



<u>Decision Ref:</u>	2020-0411
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Fees & charges applied
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns changes made by the Provider to the terms of the Complainant's current account and, in particular, amendments to the criteria applicable to the quarterly maintenance fee exemption.

The Complainant's Case

The Complainant opened his current account in 2015. In accordance with the terms and conditions at the time, a quarterly fee of €18 applied but an exemption from this charge applied where a monthly lodgement of at least €1,500 was made.

The Provider contacted the Complainant in early January 2019 informing him of its decision to standardise its products by making account changes and amendments to the terms and conditions, which were to take effect from 1 April 2019. The new terms and conditions required a cleared daily balance of a minimum of €2,500 in order to avoid paying the quarterly maintenance fee.

The Complainant is dissatisfied with the changes to his account and in particular that the terms and conditions which applied at the time of opening the account were to change and that they have subsequently been amended by the Provider. He contends that this was a fundamental change which is detrimental to him as a customer.

He submits that the terms and conditions which applied to his account at the time of opening the account were attractive and affordable to him and it was those terms and conditions and the criteria which existed at the time which led to him opening his current account with the Provider in the first place. He argues that the proposed changes may well cause financial hardship to many customers and force them to pay penalties or to leave the Provider. He argues that the proposed changes are akin to mortgage tracker scandal where the Provider abused its banking powers to the financial detriment of vulnerable customers for greater financial gains.

The Complainant wants the proposed changes to his terms and conditions to be stopped.

The Provider's Case

The Provider states that the Complainant attended his local branch on 5 February 2015 and opened the account in question. As part of the account opening process in the branch, it states that the account features and benefits, including its terms and conditions, were outlined to the Complainant. The Provider argues that the Complainant was given a copy of the applicable 'terms and conditions and personal and business banking charges' brochure, as well as the Provider's 'terms of business' document.

The Provider argues that the Complainant was notified of the terms and conditions applying to the account at the time of the opening of the account. The Provider argues that the account opening process requires completion of a "*Personal Current Account Application Form*". The Provider states that the Complainant signed this form during the account opening process on 5 February 2015 and, with his signature, confirmed he had received the Provider's current "*Terms and Conditions and Personal and Business Banking charges*" brochure. It further argues that the Complainant, by his signature, confirmed that he had read and had an opportunity to become acquainted with, understood and agreed to be bound by the terms and condition of the account in question, and that the terms and conditions may be amended from time to time.

Further, by his signature, the Provider argues that the Complainant confirmed that the Provider was entitled to vary the terms and conditions, including interest, fees and charges, from time to time and would provide at least two months' notice of any alterations. It argues that this is outlined in the *Terms and Conditions* brochure of 13 January 2015 which states at section 21:

"(b) we may vary these Conditions and the interest and charges applicable on the Account including the interest rate structure from time to time. . .

(c) unless we are permitted by law to give you shorter notice, we will notify you at least two months in advance of any alteration of these Conditions".

The Provider argues that it wrote to the Complainant on 24 January 2019 to advise of the impending changes/amendments to the quarterly maintenance fee exemption relating to the account which would take effect from 1 April 2019.

In response to the complaint that the changes to the terms and conditions of the account are detrimental to the Complainant as a customer, the Provider argues that the account remained a current account, with the operational features inherent in the current account remaining unchanged. The Provider argues that the Complainant's real submission is that the change in qualifying criteria, which became effective from 1 April 2019, is detrimental to the customer. The Provider argues that as part of an ongoing review of its current account provision to its customers, it decided to standardise and simplify its suite of current accounts. As a result, a change to the qualifying exemption fee criterion for the current account was introduced. The Provider argues that the qualifying criterion to be exempt from the quarterly maintenance fee of €18 was to lodge a minimum of €1,500 per month. Under the amended terms and conditions, it states that the Complainant is required to maintain a daily cleared credit balance of €2,500. The Provider accepts that the Complainant is unhappy with the changes made but argues that it is satisfied that the exemptions on the maintenance fee remain competitive.

In addition, and as part of its suite of products, the Provider argues that it introduced a different type of current account in May 2016 which allows the customer to offset a portion of maintenance fees by the making of transactions. It argues that the option to convert to this type of current account is available to existing personal current account holders without having to change bank account numbers.

The Complaint for Adjudication

The complaint is that the Provider has wrongfully made changes to the Complainant's current account and wrongfully amended the terms and conditions which apply to his account.

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.

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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 19 October 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.

By application form dated 5 February 2015, the Complainant applied to open a current account with the Provider. The relevant application form was signed by the Complainant, dated and witnessed. By his signature, the Complainant confirmed as follows:

"I/we have also received the Bank's "Terms of Business" letter. I/we have also received the Bank's current booklet "Terms & Conditions and Personal and Business banking charges". I/we have read and have had an opportunity of becoming acquainted with, have understood and agree to be bound by the above booklet "Terms & Conditions and Personal and Business banking charges" in relation to the facilities applied for above, which may be amended from time to time."

The Complainant bound himself to the then applicable terms and conditions of the current account by his signature on the application form on 5 February 2015.

The 'Terms & Conditions' booklet dated 13 January 2015 applicable to the Complainant's account provide as follows:

"GENERAL TERMS AND CONDITIONS

21 AMENDMENT OF THESE TERMS AND CONDITIONS (INCLUDING INTEREST, FEES AND CHARGES):

- (a) These Conditions shall continue to apply to your Account unless and until altered by us in accordance with this Condition.*
- (b) We may vary these Conditions and the interest and charges applicable on the Account including the interest rate structure from time to time.*
- (c) Unless we are permitted by law to give you shorter notice, we will notify you at least two months in advance of any alteration of these Conditions".*

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(d) ...

(e) *If you receive notice of any alteration to these Conditions, you may close your Account (or switch it to another financial institution) and simultaneously cancel all other facilities granted to you in connection with your Account without having to pay any extra charges or interest. However, any early termination charges to which you agreed when you opened your Account will continue to apply. Unless and until you close your Account, your consent to the alteration is implied.*

CURRENT ACCOUNTS

12. [CURRENT ACCOUNT]

(OPENED ON OR AFTER 6TH MARCH 2013)

(a) *When you open [current account] on or after 6 March 2013 ... you will be entitled:*

...

(ii) to obtain exemption from the requirement to pay quarterly account maintenance fees provided you lodge a minimum cleared balance of €1,500 to the [current account] in each calendar month. Failure to make such lodgement in any calendar month will result in the loss of the exemption from quarterly account maintenance the quarter during which the lodgement was not made."

I accept that the terms and conditions applicable to the Complainant's account in February 2015 provided for an exemption to the quarterly maintenance fee on condition that a lodgement of €1,500 per month was made to the relevant account. However, I also accept that the applicable terms and conditions reserved the right of the Provider to amend the terms and conditions of the account by the giving of two months' notice. This reservation of its entitlement to amend the terms and conditions of the account was not limited in any way and did not, for example, provide that the terms and conditions could only be amended so long as the effect of same was not detrimental to the customer. The entitlement to amend was reserved so long as a period of two months' notice was given to the customer, with the relevant condition also noting that the customer was entitled in those circumstances to close the account without penalty.

These conditions were agreed by the Complainant when he opened the account in February 2015, even if his motivation for opening the account was to avail of the exemption to maintenance fees that then existed. It appears that the Complainant availed of the exemption to maintenance fees throughout the period 5 February 2015 to 1 April 2019.

By letter dated 24 January 2019, the Provider wrote to the Complainant as follows:

"Following a review of our current accounts, we have decided to standardise and simplify our legacy accounts. As a result, we are writing to inform you of the important changes to your [current account], which will take effect from 1st of April.

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On this date your existing [current account] will be retired in your account type will change to the [new current account].

There will be no change to your account number and Visa Debit Card number. Payments to and from your account will not be affected. If you have an overdraft on your account, it will remain in place. There will be no change in the quarterly fee for maintaining your account but the criteria to avoid the fee has changed and is called out below.

Important changes to your account

Please note the following changes will apply to your account from first April:

- **Quarterly Maintenance Fee Exemption:** *Just like your [bank account], there is a quarterly maintenance fee of €18. However, the exemption criteria available to avoid this fee will change on 1st April. From this date you need to maintain a cleared credit balance of €2,500 every day in your account in order to avoid paying the quarterly maintenance fee. Allowances are not made for cheques, drafts or other credits lodged until value has been received.*
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What action you need to take?

There is no need to take any action as a result of this letter. While the exemptions on our maintenance fees remain competitive, below are some other options available to you if you are not happy to proceed with the changes outlined above:

You may choose to close your account or switch Providers. If you like to switch Providers please contact your new bank can arrange to close your account with [the Provider].

Please be aware that if you choose to close your account all parties on the account must provide authorisation to close and you must repay any money and charges due on the account including any interest due on this up to the date of repayment in line with your terms and conditions. If you choose not to close your account within 2 months, you are deemed to have accepted the changes by continuing to use the account from the effective date of the notified changes."

The letter dated 24 January 2019 provided notification to the Complainant of proposed amendments to the terms and conditions of his account. The most relevant change from the perspective of the Complainant was that to the exemption criteria to avoid the maintenance fee. This exception was previously available by lodgement of €1,500 per month but was to be changed to a requirement that a balance of €2,500 had to be maintained in the account at all times in order to avail of the maintenance fee exemption. All other terms and conditions of the account remained the same, as did the maintenance fee of €18 per quarter itself. As the proposed amendments to the terms and conditions of the account were due to take place on 1 April 2019, a period of just over two months' notice was provided to the Complainant in respect of the amendment of the terms and conditions.

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The letter further informed the Complainant of his entitlement to close or switch his accounts to another provider as a result of the proposed changes.

I accept that the letter sent by the Provider on 24 January 2019 including the proposed changes therein were in accordance with Condition 21 of the General Terms and Conditions applicable to the account, as set out above.

By letter dated 9 February 2019, the Complainant wrote to the Provider indicating that he was not in agreement with the proposed changes to his current account as set out in the Provider's letter of 24 January 2019. He argued that the imposition of the new current account criteria would result in many customers, such as himself, being unable to adhere to its new terms and conditions and thereby forcing him to close the current account. The Complainant argued that this was an act of discrimination by the Provider on existing customers. He further argued that the imposition of the new current account would be an abuse of the Provider's banking powers and the customer relationship.

It appears that the Complainant spoke to a representative of the Provider on 13 February 2019 by phone. By final response letter of the same date, the Provider indicated its understanding of the complaint as being that the change to the terms and conditions would affect the Complainant's cash flow and that he felt it was forcing the Complainant to either pay the new quarterly fee or to close his account. The Provider argued that while it understood that the new terms were not those agreed when he opened his account in 2015, the Provider reserved its right to amend the terms and conditions at any time provided two months' notice is given. It argues that these terms and conditions were noted in its terms and conditions booklet which were enclosed with the letter. The Provider also indicated that as explained in the earlier conversation, it also offers a different type of current account which has lower charges and also offers cashback on transactions which the Complainant could avail of. I accept that by furnishing this letter, the Provider complied with its obligations in respect of customer complaints under the Consumer Protection Code 2012.

I also accept that the Provider acted in accordance with the terms and conditions of the Complainant's current account when it wrote to him in January 2019 noting proposed changes to the relevant account from April 2019. The prescribed period of two months' notice in respect of proposed changes was afforded to the Complainant. I accept that the proposed changes, which made it more difficult for the Complainant to avail of an exemption to quarterly maintenance fees, could be seen as detrimental to the Complainant in the sense that he did not feel that he could continue to avail of the fees exemption and hence that account maintenance fees would be payable by him from April 2019 onwards.

While I can understand the Complainant's disappointment with this decision as the exemption was the reason why he opened the account in February 2015, I do not consider there to have been anything wrongful in the Provider's behaviour in deciding to amend the exemption criteria from April 2019. The Provider reserved to itself the entitlement to alter the terms and conditions applicable to the account and acted at all times within those terms and conditions.

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Further, it highlighted two options that were available to the Complainant if he was not happy to continue his current account under the new terms and conditions – either to close the account and switch to a different Provider, or to switch to a different type of current account with the Provider which would be subject to lower maintenance fees and the possibility of cashback on transactions.

It cannot be the case that a credit institution is not in a position to alter the terms and conditions on its current account in any circumstances as current accounts are regularly open for extremely long periods of time.

Further, there is no principle of consumer law that would prevent a financial service provider from amending terms and conditions applicable to an account, in a manner which is in compliance with the terms and conditions, where the change could have some kind of detrimental effect on the customer, so long as the Provider's conduct is not unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainant, which I have not found to be the case in relation to this complaint. Furthermore, these are matters that fall within the commercial discretion of the Provider.

The Complainant was and is entitled at any time to seek more competitive current account maintenance fees with another provider if such are available. It is a matter for the Complainant whether he wishes to remain a customer of the Provider in light of the changes made in April 2019 which were properly notified to him, and allowed him sufficient time to close the account if he had wished to do so before the changes were applicable.

For the reasons set out in this Decision, 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**

16 November 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.

