



<u>Decision Ref:</u>	2020-0454
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Dormant Account
<u>Conduct(s) complained of:</u>	Documents mislaid or lost
<u>Outcome:</u>	Substantially upheld

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

The Complainant held three accounts with the Provider. On **30 September 2016**, the Provider wrote to the Complainant advising her that one of her accounts had been classified as dormant and outlined the process to reactivate the account. The Complainant attended one of the Provider's branches on **30 November 2016** to make a lodgement to the account. The Complainant was unable to do so as the Provider required two forms of identification. The Provider closed the Complainant's account in **April 2017** and transferred the funds in the account to the National Treasure Management Agency.

The Complainant's Case

The Complainant has set out her complaint in her Complaint Form. She has also enclosed a copy of a letter sent to the Office of the Data Protection Commissioner (**DPC**) dated **1 August 2017** outlining her complaint.

The Complainant explains that in **September 2016** she received a letter from the Provider advising her account would be made dormant unless she did one of the options outlined in the letter. Of these options, the Complainant chose to make a transaction in the Provider's Branch.

On **30 November 2016**, the Complainant brought the letter with her to Branch A and tried to make a lodgement. However, she was asked for two forms of proof of identity. The Complainant explains she had the Provider's letter and her driving licence but "[t]hey refused this and requested another form of proof."

In her letter to the DPC, the Complainant states:

"I was verbally told that 2 other accounts were going to be made dormant also, but that with the identity documentation I had provided, this would be prevented from happening on all three accounts. I agreed to return with two forms of identity."

In the next paragraph of this letter, the Complainant explains: *"I do not remember the initial letter from [the Provider] asking me to bring any identification with me. Unfortunately, I can only find page one of this letter at the moment, so I cannot be 100% sure of this."*

In **February 2017**, the Complainant went to the A Branch with her passport and driving licence and *"... they said they would be in touch within a few weeks. They took copies of the ID provided."* In the letter to the DPC, the Complainant outlines that:

"[s]ubsequently I visited [Branch A] to enquire why I hadn't heard from them. I cannot remember the date I think it was in April. I went to the customer service desk and they could not provide any answers. ... They advised they would follow up on it and call me. I received no communication whatsoever from them."

The Complainant states in the DPC letter that she called one of the Provider's branches on **19 May 2017** and explained her situation. A formal complaint was made during this conversation. The Provider carried out an investigation and wrote to the Complainant on **14 July 2017** *"... stating that my account ... had been made dormant despite the fact that I had provided them with my identification."* Having spoken with the individual who conducted the investigation, *"... he informed me that the staff in [Branch A] had said the ID was for the other account, not [the account the subject of this complaint]."* The Complainant submits that her account *"... should not have been made dormant if [the Provider] had processed my identity documentation and done their job."* The Complainant states that on **4 April 2017** her account was made dormant when it should not have been.

On **27 June 2017**, the Complainant wrote to the Provider requesting that her account be closed. She received no response to this letter. On **17 July 2017**, the Complainant attended the Provider's B Branch and was informed the account the subject of this complaint *"... was closed. The Cashier could not tell me who closed my account and where the money went. ..."* The Provider's staff members were unable to determine where the Complainant's money had gone and she was again asked for two forms of identity. Later that evening, the Complainant received a telephone call from the Provider advising her that the account had been made dormant.

The Complainant explains that she received no further communication from the Provider until she received a letter dated **24 July 2017** in respect of her account which advised her to present the letter along with a form of identification to any of the Provider's branches.

The Complainant states:

"I am making this complaint as I feel I am being stone walled by a large organisation. They think nothing of asking me to make trips to their offices. ..."

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However, for any person who is elderly, disabled or ill or not having transport this behaviour by [the Provider] is nothing short of scandalous. Customers are people who have busy lives with many daily demands on them. We are not going to accept this treatment from them. ...”

In resolution of this complaint, the Complainant states:

“I want to know the name of the person who took copies of my ID.

I want to know what happened to those copies of my ID. I am very concerned for my safety. I want a face to face apology for the upset they have caused from the person who did not do their job in [Branch A]. I am seeking accountability. ...

I would like an explanation of how [the Provider] handles identity documentation.

What safeguards are there to protect me? The fact that I’m still being asked for proof of ID even though I’ve provided it to them twice in the last 6 months is frightening.

I want [the Provider’s] handling of dormant accounts to be investigated also.”

The Provider’s Case

Background

The Provider explains the Complainant’s account is a legacy deposit account which is no longer available to new customers. The account was converted from another financial services provider account to one of the Provider’s accounts in **2010** following the transfer of the business of that financial services provider to the Provider. The account was closed as a dormant account on **4 April 2017**.

The Provider states there were no customer initiated transactions on the account between **February 2010** and **April 2017** until the balance was transferred to the Dormant Accounts Fund. The Provider explains that as the original account “... *has been closed since 2010, which is outside of our records management obligations, we are unable to determine when the last customer initiated transaction took place on that account. However our records do confirm that it was at least, if not more, than 15 years ago.*”

After 5 years of no customer initiated transactions on an account, a system generated letter is sent to the last known address on file of the customer asking if they wish to reactivate, continue using or close the account.

If no response is received within 9 months, the Provider advises that a dormant flag and no operations marker is added to the account. A second letter is generated 6 months prior to closure, 10 years after the first letter advising the account will close unless reactivated.

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The Provider states that a period of 15 years with no transactions has to pass for an account to be closed as dormant. This was outlined in the Provider's letter to the Complainant dated **30 September 2016**.

The Complainant's Account

On **16 September 2016**, the Provider wrote to the Complainant to advise her of the actions she needed to take should she wish to reactivate the account. The Provider explains that while it does not hold a copy of the original letter, it included a template letter in the Schedule of Evidence.

The Provider states that a no operations marker was placed on the account on **12 May 2015**. The Provider explains the markers were added to the account because of the length of time since there was a customer initiated transaction completed on the account. In line with the Provider's legal and regulatory requirements, the marker was placed on the account to alert staff to seek appropriate identification documents from the Complainant prior to any transaction being completed on the account.

The Complainant's account was classified as dormant in **September 2016** and the funds were transferred to the National Treasury Management Agency (NTMA) on **4 April 2017**. This is in line with the letter sent to the Complainant on **30 September 2016**.

Requirement for Identification

A Dormant Account Reclaim form was completed by the Complainant on **17 July 2017**. The Provider refers to page 5 of this form and the requirement for identification and that identification documents should not be attached to the form.

The Provider explains that identification documents are required in line with regulatory and legal requirements and its process requires certified identification documents to complete the reclaim process.

A letter was sent to the Complainant requesting the required identification documents on **24 July 2017**. The Provider states there is no record of the required identification documents being received by its Dormant Accounts Team in order to complete the reclaim process. The Provider states that it is unable to retrieve a copy of this letter and has provided a template copy. The Provider is satisfied that the Complainant received this letter as she acknowledges its receipt.

The Provider acknowledges that in the letter of **30 September 2016**, the Complainant was not advised of the requirement to provide any form of identification to carry out any of the actions outlined in the letter.

When the Complainant attended Branch A in **November 2016**, in line with the Provider's regulatory and legal obligations, the Complainant was advised that the transaction could not be completed as two forms of identification were required.

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The Complainant did not attend Branch A until **February 2017** to provide the two forms of identification to complete the transaction.

The Provider states that as there had been no transactions on the account since **February 2010**, a no operations marker was placed on the account and the Provider's staff were obliged to comply with its regulatory and legal obligations in ensuring that customer records were up to date. The Provider submits it was reasonable for branch staff to request two forms of identification documentation.

Branch Visit in November 2016

The Provider states that due to the passage of time, it is unable to determine which member of staff advised the Complainant that the identification documents provided would have prevented all three accounts from going dormant. The Provider advises that no current staff member has any recollection of a transaction with the Complainant on **30 November 2016**.

Branch Visit in February 2017

In response to the Complainant's submission that when she attended the Provider's branch in **February 2017** with her driving licence and passport and the Provider's agent said they would be in touch in a few weeks, the Provider states that had the Complainant presented with her driving licence and passport, these would have been acceptable forms of identification which would have allowed the Complainant to carry out a lodgement or withdrawal on the account. The Provider notes the Complainant does not state that she attempted to make a lodgement or withdrawal at the time. The Provider advises that with the passage of time, it is unable to confirm which staff member met with the Complainant in Branch A and none of the members of staff at this branch have a recollection of this particular matter.

The Provider explains the identification documents alone would not have been enough to satisfy the requirements set out in the letter of **30 September 2016** to prevent the account being closed and the funds transferred to the NTMA. Referring to the options in this letter, the Provider submits it is unable to determine why no lodgement or withdrawal was completed when the Complainant attended the Branch A in **February 2017**.

Account Closure Request

Responding to the Complainant's request contained in her letter dated **27 June 2017** and her request to close three of her accounts, including the account the subject of this complaint, the Provider states the letter submitted by the Complainant does not confirm the address to which it was sent. Usually letters of this nature would be forwarded to a customer's branch. The Provider states that neither of the branches where the Complainants held accounts have any record of receiving this letter.

The Provider explains that although submitting a letter requesting the closure of the account was one of the options outlined in the letter of **30 September 2016**, the Complainant's letter dated **27 June 2017** requesting the account closure was dated after **31 March 2017**. The Complainant's account had been closed at this time and the account balance transferred to NTMA. Therefore, the Provider would have been unable to accede to the Complainant's request.

Account Closure

The Provider refers to section 7 of the ***Dormant Accounts Act 2001*** (the **2001 Act**), and states that an account is classified as dormant if no transactions have occurred for a period of 15 years. A no operations marker was placed on the account on **15 May 2015**. The Provider wrote to the Complainant on **30 September 2016** to advise her that the account had been marked dormant in line with the 2001 Act.

When the Complainant attended Branch B in **July 2017**, she was advised her account was closed. As the Complainant's account was dormant, to reactivate the account, the Complainant was required to complete one of the options listed in the **September 2016** letter by **31 March 2017**. The Provider advises that as none of the options were completed by **March 2017**, the account was closed by the Provider and the balance transferred to NTMA. The Provider submits that its branch staff member was correct in advising the Complainant on **17 July 2017** that her account was closed.

Written Instruction

The Provider states it has no record of any written instruction made by the Complainant held at either branch the Complainant visited. The Complainant did however, write to the Provider by letter dated **27 June 2017** to request the closure of her accounts. The Provider states that it has no record of this letter.

The Complainant attended at Branch B on **17 July 2017** and presented two forms of photo identification and subsequently made a withdrawal from account ending 2809. During this visit, the Complainant also completed a Dormant Account Reclaim form which was forwarded to the relevant department on **18 July 2017**.

Dormant Account Reclaim

The Provider had cited section 19 of the 2001 Act and states the Dormant Account Reclaim form for the account was signed by the Complainant on **17 July 2017**. The Provider submits that the identification documents sought in its letter of **24 July 2017** were not received and it was therefore, not able to progress the claim under the 2001 Act.

The Handwritten Note

The Provider states that it contacted the relevant customer service agent and unfortunately, due to the passage of time, he has no recollection as to why he contacted the Complainant in **February 2018**. The customer service agent also has no recollection of receiving the Complainant's letter dated **1 March 2018**.

Repeated Requests for Identification

The Provider explains that in line with its legal and regulatory requirements, it is obliged to ensure it holds relevant and up to date identification documentation for a customer when completing a transaction. The Provider *"... apologises that the Complainant is displeased that she had been asked to provide such information each time she attended a Branch ... The Bank apologises to the Complainant for any distress or inconvenience this issue has caused."* However, the Provider submits it is not unreasonable for staff members to request such documentation to verify a customer's identity.

Copies of the Complainant's Identification

The Provider states that no current staff members at Branch A have any recollection of this matter or the Complainant's visit to branch in **February 2017**. The Provider states that Branch A has stated there are no copies of any identification documents held by the branch for the Complainant.

Jurisdiction and Investigation of Complaints

The Complainant has made a complaint in respect of the Provider's conduct regarding her dormant account. As noted above, the Complainant has also identified certain aspects of the Provider's conduct relating to the processing and storage of her identification documentation and has sought redress from this Office in respect of this conduct.

These aspects of the complaint are not within my jurisdiction and are more properly matters for the Office of the Data Protection Commissioner. Therefore, I will not be investigating any aspect of this complaint relating to the Provider's processing or otherwise, of the Complainant's identification documentation or personal data, or any matter considered to be within the jurisdiction of the Data Protection Commissioner.

Further to this, by email dated **4 September 2019**, the Complainant states:

"Account XXXX 0696 ... was closed and we received our funds, it is not the subject of this complaint.

On page 3, Section C of the complaint I made to the Ombudsman, on 01/08/2017, I have only indicated one account, that is [account ending 5575]. ..."

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Therefore, I am satisfied it is only account ending 5575 that is the subject of this complaint.

The Complaints for Adjudication

The complaints are that the Provider:

1. Wrongfully classified the Complainant's account as dormant;
2. Failed to allow the Complainant perform a transaction on the account on **30 November 2016**;
3. Failed to correctly process the Complainant's identification documentation in **February 2017** and **July 2017** for the purpose of reactivating the Complainant's account;
4. Did not fulfil assurances to follow up with the Complainant during **February, April, July and September 2017**.

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 24 August 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 parties made the following submissions:

1. E-mail, together with attachment, from the Complainant to this Office dated 10 September 2020.
2. E-mail, together with attachment, from the Provider to this Office dated 14 September 2020.
3. E-mail, together with attachments, from the Complainant to this Office dated 6 October 2020.
4. E-mail, together with attachment, from the Provider to this Office dated 19 October 2020.

Copies of the above submissions were exchanged between the parties.

The Complainant advised this Office under cover of her e-mail dated 28 October 2020 that *“she would like to refer the case back to the Ombudsman”*.

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

Background

The account the subject of this complaint was originally held with another financial service provider until this entity merged with the Provider. This resulted in a transfer of the Complainant’s money to the account, the subject of this complaint, in **2010**.

Notification of Dormancy

The Complainant has furnished the first page of a two page letter received from the Provider dated **30 September 2016**.

The first page of this letter states:

“I am writing to inform you that the Dormant Accounts Act, 2001, will soon have a significant effect on your account, detailed above. This account, held by [the Provider] on your behalf, has now been classified as ‘dormant’ since no transactions have been made for a period of 15 years or more.

It is easy to reactivate your account by taking one of the simple steps set out below by 31 March 2017. If you do not reactivate your account by this date the balance will be transferred to the National Treasury Management Agency (NTMA) without further notice.

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Even after this date you are still entitled to reclaim your funds, subject to the terms set out in the Act. To do so you must contact us and we will request your total funds on your behalf.

What should I do next?

You need to do one of the following by 31 March 2017:

- *Simply make a lodgement or withdrawal from your account, or*
- *Transfer all outstanding funds to another (non-dormant) account, or*
- *Close your account and request a cheque to be drawn in your name.*

...

When you have reached a decision on what steps to take, your branch will be pleased to assist you. Please remember that whatever you choose to do we will ask you to confirm your instructions in writing."

The Provider has been unable to locate a copy of this letter. However, it has furnished a template of the letter that issued to the Complainant. Having reviewed this template, I accept that the first page of the letter submitted by the Complainant and the first page of the template are essentially the same. I also accept the second page of the template does not contain any information relevant to my adjudication of this complaint. It simply outlines changes to the incorporated status of the Provider. This being the case, it is unlikely the second page of the letter received by the Complainant contained any information pertinent to this complaint.

Telephone Conversations

I have considered the content of telephone recordings provided in evidence.

On **19 May 2017**, the Complainant contacted the Provider and told the Provider's agent that she was advised three of her accounts were being made dormant.

She attended the Provider's branch in **November 2016** "*... and I gave them in all my details and everything else ...*" and heard nothing from the Provider since the branch visit.

The Complainant states during the call that she keeps going back to the branch, her documentation is taken, and she is told the Provider would telephone her. The Complainant also explains that when she goes into the Provider's branch, she is promised that the Provider's branch staff members would telephone her, but she is never contacted. The Complainant was then transferred to the Provider's complaints department.

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While speaking to the Provider's agent in the complaints department, the Complainant explained that when she was in the branch she enquired as to why she had not heard anything from the Provider *"... because when I gave them the documentation they told me that within three weeks my accounts would be viable again and I could access my money and I've heard nothing and this is nearly June ..."*

During a telephone conversation with the Provider on **7 July 2017** the Complainant explains that *"... back in February I went into that branch when I got the letter saying the account was going to be made dormant and I provided them with the documentation to say that it shouldn't be made dormant ..."* and wanted to know why, having provided the relevant documentation to the Provider, her account was made dormant.

Correspondence

A letter dated **27 June 2017** has been furnished by the Complainant. The Complainant states this letter was sent to the Provider. This letter states:

"Some time ago I received a letter from you regarding an account of mine that was classified as being dormant.

The account number is ...

When I visited the [Branch A] on 30th November 2016 I was advised that two other accounts were also dormant. The account number for these accounts are ...

I am writing to you now to close all 3 accounts

...

and I am requesting a cheque for the total amount please.

Please note that I have provided documentation showing proof of address and identity to [Branch A] in Spring 2017 as this was requested by them."

The Provider maintains it did not receive this letter. I note that the letter does not contain any recipient address.

The Complainant wrote to Branch B on **24 September 2017** explaining that she completed the claim form and provided two forms of identification. The Complainant states that the Provider advised her she would be contacted about the claim but she had not received any communication from the Provider since completing the claim form.

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Dormant Account Claim Form

The Complainant completed a Dormant Account Claim Form on **17 July 2017**. Part A on page 5 of the form asks which of the listed documents could the Complainant provide on request. The Complainant ticked passport, driving licence and birth certificate. Under this section it states:

*“NOTE: Identification documents **should not be attached to this form**, but may be asked for during the processing of your claim.”*

A similar note is set out on page 6.

Part C contains the following statement:

“Account closed by [the Provider] on 4/4/17. Balance transferred to Dormant Centralisation despite documentation supplied to [Branch A].”

The Provider wrote to the Complainant by letter dated **24 July 2017** stating:

“To enable us to further this request, we are required to confirm your identity. I should therefore be grateful if you would call into your nearest ... branch with this letter and one of the following forms of photographic identification for yourself:

...

The Branch will photocopy and certify the identification and forward it to the Dormant Account Section in this office.

...

Upon receipt I shall be in [a] position to complete the search and, should an account be located, submit the refund claim to the National Treasury Management Agency”

The First Complaint

Section 7 of the 2001 Act states as follows:

“An account shall be deemed to be a dormant account where, during the dormancy period, no transaction on the account has been effected by the account holder.”

Dormancy period is defined in section 2 as:

“(a) a period of not less than 15 years ending on—

(i) 31 March 2002, and

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(ii) 30 September in each subsequent year commencing on 30 September 2003,

or

(b) any other period prescribed under [section 9](#);

Transaction is defined as:

““transaction”, in relation to an account, means—

(a) in the case of a savings bond, savings certificate or instalment savings scheme, encashment or partial encashment by the account holder,

(b) in the case of a deposit receipt or fixed deposit, encashment or partial encashment by the account holder, and

(c) in any other case, the debiting from or crediting to the account, of an amount, by the account holder.”

Section 8(1) states:

“Subject to subsection (2), this Act applies to dormant accounts held at an institution specified in Part 1 of the Schedule.”

In essence, pursuant to section 7 of the 2001 Act, if no transactions have been effected on an account held at a relevant institution by an account holder for a period of 15 years, the account shall be deemed dormant.

The Provider informed the Complainant by letter dated **30 September 2016** that her account had been classified as dormant. The Provider submits that no transactions initiated by the Complainant took place on the account from when the funds were transferred in **February 2010** to the date of its letter dated **30 September 2016**. The Provider also states the original account information is “... outside of our records management obligations ...” and “... we are unable to determine when the last customer initiated transaction took place ...” Notwithstanding this, the Provider submits that “... our records do confirm that it was at least, if not more, than 15 years ago.”

Having considered the evidence in this complaint and the parties’ submissions, I am not satisfied the Provider has demonstrated that there were no account holder transactions on the account for more than 15 years as required by the 2001 Act; whether on the original financial service provider account or the Provider account. I have come to this conclusion for a number of reasons.

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The Provider has not been able to identify when the last account holder transaction took place. How then, can the Provider say with a sufficient degree of certainty whether the *dormancy period* has passed? In its original response to this Office as part of the investigation of the complaint the Provider only furnished account statements dating from **3 May 2016**. This is not sufficient to satisfy the requirements of the 2001 Act. At that stage the Provider indicated it had been unable to provide any records in respect of the original account.

The Provider had not, at that stage, provided any documentation to support its submission that *"... our records do confirm that it was at least, if not more, than 15 years ago."*

Furthermore, the Provider has not established its legal entitlement to rely on any periods of inactivity which might have accrued on the original account prior to the merger, and seems to be operating on the assumption that it is entitled to do so. It appears from section 8(1) that the 2001 Act only applies to accounts **held** at an institution specified in the Schedule. While the Provider advises that a merger took place, it is not clear, for the purposes of section 8(1), that the Complainant's account was *held* by the Provider prior to **February 2010**.

While the Complainant has not disputed an absence of transactions on her account, this is not sufficient to permit the Provider to classify an account as dormant. Additionally, it was only apparent that the Complainant did not dispute the lack of activity on the account after the decision to classify the account as dormant occurred.

In my Preliminary Decision I had stated that *"In responding to a complaint of this nature, the Provider is obliged to furnish sufficient evidence to demonstrate its entitlement to classify the account as dormant. As stated above, it has failed to do so. On the basis that the evidence furnished to this Office in response to this complaint, I consider the Provider's decision to classify the account as dormant to be unreasonable, particularly when the Provider cannot identify the date on which the last account holder initiated transaction occurred"*.

I note that the Provider has, in its post Preliminary Decision submission dated **14 September 2020**, submitted copies of account statements in relation to the account which is the subject of this complaint from July 1995 to April 2017.

The Provider submits that:

"During the course of our investigation of the complaint initially we were unable to locate the statements for the relevant account prior to the February 2010 transfer of the [name of previous financial service provider] banking business to [the Provider]. However, a further search has located statements that date back to 1995 which we now submit to your office for consideration as they show no customer initiated transaction occurred since July 1995".

It is most disappointing that the Provider had failed to locate this information when it first investigated the Complainant's complaint. It also failed to furnish this evidence at an earlier stage of the investigation and adjudication of the complaint by this Office and only did so in response to my Preliminary Decision.

Of the three sets of account statements, belatedly furnished by the Provider, I note the first relates to the original provider and the second and third relate to the Provider.

I also note that each account statement has different sort codes and accounts numbers. While a change of account number on **12 February 2010** between the two sets of Provider accounts is evident, it is not necessarily clear that the original provider statements relate to the account in issue.

Additionally, the submission of these statements raises further questions. If the Provider's evidence is that the transfer of the account in issue occurred in **February 2010**, how can the Provider have its own account statements for this account commencing in **October 2006** (the second set of statements) and relating to a period prior to the transfer? Would it not follow that the original provider's account statements should run up to **February 2010**?

I am, therefore, not satisfied that the Provider has in fact shown a 15 year dormancy period.

The submitted account statements appear to show that no transaction had occurred on the account for period of over 15 years. However, as I have stated above, it appears from section 8(1) that the 2001 Act only applies to accounts held at an institution specified in the Schedule.

The Provider has, in its post Preliminary Decision submission, disagreed with the above conclusion and would challenge it.

The Provider submits:

"Our reading of Section 8(1) is that it does not specify that a dormant account must be held within the same institution for the duration of the dormancy period. It merely states the Act applies to dormant accounts held at an institution as specified in Part 1 of the Schedule. The Act itself does not stipulate that the qualifying period to classify an account as dormant must be accrued while an account is housed in the same institution. The Act imposes no obligation for an account to remain in the same institution for the purposes of the dormancy period. Furthermore, there is no apparent prohibition on the dormancy period continuing to accrue should an account move between institutions in a transfer or merger scenario. We were the institution housing the account when the qualifying period for dormancy was reached".

While I note the argument put forward by the Provider, I would disagree with the conclusions it has drawn.

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The 2001 Act is silent on this matter, but I note the wording of section 8(1) of the Act:

*“Subject to subsection (2), this Act applies to dormant accounts **held at an institution** specified in Part 1 of the Schedule.”*

[My emphasis added]

In relation to the Provider’s reliance on section 34 of the Central Bank Act 1971, I would point out that the following passage, puts more perspective on the text quoted by the Provider:

“[An account]... shall be transferred or deemed to be transferred to the transferee on the transfer date and become as and from that date an account between the transferee and that person with the same rights and subject to the same obligations and incidents (including rights of set-off) as would have been applicable thereto if such account between the transferor and the person had continued ...”

This would indicate that an account:

- i) is not transferred until the transfer date; and
- ii) is not deemed an account of the transferee (the Provider) until the transfer date.

This, in my view, supports the position that the account must be *held* by the Provider and the dormancy period should only be reckoned by reference to the period the account was *held* by the Provider.

The transfer occurs *with the same rights and subject to the same obligations and incidents*. I would not consider this would (viewed in the context of the 2001 Act) encompass the Provider’s interpretation nor would these words suggest, to me, that the Provider is entitled to rely on any dormancy period that accrued prior to the transfer, unless the period of pre-transfer inactivity could be considered an *incident* of an account.

In any event, if I were to accept the Provider’s interpretation, then it would appear the Provider would potentially be in breach of section 12(1) of the 2001 Act as the account would not have transferred to the Dormant Account Fund in the correct timeframe.

The Provider’s conduct has resulted in the Complainant’s account being closed and the account balance being transferred to the NTMA. It also appears that the Complainant has not yet managed to retrieve her money from the NTMA.

The Second Complaint

The Complainant attended one of the Provider’s branches on **30 November 2016** to reactive her account by making a lodgement.

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When the Complainant attended the branch, she was asked for identification. In response to this, the Complainant produced the Provider's letter dated **30 September 2016** and her driving licence. It appears that two forms of identification were required from the Complainant. However, at the time, the Complainant did not have a second form of identification with her. The Provider was unable to verify the Complainant's identity and the lodgement to the account could not be made.

The parties have made extensive submissions on this aspect of the complaint. In particular, reference has been made to clause 7.2 of the account terms and conditions. This clause deals with cash lodgements and states *"You will be required to provide your Account number and sort code and details of your identity at the time of your cash lodgement."* The terms and conditions are virtually silent as to what is required beyond this.

The Complainant attempted to carry out the transaction at a time when her account had been marked as no operations and classified as dormant. From the Provider's perspective, this means that a significant period of time had elapsed since the account was used by the account holder. In such circumstances, it is necessary to have a more rigorous identification and verification process when an account holder is seeking to transact on the account. In this instance, two forms of identification were required from the Complainant. While I do not consider this to have been an unreasonable requirement, considering the status of the account to which the Complainant sought to make the lodgement, I believe the Provider should have set this important information out in its original letter of 30 September 2016. Had it done so, it is possible that this complaint may never have arisen.

The Third Complaint

February 2017

The Complainant states that she visited one of the Provider's branches in **February 2017** with two forms of identification: a driving licence and passport. The Provider's staff members then made copies of the Complainant's driving licence and passport, and told the Complainant they would be in touch with her.

The Provider states that had the Complainant presented with her driving licence and passport; these would have been acceptable forms of identification which would have allowed her to carry out a transaction on the account. The Provider observes that the Complainant does not state whether she attempted to make a lodgement to, or withdrawal from the account. The Provider also states that with the passage of time, it is unable to confirm which staff member met with the Complainant and none of its members of staff at this branch have a recollection of this particular visit. The Provider also states this branch has stated there are no copies of any identification documents held by the branch for the Complainant.

The Complainant maintains that she presented at the Provider's branch in **February 2017** with two forms of identification and copies of these were made by the Provider. The Provider appears to be asserting that if this was the case, the Complainant would have been able to reactivate her account.

On balance, I accept it is likely that the Complainant attended at the Provider's branch in **February 2017** with her driving licence and passport. I believe it is also likely that the purpose of this visit was to reactive her account; it would be strange if she did not seek to do so; especially given the options outlined in the letter dated **30 September 2016**.

In addition, the telephone conversations outlined above would suggest it was to reactivate her account but, as discussed further in the next paragraph, not necessarily to perform a transaction on the account.

In a submission dated **23 December 2019**, the Complainant states: *"I was told they would contact me within 2-3 weeks and then I could make a lodgement."* This would also suggest the purpose of the visit was not to perform a transaction. However, in a further submission dated **6 April 2020**, the Complainant states: *"In Feb 2017 in the ... branch when I brought in 2 forms of Photo ID to perform a transaction, why was I sent away and told they would contact me. ..."* This is somewhat contrary to the preceding point and the evidence referred to, especially the more contemporaneous telephone conversations. This also appears to be the first time the Complainant has indicated she wanted to perform a transaction on the account. However, no details as to the precise transaction have been provided.

July 2017

The Complainant attended one of the Provider's branches with identification documentation in **July 2017**. However, by this time her account had been closed and the account balance transferred to the NTMA. Therefore, it was not possible to reactivate her account. During this visit the Complainant also completed and signed a Dormant Account Claim Form. This form specifically states that identification documents should not be attached to the form but may be sought during the processing of the Complainant's claim.

Any complaint the Complainant has regarding the use or processing of her identification documentation beyond what has been considered in respect of this aspect of the complaint is not within the jurisdiction of this Office and is more properly a matter for the Office of the Data Protection Commissioner.

The Fourth Complaint

February 2017

As previously recounted, the Complainant states that she visited one of the Provider's branches in **February 2017** with two forms of identification: a driving licence and passport.

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The Provider's staff members then made copies of the Complainant's driving licence and passport and told the Complainant they would be in touch with her. It is not clear what the Provider was to follow up with the Complainant following this visit. The telephone conversations referred to above demonstrate that the Complainant tried to follow up with the Provider in respect of whatever it was that the Provider was to contact her about; which appears to have been the reactivation of her account. In the circumstances of this complaint, as no transaction was carried out on this occasion and as the Complainant had furnished identification documentation to the Provider, it is likely that some further action was required of the Provider. This would also suggest that some form of follow up communication was required on the part of the Provider. However, no such communication appears to have been made.

April 2017

The Complainant states that she attended one of the Provider's branches in **April 2017** to enquire as to the status of her account and why she had not heard from the Provider since **February 2017**. The Complainant was advised that the Provider's staff members would follow up on her query but she received no response from the Provider. While there have been extensive submissions by both parties to this complaint, the Provider does not appear to have addressed this specific aspect of the complaint.

July 2017

The Complainant attended one of the Provider's branches with identification documentation on **17 July 2017**. The Provider's agent advised the Complainant that her account was closed and the agent was unable to determine where her money had gone. The Complainant also completed a Dormant Account Claim Form during this visit. The Complainant states later that evening she received a telephone call from the Provider advising her that the account had been made dormant. The Complainant explains she received no further communication from the Provider until a letter dated **24 July 2017** in respect of her account which advised the Complainant to present this letter along with a form of identification to any of the Provider's branches. The Provider submits the identification documents sought in its letter were not received and it was not able to progress the claim under the 2001 Act.

September 2017

The Complainant states that as she had not heard from the Provider since **July 2017**, she wrote to the Provider on **24 September 2017** regarding the Dormant Account Claim Form and requested her money. The Complainant states she has not received a response to this letter.

In a submission dated **9 December 2019**, the Provider advises that following an investigation of the matter, the relevant branch manager has no recollection of receiving this letter.

Goodwill Gesture

The Provider states that:

“In addition to the €50 gesture of good will already accepted by the Complainant in relation to this matter, the Bank would like to offer an additional goodwill gesture of €1,000 to the Complainant which we believe to be a fair and reasonable offer following consideration of the issues. The Bank would also like to advise that the Complainant is entitled to also complete and submit the identification documents required in order to retrieve the balance of €298.98 for account xxxx5575 from the National Treasury Management Agency.”

Taking into consideration my findings in respect of each aspect of this complaint, in particular, my findings regarding the decision to classify the Complainant’s account as dormant, I am not satisfied the Provider’s goodwill gesture is a reasonable sum of compensation. The Provider’s decision to classify the Complainant’s account as dormant appears to have been made on a very tenuous basis and without adequate or sufficient evidence to support its decision. This resulted in the closure of the Complainant’s account and the transfer of her money to the NTMA. The Provider’s conduct has denied the Complainant access to her account and her money and caused her significant inconvenience.

In my Preliminary Decision I had noted that *“the Complainant was required to unnecessarily follow a process to reactive her account which proved quite arduous and has yet to retrieve her money from the NTMA”*.

The Complainant has, in a post Preliminary Decision submission dated **10 September 2020**, made the statement that:

“As I still haven’t received the funds from account xx5575 and have stated in a previous submission that I will not give my identity documents to [the Provider] ever again, what is your decision in relation to refunding the money in this account please?”

While I acknowledge that the Complainant had made a submission dated **11 May 2020**, in which the Complainant maintains that:

“I will never hand over my ID to [the Provider] again They have been provided with my Identity documents and Photo Identity documents multiple times and they have failed on each and every occasion to handle them properly and use them for what they were intended. I still do not have an explanation or an answer as to why this occurred”.

If the Complainant wishes to retrieve these funds, she will be required to *follow the process to reactive her account and to retrieve her money from the NTMA*. Therefore I will not direct the Provider to refund the money as the formal process must be followed to retrieve the funds from the NTMA. It will be a matter for the Complainant to decide if she wishes to cooperate with the required processes in order to retrieve her money.

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There can be no doubt that better communication by the Provider from the very outset of this process could have avoided much of the inconvenience caused to the Complainant.

For the reasons outlined in this Decision, I substantially uphold this complaint and direct the Provider to pay the sum of €2,000 to the Complainant in compensation.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2) (a), (b), (d), (e) and (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €2,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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

11 December 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.