An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0439
Sector:	Banking
Product / Service:	Business Bank account
Conduct(s) complained of:	Maladministration
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint relates to the accounts held by the Complainant (a limited company) with the Provider.

The Complainant's Case

The Complainant's complaint is that the Provider wrongfully put a hold on its accounts (two current accounts and a deposit account) which it alleges resulted in a loss of rental income for a period of almost a year.

At the time that the Provider put a hold on the accounts, the Complainant was in the process of leasing a property to a prospective tenant. It appears from correspondence from a Mr. E, dated 7 January 2019, that solicitors acting for the prospective tenants, at the time the lease was being negotiated, informed the prospective tenants that the Complainant business was in receivership at the time. As a result, the prospective tenants believed that the Complainant was not in a position to complete the deal, leading to a significant delay in the tenants entering into the lease.

The Complainant contends that it was the Provider's error of freezing their accounts which resulted in the prospective tenants being of the belief that the Complainant was not in a position to complete the deal and the Complainant submits that this cost it a loss of almost one year's rent.

The complaint is that the Complainant's accounts were improperly frozen. The Complainant seeks "*financial restitution as being a sum of money comparable to what was lost*".

The Provider's Case

The Provider's position is that because there was a Fixed Asset Receivership relating to specific assets only of the Complainant, the Provider should not have placed holds on the Complainant's accounts. The Provider, in a letter dated 14 December 2018, acknowledged its error and also made an offer of compensation in the amount of €1,000 to the Complainant, this representing an increase on an earlier offer made in the amount of €400. In its formal response to this office, the Provider increased the offer of compensation to €2,500.

The Complaint for Adjudication

The complaint is that the Provider improperly froze the Complainant's accounts.

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.

A Preliminary Decision was issued to the parties on 10 September 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.

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Following the issue of my Preliminary Decision, the Complainant made a submission under cover of its e-mail to this Office dated 17 September 2020, a copy of which was transmitted to the Provider for its consideration.

The Provider advised this Office under cover of its e-mail dated 18 September 2020 that it had no further submission to make.

Having considered the Complainant's additional submission and all of the submissions and evidence furnished by both parties to this Office, I set out below my final determination.

Analysis

The Provider in this matter placed a "*hold*" on both of the Complainant's current accounts on 12 June 2017 on foot of an "*E8 Notice of Receivership Appointed*" form which had been filed with the Company's Registration Office. This was queried on behalf of the Complainant on 15 June 2017 however a return call, as had been promised by the Provider, was never made. The hold on these particular accounts appear to have remained in place thereafter for a period of six months at which point an individual attempted to carry out a transaction on a different account (a deposit account) which the Complainant held with the Provider.

This led, on 29 December 2017, to the Provider extending the 'hold' to the Complainant's deposit account. A query was raised on behalf of the Complainant regarding the 'holds' on 2 January 2018 and, on 4 January 2018, the 'holds' were lifted.

In its letter of 25 January 2018, the Provider acknowledged that it "*should not have placed the holds on the company's accounts*". The Provider noted that *"this was caused by a staff member who did not follow correct procedures once we were notified of the Receivership*". The position was that the receiver had been appointed over certain assets but not including the bank accounts. The letter sought to "*sincerely apologise*" for the error and offered compensation in the amount of €400.

This offer was not accepted and, thereafter, there was engagement between the Provider and the Complainant's representatives leading to a meeting held on 26 October 2018 during which the Complainant sought compensation commensurate with the loss of rental income which it was claimed had resulted directly from the Provider's actions. The Provider, in return, requested documentation supporting the claim that the loss of rental income was caused by the Provider's actions. This request was also made in writing by way of letter of 1 November 2018.

The value of the loss said to have been suffered by the Complainant is not identified in the documentation furnished to this office. The Provider has however provided a minute of a meeting held on 26 October 2018 wherein it is recorded that the Complainant's loss was quantified in the amount of €22,916, that figure representing five months' rental payments.

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This appears to relate to the period during which the Complainant was unable to lease the premises. There is also a reference to an additional €10,000. In a letter of 4 December 2018, the figure of €50,000 is advanced as the "*loss of rental income*".

In terms of documentation, the Complainant relies on an email of 19 October 2018 from a chartered surveyor, the relevant portion of which states as follows:

> *As discussed, the letting of the above unit was exceptionally problematic at the legal stage of the process, with inordinate delays incurred.*
>
> *Planning permission was secured for change of use to facilitate the letting in September 2017, yet it took 5 months to close it out.*
>
> *I understand that there were delays in securing bank consent for the letting, release of title documents etc.*
>
> *You will recall that we nearly lost the lease deal over feedback the tenants got from a legal search, which raised issues as to whether* [the Complainant] *was in fact in a position legally to complete the letting deal.*

A letter dated 4 December 2018 sought to amplify the Complainant's argument:

> *In April 2017, I had a tenant very interested in my* [the rental premises] *and subsequently, because of the fact that they were told by their solicitors that* [the Complainant] *was in receivership and that the accounts were frozen, (in error) they took their time dealing with the legal aspects of this lease. Even at one stage, they proposed pulling out from renting my Unit. During this period of time, I convinced them that* [the Complainant] *was not, and had never been in receivership, just that two units in* [location redacted] *had been put into receivership by [third party financial service provider] over the Easter weekend (when the banks were shut and I was unable to pay the mortgage). This matter has now been resolved. Therefore due to the Bank's staff member "not following correct procedures" as outlined by your colleague* [name redacted]*, in a letter to me dated the 25th of January 2018*, [the Complainant's] *bank accounts were frozen and I was unable to close this transaction in a normal speedy, manner and this caused me to wait for 12 months before my unit was let. In these circumstances, I am at the loss of a year's rent relating back to the fact that the Bank was in error by freezing my accounts.*

A further email from the same chartered surveyor dated 7 January 2019 provides as follows:

> *In a telephone conversation, the proposed tenants conveyed to us that feedback they received from their [solicitors], was that* [the Complainant] *was in receivership.*

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> *The implication being that our client was not in a position to complete the letting deal. This information was naturally very unsettling to them, and they threatened to pull out of the deal, altogether. We had to convince them that our clients were not in receivership and were in a position to complete the deal.*

Following the letter of 4 December 2018 written on behalf of the Complainant, the Provider increased its offer of compensation to €1,000 in a letter of 14 December 2018 before increasing the offer again to €2,500 in its response to this office.

The first comment I might note regarding the three passages quoted above is that it is clear that the Complainant ultimately secured the lease agreement with the third party; the complaint sets out a delay in securing same rather than a failure to secure the lease. The period of this delay is however unclear. The Complainant refers to a period of approximately 12 months, however it is not clear how he has arrived at this. The email from the chartered surveyor of 19 October 2018 refers to efforts "*to facilitate the letting in September 2017, yet it took 5 months to close it out".* This describes a 5-month delay (beginning in September 2017). The Complainant's accounts appear to have been frozen for four months of that period.

I am satisfied however that I do not need to resolve these inconsistencies relating to the period of alleged rental loss (not to mention the inconsistencies regarding the value of the alleged rental loss) as I am not of the view that the Complainant has substantiated a connection between the Provider's actions and any loss of income.

The Complainant argues that the delay in securing the lease was a direct result of the prospective renter being "*told by their solicitors that* [the Complainant] *was in receivership and that the accounts were frozen".* The email from the chartered surveyor of 19 October 2018 provides a little more insight insofar as it states that the deal was nearly lost *"over feedback the tenants got from a legal search, which raised issues as to whether* [the Complainant] *was in fact in a position legally to complete the letting deal".* This is further clarified in the email of 7 January 2019 which renders it clear that it was the fact of the appointment of the receiver, rather than the fact of the (mistaken) freezing of the accounts, that concerned the prospective renter.

The status of the Complainant was a matter of public record, and the fact that a receiver was appointed over certain assets was a matter that would have been visible on the website of the Companies Registration Office (CRO). I am of the view that the Complainant has not established a causal link between the freezing of the accounts and the delay in executing the lease. In fact, it seems more likely that the solicitors for the prospective renter uncovered the fact of the receivership independent of any action taken by the Provider.

Furthermore, the Complainant has not put forward any plausible theory as to how the Provider's freezing of the Complainant's accounts came to the attention of the renter's solicitor; it is far more likely that the solicitor learned of the appointment of the receiver through independent searches of relevant databases such as the CRO and communicated this information to his client.

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There is absolutely no evidence to support the Complainant's contention in its email to this office of 9 March 2020 that the "*legal search*" would have shown that all the accounts were frozen. The Provider has pointed out that it is prohibited under data protection law from sharing such information with anyone other than account holders and nominated individuals. I accept this to be the situation.

As the Provider has accepted its failings, I must now turn to the compensation offered by the Provider. The period during which two of the accounts remained frozen was significant (6 months), however other than the alleged rental income loss, the Complainant has not pointed to any other loss or inconvenience suffered by it. In those circumstances, I accept that the amount of €2,500 compensation offered by the Provider is reasonable.

On the basis that the Provider has acknowledged its error and offered a sum of €2,500, which I consider to be reasonable in the circumstances, 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

2 December 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,

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and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.