the purpose of the telephone contact;

...

3.44 When making a personal visit or telephone contact in accordance with this Code, the representative of a regulated entity must immediately and in the following order:

- a) identify himself or herself by name, and the name of the regulated entity on whose behalf he or she is being contacted and the commercial purpose of the contact;
- b) inform the consumer that the telephone contact is being recorded, if this is the case;
- c) where relevant, disclose to the consumer, the source of the business lead or referral supporting the telephone contact; and
- d) establish if the consumer wishes the personal visit or telephone contact to proceed and, if not, end the contact immediately.

4.1 A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.

4.2 A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following:

- a) the urgency of the situation; and
- b) the time necessary for the consumer to absorb and react to the information provided.”

Finally, Chapter 10 of the Code deals with complaints:

“10.9 A regulated entity must have in place a written procedure for the proper handling of complaints.... At a minimum this procedure must provide that:

- a) the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received;
- b) the regulated entity must provide the complainant with the name of one or more individuals appointed by the regulated entity to be the complainant’s point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further;

c) the regulated entity must provide the complainant with a regular update, on paper or on another durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made;

d) the regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; where the 40 business days have elapsed and the complaint is not resolved, the regulated entity must inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the complaint and must inform the consumer that they can refer the matter to the relevant Ombudsman, and must provide the consumer with the contact details of such Ombudsman; and

e) within five business days of the completion of the investigation, the regulated entity must advise the consumer on paper or on another durable medium of:

- i) the outcome of the investigation;*
- ii) where applicable, the terms of any offer or settlement being made;*
- iii) that the consumer can refer the matter to the relevant Ombudsman, and*
- iv) the contact details of such Ombudsman.*

10.10 A regulated entity must maintain an up-to-date log of all complaints from consumers subject to the complaints procedure. This log must contain:

- a) details of each complaint;*
- b) the date the complaint was received;*
- c) a summary of the regulated entity's response(s) including dates;*
- d) details of any other relevant correspondence or records; e) the action taken to resolve each complaint;*
- f) the date the complaint was resolved; and*
- g) where relevant, the current status of the complaint which has been referred to the relevant Ombudsman.*

10.11 A regulated entity must maintain up to date and comprehensive records for each complaint received from a consumer."

Having considered the evidence and submissions of the parties in this complaint I note that the Provider first made the Complainants aware of the due diligence request in **December 2016** with a telephone call to the First Complainant.

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No contemporaneous note or memorandum of this call has been furnished by the Provider. The First Complainant has not given any detail surrounding this call either except that the Provider asked him how he was living. I am satisfied from the evidence in this case, and from the emails set out below, that the Complainants were aware from a very early stage of the various documents the Provider required them to provide.

These related to proof of identity, address and source of funds/wealth. The Complainants complied with the first two categories requested however, there were issues surrounding the Complainants' compliance with the third category: proof of source of funds/wealth.

In the Provider's letter dated **5 April 2017**, reference is made to previous correspondence. This has not been furnished by the Provider. I would also note the lack of written correspondence from the Provider to the Complainants regarding the due diligence being conducted. The letter of **5 April 2017** is somewhat generic and while the Complainants had provided sufficient proof of identify and address at that point in time, this was sought in the letter together with proof of source of funds/wealth. However, viewed in the context of all of the communications in this case up to that point, it was clear what was required of the Complainants. Furthermore, this letter clearly, and in plain language, set out what was going to happen in the event the Complainants failed to comply with the request.

The Second Complainant states that this letter was not received but that an account statement from **February 2017** was sent to their correct address. I note that this statement has not been provided in evidence by the Complainants therefore I am not able to determine whether this was the case. I also note that while the Second Complainant states the letter was not received, a number of subsequent letters were sent to the same address and the Complainants have not disputed receiving those letters.

The Complainants wished to demonstrate that correspondence was being sent to their previously held address and not the most recent one.

The Complainants approached the new tenant of their previous address and requested she submit to this Office a statement.

An email, from a third party, supplied to this Office, on the Complainants' behalf on **17 February 2020** states:

"I am writing to confirm that I received a letter from [the Provider] for [the second Complainant] and couldn't get hold of her to forward to her new address. Unfortunately I can't remember what happened to it, but I definitely received it in 2017. I believe this was somewhere between February and April 2017 and this was received at the previous address that was: [previous address of the Complainants]"

If you need any other further information please don't hesitate to contact me. I am happy to make any truthful and honest statements.

*Yours sincerely
[name]"*

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No evidence of the letter itself was provided.

In light of these matters, I have no reason to believe that the letter was not sent.

Furthermore, the obligations of the Provider and the consequences for the Complainants should they fail to comply with the due diligence request were not solely contained in the letter dated **5 April 2017**. First, there were multiple interactions between the parties prior to **5 April 2017**. Second, section 33(8) of the 2010 Act states that if a customer fails to comply with a due diligence request, the Provider is obligated to cease the relationship with the customer. These matters are set out in the Provider's terms and conditions at clause 16 and clause 22.

I accept that the Complainants were aware of the need to comply with the Provider's request for proof of source of funds/wealth. I also note the position adopted by the Second Complainant that both she and the First Complainant had previously provided similar documentation when they opened their account. While the Complainants may have provided such documentation at the time they opened their account, the Provider's obligations under the 2010 Act are ongoing and accounts may be subject to periodic due diligence.

As part of the Second Complainant's submission, in an email dated **18 September 2018** the Second Complainant states in respect of source of funds/wealth:

"We made several visits to the [Provider's Branch B] December 2015/January 2016

All information regarding house purchase and move was given to the [Branch B] December 2015/ Jan 2016.

All this was provided when we went to [Branch B] and spoke personally with [the Provider's agents] with regards to our funds.

All proof of funds and house purchase were given to the [Provider] at this time including new address.

...

The [Provider] has full access to our account

How could we supply as requested a payslip? Social welfare receipts (we had already supplied a letter stating no payments)? Salary Certificate? a letter from Employer,?

This was our first year in business, the [Provider] knew this ..."

In a submission by email dated **23 October 2018**, the Second Complainant states:

"... we gave them proof of funds etc we actually purchased the house on 21st December 2016, we went into the bank to talk about transferring funds."

/Cont'd...

In a further submission by email dated **24 October 2018**, the Second Complainant states:

"In October of 2015 we had experience of this when we opened the account in [Branch B]. I was asking advice re transferring the funds from UK to [the Provider] following a house sale so that we could purchase our new property. We never refused to supply them with everything requested at that time hence they eventually opened our account

...

It appears to us that [the Provider] definitely and deliberately focused completely on the part of the Act pertaining to source of funds and wealth from October 22nd 2015 to Jan 2016 then again December 2016 to the time they closed our account 2017."

It is important to point out that despite the Complainants' many assertions that they provided proof of the source of the funds or wealth, I been provided with no evidence that they furnished any such proof to the Provider. Furthermore, despite the many submissions to this Office, the Complainants have not supplied proof of the source of the funds or wealth to this Office.

I accept that the Complainants may be confused in this regard in that they assert that they have supplied the necessary proof. In support of this argument, they appear to be relying on a letter addressed to the Complainants from their own Solicitor. This letter, dated 08 April 2016 states as follows:

*"Re: Purchase house [Address]
Our Ref: [Redacted]*

Dear Complainants,

With regard to the above matter, I have now heard from the Property Registration Authority advising that you are now the registered owner of your property. Enclosed please find notification of registration complete

I would advise that you should now get a copy of your title documents and official associate map from the PRA. There are many benefits of having this document, to include an opportunity to check the boundaries on the map and make sure that everything is in order.

You are under no obligation to get this however many clients consider worth having it. The PRA charge €40 for the document and if you hand into our office a cheque or bank draft or postal money order for €40 made payable to the "Property Registration Authority" then I can get it for you. Please do not hand in cash as the

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PRA do not accept cash. As a sign of our thanks to you for instructing our office in this matter we charge no fee for getting this certified copy title deed and official map on your behalf. It can generally take two to four weeks. To repeat, we need a cheque or bank draft or postal money order as the PRA will not accept cash.

I confirm that your account is clear in this office as you have paid same in full. May I take this opportunity to thank you for the favour of your very kind instructions.

Please also accept my thanks for having had the opportunity to place the services of this office at your disposal and trust that the services rendered here were to your entire satisfaction.

Assuring you of my best attention at all times.

Now that the property is in your name, the enclosed information leaflet will interest you if you want to make a will or review an existing will and have it brought up to date. I will be pleased to make the will for you free of charge with my compliments. Please regard this as my appreciation of your support in favouring this office with your instructions. Should you decide to make or review a will would you please phone me in due course [Number]"

I accept that the Complainants may believe that this correspondence is somehow proof of the source of the wealth or funds. Clearly, it is not. It simply demonstrates that the Complainants had completed the purchase of a house. It could certainly be argued that it demonstrates where the funds or wealth was spent but it is most definitely not proof of the source of the funds or wealth in fulfilment of the Provider's requirement and request.

In light of the above, I accept that the Provider was entitled to close the Complainants' account for their failure or inability to comply with its due diligence requirements and provide proof of the source of the funds or wealth. I further accept that there was a significant level of interaction and communication between the Provider and its agents and the Complainants.

Therefore, I do not accept that the Provider failed to communicate with the Complainants regarding the requested documentation and the closure of their account. I note in post Preliminary Decision submissions, the Complainants have drawn attention to the First Complainant's hearing issues and understanding of English. However, I have been provided with no evidence that this was drawn to the attention of the Provider. Furthermore, I note that the Second Complainant engaged both directly and in the background with the Provider on a number of occasions in relation to the matter.

While I accept the Complainants have found the process of the Provider's due diligence to be disruptive and distressing, the Provider was carrying out its legal obligations pursuant to the 2010 Act.

The Complainants, in their post Preliminary Decision submission, have stated that they are dissatisfied that the Provider has given them:

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“no reassurance that the use of this 2010 Act [Criminal Justice Act 2010] will not impact on his application for citizenship even though he asked several times”.

The Complainants also state:

“How can we be sure that our good character will not be compromised by [the Provider’s] actions in light of the fact we are applying for citizenship.

I therefore request a letter to this effect stating unequivocally that we the customer are exonerated of these accusations”.

It is my understanding that the ‘accusations’ the Complainants are referring to, are that the Provider asserts that they refused to supply the proof of income and funds. I also believe that the Complainants are concerned that as the account was closed in line with the **Criminal Justice (Money Laundering & Terrorist Financing) Act 2010**, that therefore it may be assumed they have been engaged in money laundering and/or terrorist financing.

For the avoidance of doubt, this Decision neither states nor implies that the Complainants have been involved in any way in wrongdoing, nor have I been provided with any evidence that the Provider has accused the Complainants of any wrongdoing.

I also note that the Complainants have asserted that the Provider informed other financial service providers of the matters dealt with in this complaint and that consequently other providers had refused them services. I have been provided with no evidence to support these assertions.

The final aspect of the complaint relates to the Provider’s handling of the Complainants’ complaint. A complaint was made by the Complainants on **7 July 2017**. A 5 day acknowledgement letter dated **13 July 2017** was then sent to the Complainants. Following this, a Final Response Letter was sent to the Complainants dated **25 July 2017**. I have reviewed these letters and have been provided with no evidence that the Provider has failed to correctly handle the Complainants’ complaint.

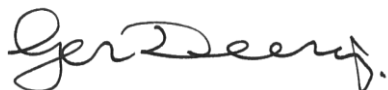
For the reasons set out above, I do not uphold this complaint.

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.

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**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

8 May 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.