



2020-0208

Decision Ref:

Sector:

Banking

Product / Service:

Switching Accounts

Conduct(s) complained of:

Failure to process instructions in a timely manner
Dissatisfaction with customer service
Fees & charges applied

Outcome:

Rejected

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

This complaint concerns quarterly fees applied to the Complainants' current account with the Provider.

The Complainants' Case

The Complainants were charged a quarterly fee on their current account with the Provider as the balance on their account did not meet the minimum quarterly threshold of €2,500 as set by the Provider. The Complainants have a significant amount of money on deposit in a savings account with the Provider which can *“only be accessed by us or the [Provider] via secured on-line transaction or in branch”*. They do not want to place more money in their current account as they have security concerns. This concern stems primarily from a data breach at their telecommunications company in which their data was amongst the data compromised. The Complainants feel that placing more funds in their current account could expose them to the risk of losing the funds. This is the *“biggest part of [the Complainants'] concern”*.

The Complainants have set up an *“automatic transfer to [their current account] every week”* from their savings account and state that most transactions go through the current account. The Complainants' fear more fees from direct debits and other transactions could be applied to their current account.

The Complainants called the Provider and explained the level of savings they have, but were advised that only the balance of the current account is taken into account in terms of the application of a charge where the balance of the current account falls below €2,500 in a quarter. The Complainants state that they would like to be advised of all of their options other than transferring everything to another provider.

The complaint is that the Provider unfairly applied a charge to the Complainants' current account where their balance fell below €2,500 during a quarter notwithstanding the fact that the Complainants have a significant amount on deposit in a savings account with the Provider.

The Complainants want the Provider to facilitate them in having an account in joint names with the Provider that does not result in charges being applied where the balance falls below €2,500 in one quarter.

The Provider's Case

The Provider states that it reversed the charges on a *"one off"* basis. The Provider states that it has options in place for customers where charges are not applied to accounts. One option was that the Complainants maintain their current account balance above the minimum quarterly threshold of €2,500. The Provider states it *"cannot take into account money held in other accounts when offering this benefit"*. A second option is the availability of a specific account which is free of charges for customers aged 66 or over, however all account holders to such an account must be 66 or over, and only one of the Complainants meets this criteria.

The Complainants want their account to be in joint names, but in order to avail of the 66 or over no fees account it would have to be in one of their names only. The Complainants believe they *"would need a power of attorney if something happened"* were they to avail of such an account. The Complainants state that all of their *"accounts, assets, wills and home are in joint names"*.

The Provider states it has *"acted in a way that meets [its] obligations to customers and to regulations"*.

In addition to a refund of fees on a once off basis, the Provider gave the Complainants a once off goodwill gesture of €50.

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.

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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.

During the course of this complaint the Complainants took issue with the documentation provided to this Office by the Provider, and also queried whether or not the Provider had been entitled to record telephone calls.

I would point out to the Complainants that the Provider was responding to requests from this Office as it is obliged to do in accordance with the ***Financial Services and Pensions Ombudsman Act, 2017***.

The Complainants acknowledged that they were informed that this would happen when they signed the "*our permission to proceed*" section of the Complaint Form which they submitted to this Office in April 2019. Furthermore, the Complainants were informed by the Provider at the time that telephone calls were recorded.

It is necessary that I have all the evidence and records available to me to arrive at an informed, impartial and fair decision.

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 June 2020, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

The Complainants opened a current account with the Provider in May 2001. The Complainants opened a savings account with the Provider in April 2018.

The current account terms and conditions on opening contained the following provisions:

"[These terms and conditions] may be changed by the Bank by notification to Customers by such means as the Bank considers appropriate."

"9. Fees and charges

Operations on the Account will be subject to the payment of the Bank's fees and charges. Details of our current fees and charges are available at all times on request to the Bank. All fees and charges in relation to the Account, and all stamp duties and Government levies in respect of the Card will be debited to the Account."

On 14 March 2012 the Provider issued a press release entitled *"Notification to [the Provider's] Personal Current Account Customers..."* containing the following information:

"We would like to advise customers that with effect from 28th May 2012, the following revised qualifying criteria for 'A Way to Bank Free of Maintenance and Transaction Fees' will apply:

Maintain a minimum daily credit statement balance* of €2,500 in your personal current account for the full fee quarter**."

" The statement balance is the end of day account balance.*

*** The fee quarter ends on the last business Friday of February, May, August, and November".*

"The continued operation of your personal current account after 25th May 2012 will be deemed to confirm your acceptance of this change and no further action is required by you. This change does not in any way affect your entitlement to close your personal current account at any time, without charge...."

On 27 July 2012 the Provider issued an updated *"Guide to Fees and Charges for Personal Accounts"* which itemised the applicable account fees and charges, and reiterated the option to avoid any such fees and charges by maintaining the account balance above €2,500.

This guide also listed a number of other types of account that were exempt from fees/charges, either in their totality or certain specific fees/charges. At that time an account was available free of certain fees/charges where an account holder was 60 or over. In March 2015 the terms of this 'over 60' account were amended whereby the qualifying age was 66, and all account holders had to be 66 or older. In February 2016 and January 2019 these terms were updated. These changes did not impact on the complaint under investigation.

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In October 2018 the Complainants wrote to the Provider to outline their complaint – their account had been debited €25.93 (for Q3 – June to August 2018) in fees for the previous quarter.

The Provider has advised the Complainants that in order to avoid fees/charges they can either maintain their balance above €2,500 or the Second Complainant, who is over 66, can open an account in her sole name.

In November 2018, in response to the complaint, the Provider paid €50 to the Complainants as a goodwill gesture. In December 2018 the Provider refunded €24.41 in fees (for Q4 – September to November), again as a goodwill gesture.

In or around August 2018 the Complainants were two of the customers of a telecommunications company whose personal information was compromised when an agent of that company mislaid a laptop containing customer information.

This is a significant factor in the Complainants not wanting to be required to place more money on deposit in the current account (thereby avoiding fees/charges) – they feel that as their current account was used for payments to the telecommunications company, there is a risk that it has been compromised.

Although they were advised that no financial data was compromised, they are understandably extra vigilant in relation to their affairs and are wary of doing anything which could put any of their assets at risk of being compromised.

In relation to the second option, the Complainants maintain all of their affairs are in joint names, they state they would be concerned that a power of attorney would be required “should something happen” to the Second Complainant while the account was in her sole name. This is not an unreasonable concern.

Analysis

There is no question that the account terms and conditions permit the Provider to apply the fees/charges in the manner that it has on the Complainants' current account. There is no evidence that the fees/charges have been applied other than in accordance with the terms, nor that they have somehow been applied 'by stealth' – without notifying customers in advance.

The Complainants' complaint is essentially that, given their personal circumstances, the Provider should waive fees/charges on their current account (and this Office should direct that it do so).

It should first be noted that a current account and a savings account constitute distinct relationships between bank and customer, and are subject to different terms and conditions of use. A provider is not obliged to treat funds on deposit in a current account in an identical manner to funds on deposit in a savings account.

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Furthermore, the charging of fees is a matter which falls within the commercial discretion of the Provider. I cannot interfere with this commercial discretion unless it is exercised in a manner that is unreasonable, unjust, oppressive or improperly discriminatory. I have been provided with no evidence that the Provider has acted unreasonably, unjustly, in an oppressive manner or a manner that is improperly discriminatory.

For this reason (in addition to the specific terms and conditions applicable to the accounts) there is no basis upon which this Office could direct that the Provider treat funds on deposit in a savings account as if they formed part of a current account balance.

The issue for this Office is whether circumstances exist to find that the Complainants ought to be entitled to avail of an arrangement other than in line with the applicable terms and conditions on the account.

I can fully sympathise with the Complainants concerns about security. However, I must accept that they have been presented with a number of ways in which they can avoid fees/charges. They could avail of any of them, but have chosen not to for their own legitimate reasons.

I do not believe it would be appropriate for me to direct the Provider to adapt its account terms or processes for an individual customer. In essence, that is what the Complainants are seeking to have done in this complaint. There is no basis for me to interfere with the Provider's commercial discretion.

For the reasons outlined 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.



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

29 June 2020

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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.

