



<b><u>Decision Ref:</u></b>	2020-0281
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Multiple Products/Services
<b><u>Conduct(s) complained of:</u></b>	Failure to process instructions
<b><u>Outcome:</u></b>	Rejected

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

The complaint relates to the Complainant's request to the Provider to receive electronic account statements instead of paper statements in respect of his two accounts with the Provider.

#### **The Complainant's Case**

The Complainant states that when he opened a bank account in **July 2015** and subsequently a credit card account with the Provider, he was advised that the Provider was not doing electronic statements as it was fairly new to the market but it was something it would bring in shortly. He states that he enquired every six months or so as to what was happening but was told that it was something the Provider was still working on, and hoping to bring in shortly.

The Complainant states that he experienced an event in late 2018 where his credit card details were compromised, and although the Provider flagged this to him, it was unable to explain how the details had been compromised. As a result, the Complainant states that he was concerned that the fact that the account statements issued to him by post, could pose a security risk.

The Complainant states that he requested the Provider to discontinue issuing paper statements to him due to the potential security risks. The Provider responded that it was unable to issue exclusively electronic statements.

The Complainant queries why the Provider is unable to send electronic statements when other financial institutions are in a position to provide that service. The Complainant wants his account statements issued in exclusively electronic from henceforth.

### **The Provider's Case**

The Provider states that it is unable to execute the Complainant's request as its systems do not allow for the option to suppress individual documents. It states that it is working to address this so that individual correspondence can be suppressed, while ensuring that it can still issue the correspondence that is obligated to send as a regulatory requirement.

The Provider states that it has no record of indicating to the Complainant that electronic statements would be brought in shortly. The Provider states that it gave no commitment to the Complainant that electronic statements would be available as an alternative to paper statements. It states that while it is working to make it possible for its customers to 'opt out' of receiving paper statements, other projects have arisen in the interim requiring higher priority. It argues that the option of an 'opt out' of receiving paper statements is a convenience feature and if a project arises which impacts system functionality, it must take priority.

The Provider states that it cannot agree at this time to the Complainant's request to opt out of receiving paper statements as it cannot suppress regulatory correspondence from issuing to the Complainant, which would happen if it were to suppress the paper account statements, based on its current functionality. It confirms that electronic statements are available to the Complainant via its online banking platform.

The Provider states that there is no evidence to suggest that the Complainant's credit card details were compromised by someone accessing his posted statements.

### **The Complaint for Adjudication**

The complaint is that the Provider failed to accede to the Complainant's request to discontinue the issuing of his account statements in paper form and to instead issue him electronic statements.

### **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

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A Preliminary Decision was issued to the parties on **28 July 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.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

The Complainant is dissatisfied that the Provider has failed to accede to his request that all future account statements be issued to him electronically only. He accepts that he was aware when he opened his account in 2015, that the Provider did not offer this service but he indicates that he has been informed on several occasions that it is a matter that the Provider was working on and hoped to have in place 'shortly'.

A complaint was received by the Provider on behalf of the Complainant by email dated **6 February 2019** and an acknowledgement was issued on 12 February 2019. The Provider issued a response on **4 March 2019** indicating that was unable to accede to the Complainant's request to 'opt out' of paper-based account statements. The Complainant requested a final response from the Provider on **27 March 2019**.

In its final response letter dated **1 April 2019**, the Provider stated that it was obliged to provide its customers with quarterly statements for all current accounts and annual statements for deposit accounts in a durable medium. It stated that while these statements are available to the Complainant online, it cannot suppress the issuing of paper statements to the Complainant because all correspondence on the account would then be suppressed, which may include regulatory correspondence it is obliged to issue. The Provider indicated that it hopes to introduce functionality for isolated document suppression in the future and it apologised if the Complainant had been previously informed that this would be available by a certain date. It stated that it was unable at this time to agree to the Complainant's request to issue electronic statements only and that it does not yet have a definite date for implementation of this functionality. This final response letter mirrors the Provider's response dated 11 February 2020 to questions raised by this office.

I appreciate the Complainant's frustration that a seemingly straightforward request that he henceforth receive his account statements electronically only, cannot be facilitated by the Provider. He rightly points out that the majority of other financial service providers are in a position to provide this option for their customers. I also appreciate his frustration that the Provider seems to have indicated over a number of years that it hopes to be in a position to offer an 'opt out' of paper statements service to its customers in the future. Indeed, this is the response that the Provider has made to the present complaint.

The Complainant however, has offered no legal basis for the suggestion that the Provider is obliged to comply with his request, to cease issuing paper-based account statements.

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I note that the Provider's Personal Banking Terms and Conditions applicable from **13 September 2019** appear to contemplate an option for the Provider provide exclusively online statements, but there is no corresponding option for a customer to choose exclusively online statements. These 'eStatements' are available through the Provider's so-called 'Digital Service', defined as its online and mobile services. Pursuant to Clause 43:

*"43.1 All information on your Current Account will be available to you through Digital Services. Statements on your Current Account are issued once a quarter (or more frequently if requested) either by post or digitally on your Digital Service.*

*43.1.1 Where you avail of Digital Services we may decide to only issue eStatements on you Current Account. You can access your eStatements by logging onto either your Mobile Service or Online Service. . . .*

*43.1.2 Where you avail of Digital Services but wish to continue to receive paper statements you may at any time, switch your preference to receiving printed statement though the Digital Service or by contacting our Customer Services helpline. . . .*

*43.1.5 [The Provider] reserves its right to withdraw access to eStatements at any time, for any reason and issue statements by post to the address provided to us on account opening unless you have advised us of a change of address."*

In my opinion, there is nothing in the terms and conditions that commit the Provider to providing online statements only instead of paper statements at the direction of the customer. Furthermore, there is no regulatory obligation on a financial services provider to offer its customers electronic statements only, in the place of paper statements. Rather, regulatory obligations are generally expressed in terms of obligations to provide identified information "on paper or on another durable medium". The choice of "durable medium" is left to the financial service provider in question.

By his own admission, the option of exclusively online statements was not a service that was available from the Provider when the Complainant opted to open an account with the Provider in 2015, in preference to an account with an alternative provider that offers such an option. The Complainant has provided no evidence of any concrete commitment made to him by the Provider regarding the provision of exclusively online statements. He has argued that the Provider has repeatedly indicated its intention to 'shortly' provide an 'opt out' of paper-based statements to its customers, but these are ambiguous statements which do not commit to any date from which the option will be available. Consequently, such statements are not legally binding. Nor do I consider the Provider's conduct to be unreasonable in this regard. I accept the Provider's argument that there is no evidence of any link between the compromise of the Complainant's credit card details in late 2018, and the fact that credit card statements are sent by post.

I also accept that any proposed project to change the underlying functionality of the Provider's systems, is something which the Provider itself can choose to implement, when it considers it appropriate to do so, in the context of other competing priorities which can arise.

In the absence of evidence of any specific agreement between the Complainant and the Provider that the Complainant would be provided with an 'opt-out' of paper-based account statements option from a certain date, and in the absence of any regulatory obligation on the Provider to do so, I am unable to uphold the present complaint.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint 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**  
**DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

25 August 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.