



<u>Decision Ref:</u>	2021-0040
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Failure to provide notification /reason for closure Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant held a current account with the Provider. The Provider wrote to the Complainant on **27 September 2019** to inform him that his account would be closed in 60 days. The Provider closed the Complainant's account on **4 December 2019**.

The Complainant's Case

The Complainant explains that his complaint relates to the closure of his current account on **3 December 2019** by the Provider. The Complainant says that he was not given any notice of the account closure. The Complainant says he received two cheques from the Provider in the amount of his current account balance and two letters, neither of which provided a reason for the closure of the account.

On **10 December 2019**, the Complainant states that he attended his local branch but the manager refused to see him and another staff member gave him a phone number for a customer helpline. The Complainant contacted this number and says he was left waiting for over 10 minutes before he was told that the Provider was not obliged to give a reason or notice regarding an account closure.

As a result of the Provider's conduct, the Complainant advises that he missed two mortgage loan repayments scheduled to leave his account on **1 December** and **10 December 2019**. However, the Provider processed a separate direct debit on **1 December 2019**. The Complainant states that there were more than sufficient funds in his account to cover his direct debits.

The Complainant says the Provider's "... *lack of professionalism and courtesy ...*" meant he spent two days opening a new current account with another financial service provider and had to contact all of his debtors to provide them with his new account details. The Complainant says he has never before missed a mortgage loan repayment and that his credit rating has been permanently affected by the Provider's conduct.

On **13 December 2019**, the Complainant explains he contacted the Provider's Complaints Department to register a complaint. The Complainant states that the Complaints Department told him they would respond to him within one to five working days, which they failed to do. The Complainant states that he emailed a letter to the Complaints Department on **19 December 2019**.

On **14 January 2020**, the Complainant says he received a response dated **8 January 2020** from the Provider. The Complainant says the letter:

"... basically said they had sent out a notice letter on the 27th September 2019 and through some lapse of memory of mine or for whatever reason it was my problem that I did not get it and they absolved themselves of all responsibilities in this matter."

The Complainant submits: *"[t]he only problems are that nobody in [the Provider] knew of this letter in December 2019 but it conveniently materialised in January 2020, unsigned."* A further problem, the Complainant says, is that a direct debit in favour of his gym was processed and his weekly wages were deposited to the account on **2 December 2019**. However, the Complainant's December mortgage loan repayments were not processed.

The Complainant says that had he been given the proper notice, he would have closed his accounts immediately.

The Provider's Case

The Provider refers to Section A, clause 5 and Section B, clause 13 of its account terms and conditions. The Provider explains that the decision to close the Complainant's account was made because, as a result of a review of customer accounts, a routine request for information was made to the Complainant in **May 2019** and the Provider was not satisfied with the outcome of this request. The Provider states that following dialogue and correspondence with the Complainant over a four month period between **May** and **September 2019**, not all information was supplied by the Complainant as had been requested in **May 2019**.

The Provider remarks that the Complainant has not disputed receiving the letters dated **22 May** and **5 June 2019** in which the Provider requested that the Complainant provide certain information. The Provider also states the Complainant has not disputed that a telephone conversation took place with one of the Provider's representatives during which, information was requested. However, the Provider submits that although the Complainant states he provided the requested information '*to the best of [his] ability*', its records indicate otherwise.

The Provider says its subsequent efforts to gather the required information were unsuccessful. Consequently, due to insufficient co-operation from the Complainant, the Provider states it reserved its right to close the account and cease payment services as stated in the account terms and conditions. The Provider submits it is within its commercial discretion to select which customers it chooses to conduct business with.

The Provider advises that the 60 day notification of account closure letter dated **27 September 2019** was posted to the Complainant via standard post. The Provider submits there is no evidence to show this letter was not received. The Provider advises that the notice period elapsed on **26 November 2019** and the account closure was complete on **4 December 2019**.

The Provider states the Complainant raised a complaint with its Customer Care Team on **13 December 2019** and although the representative who dealt with this call did not have visibility of the letter of **27 September 2019** (nor would it be expected that she would have a copy of this letter at her disposal) the agent did take note of the Complainant's issue and advised the Complainant that a complaint would be logged.

The Provider advises that the letter of **27 September 2019** was computer generated and did not include a signature of any specific staff member. The Provider further advises that, in accordance with the Provider's practice, the letter was signed off '*For and on behalf of*' the Provider and was issued by its Central Operations Team.

Referring to its Final Response letter and the Complainant's account statements, the Provider states that the last direct debits presented to the account were dated **26 November 2019** and there is no record of any subsequent direct debit being presented or unpaid on the account statements. The Provider also explains that a direct debit is typically in its automated payments system for 10 days before it is due to be applied to a customer's account and this would explain why the direct debits of **26 November 2019** were presented and honoured.

In terms of the Complainant's wages, the Provider states that the account statement shows a credit of €608.35 on **3 December 2019**. This was the same day the Provider commenced the account closure process and the credit of the Complainant's wages was a timing issue which coincided with the closure of the account. The Provider explains that it issued a cheque for €608.35 to the Complainant on **4 December 2019** in lieu of the remaining credit balance on the account. The Provider submits that it was not at fault in accepting the Complainant's wages, as the account was technically open at that point.

Dealing with the Complainant's branch visit, the Provider says that, in line with its policy and in accordance with its terms and conditions, it is not required to provide a reason when requesting its customers to close their accounts. The branch staff would not have information pertaining to the Provider's decision to close the Complainant's account. Therefore, the Provider explains, branch staff would not have been able to assist the Complainant to the extent which he required when raising the issue in branch. The Provider says its branch staff appear to have provided the Complainant with a telephone number for its Help Desk.

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The Provider states that a complaint was raised on **13 December 2019**. During this telephone conversation, the Provider says its Complaints Consultant assured the Complainant that she would log a complaint in relation to the concerns raised during the call. The Provider advises that an acknowledgement letter issued on **19 December 2019**, the complaint was investigated and a response letter was issued on **8 January 2020**. The Provider also advises that the Complainant communicated with its Customer Care Team via its online complaints platform and email on **20 December 2019**.

The Provider states that it regrets any distress, upset or inconvenience which this matter has caused the Complainant.

The Complaint for Adjudication

The complaint is that the Provider:

1. closed the Complainant's current account without prior notice or reason;
2. refused to engage with the Complainant during a subsequent branch visit; and
3. failed to respond to the Complainant's formal complaint in a timely manner.

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 **27 January 2021**, 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.

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

Account Terms and Conditions

The Complainant signed the Provider's current account application form on **30 May 2017** accepting, in particular, the Provider's current account terms and conditions. The Provider's *Personal Banking Terms and Conditions* state in respect of account closures that:

"5 Closure of the Account

5.1 *Unless the Additional Terms and Conditions in Sections C and D provide otherwise, this Agreement has no minimum term and will continue until terminated by either You or us in accordance with this Agreement. Your Account will remain open until it is closed by either You or is in accordance with this Agreement.*

5.2 *We may require You to close the Account. Where your Account is a Payment Account, We will give You not less than 60 days' notice. Where your Account is a non-Payment Account, We will give you not less than 30 days' prior notice or such period of notice You would have to give us in order to close your Account, whichever is longer. We may do this by writing to You indicating the period within which You are required to comply with this request. If, at the end of that period, You have not closed the Account, We will be entitled to refuse to accept any more payments into the Account (except such payments as are necessary to repay debt and outstanding interest and charges on the Account) and may return any existing balance to You at the last address You have intimated to us as your home address. We do not have to give You a reason for our decision."*

Correspondence

A telephone conversation appears to have taken place between the Complainant and the Provider on **22 May 2019** in respect of certain account information required by the Provider. The Provider has provided the following account of this conversation which has not been disputed by the Complainant:

"Telephone call between the Bank's Central Operations Department agent and the Complainant during which financial information was sought from the Complainant. The Bank considered that insufficient and incomplete information was received from the Complainant at that telephone call. It is the recollection of the agent who spoke with the Complainant that the Complainant was dis-satisfied with the questions posed to him. The Complainant did not provide the Bank with all the information it required for the Bank to maintain the banking relationship with the Complainant."

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By letter dated **22 May 2019**, the Provider wrote to the Complainant in respect of his account as follows:

"[The Provider] is required to hold accurate information about our customers. This enables us to provide an effective banking service that both meets your needs and complies with our legal and regulatory obligations.

A recent review has identified that we need to update our records, and re-verify information, held.

What do I need to do?

Please contact the Central Operations Team on ... or by emailing ... by 05/06/2019 to supply the information we require in order to complete our review. ...

What could happen if I don't supply the information?

If you do not provide the required information, [the Provider] will not be able to continue operating your bank account(s). ..."

A further letter was issued on **5 June 2019** explaining that:

"We have recently contacted you, asking for some information to ensure we are able to comply with our regulatory obligations and legislation and to ensure we are able to continue operating your bank account(s).

You appear not to have supplied everything we have requested and consequently we have no other option but to cease operating your account(s) from 4th August 2019. This may ultimately lead to the closure of your account(s).

...

What do I need to do?

Please contact the Central Operations Team on ... or by emailing ... to supply the information we require in order to complete our review. ...

What could happen if I don't supply the information?

If you do not provide the required information, [the Provider] will not be able to continue operating your bank account(s).

We assure you that we have taken this action reluctantly and as a last resort, to ensure the Bank continues to comply with its regulatory obligations. ..."

The Provider wrote to the Complainant again on **27 September 2019** notifying him of the closure of his account:

"We, [the Provider], have recently undertaken a review of the banking arrangements that you have with us. We have, with regret, reached the conclusion that we will no longer provide these facilities for you.

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Consequently, you will need to make alternative banking arrangements within 60 days of the date of this letter. These arrangements must be outside of [the Provider]
...

You will need to make alternative payments arrangements because at the end of the 60 days:

- *Any overdraft facilities will be withdrawn.*
- *Any standing order and direct debit authorities will be cancelled.*
- *All cards and cheque books for the account(s) will be stopped.*
- *Online banking will be terminated.*
- *Your account(s) will be closed.*

...

Any credit balance remaining at the time of closure of your account(s) can be forwarded to you via cheque. ...”

The Provider wrote to the Complainant on **3 December 2019** enclosing a cheque in the amount of €2,120.56 representing the closing balance on the account. The Provider wrote to the Complainant again on **4 December 2019** the following day, enclosing a cheque in the amount of €608.35 representing the outstanding closing balance on the account.

Analysis

The reason for closing the Complainant’s account appears to arise from the Complainant’s failure to provide certain information to the Provider. The Provider has not clarified the precise information which was required and outstanding.

The evidence shows that the Provider required certain information from the Complainant in respect of his account. The Complainant appears to have been made aware of this during a telephone conversation which took place on **22 May 2019**. A recording of this conversation is not available. However, the Provider has provided an account of this conversation which I have cited above. It can be seen from this passage that *financial information* was sought from the Complainant but the Complainant was dissatisfied with the questions asked and did not provide the information requested. The Provider describes this request as a *routine* request for information.

While I note that the Complainant does not dispute the Provider’s account of this conversation; in a telephone conversation with the Provider on **13 December 2019** and recounting the May conversation, the Complainant states that he answered the Provider’s questions to the best of his ability. The Complainant then explained that the person he was dealing with said *ok, fair enough* and that was the last he heard of the matter. Later in this conversation, the Complainant says the relevant agent told him no further information was required.

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During the December telephone conversation, the Complainant acknowledged receiving correspondence from the Provider on **25 May** and **5 June 2019**. This correspondence advised the Complainant that certain information remained outstanding and requested that the Complainant contact the Provider. Although the Provider has not specified the information the Complainant failed to provide, the correspondence which issued subsequent to the conversation on **22 May 2019** would suggest, contrary to the Complainant's position, that not all of the required information had been provided. As a result, I am satisfied that the Complainant was, or ought to have been, reasonably aware of this. However, it is not clear from the evidence whether the Complainant contacted the Provider following these letters and the Complainant has not given evidence of any such contact.

Importantly, these letters clearly advised the Complainant in essence, that in the absence of his co-operation, the Provider would cease operating his account(s).

The Provider wrote to the Complainant on **27 September 2019** notifying him of the closure of his account. The Complainant disputes receiving this letter. However, I note that the address on this letter is the same as the address contained on the letters issued in **May** and **June 2019** which the Complainant acknowledges receiving. Further to this, the Complainant confirmed his address during the telephone conversation on **13 December 2019** and this address matches the address on the September letter.

While the Provider was obliged to issue the account closure notification to the correct address, it was not obliged to ensure the Complainant received it. Although it may well be the case that it was not received, I do not accept this was as a result of the Provider's conduct.

Separately, the Complainant maintains the Provider failed to provide a reason for closing his account. While a reason was not contained in the September letter, the Provider's conduct must also be considered in the context of clause 5 of the terms and conditions and, as per clause 5, the Provider is not obliged to provide a reason for closing an account. However, it appears in this instance, the reason for the account closure was the lack of co-operation on the part of the Complainant in providing certain information and I am satisfied that the Provider's communication of 5 June 2019, was clear in that regard.

If the Provider believed that further information was required from the Complainant, I believe in addition to notifying the Complainant that information was required, it would have been reasonable for the Provider to have identified the information required. Furthermore, if there is indeed a reason for closing an account, as appears to have been the case here, it is also reasonable, generally speaking, to expect that this would be stated in the account closure letter.

However, despite this and given the correspondence issued to the Complainant in **May** and **June 2019**, I am satisfied the Complainant was aware or ought reasonably to have been aware that the Provider was not satisfied with the information previously provided and that further information was required. The Provider also set out the consequences (ceasing to operate the account) if this information was not forthcoming.

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Therefore, taking the circumstances of this complaint into consideration, I don't accept that the Provider closed the Complainant's account without prior notice or reason.

In respect of the Complainant's branch visit in **December 2019**, the Complainant states that the Provider's branch staff refused to deal with him. The Provider states that branch staff members would not be involved in the account closure process and were unable to address the Complainant's query. However, the Provider states that to assist the Complainant, one of its branch staff gave him a telephone number for its Help Desk. The Complainant also acknowledges that he was given a telephone number during his branch visit.

In the Provider's Final Response letter, the Provider advised the Complainant that:

"... I have taken the time to contact the branch manager, ... so that she could comment on your request to speak with her and her refusal to do so. [The branch manager] confirmed that she has no recollection of your particular visit, but has affirmed that she would never refuse to speak with a customer, and that the only reason why she would not have spoken with you is because she was otherwise engaged."

Having considered the evidence, I accept that branch staff members will generally be unable to properly address a customer's query regarding the reason for the closure of an account and the suggested absence of notification. However, as can be seen, the Complainant was provided with a telephone number for the Provider's Help Desk. Therefore, given the nature of the Complainant's query, I don't accept that the Provider's branch staff failed or refused to engage with the Complainant during his branch visit.

A formal complaint was made by the Complainant during a telephone call on Friday **13 December 2019**. Towards the end of this call, the Complainant was advised that his complaint would be logged and someone would be in contact with him in the next 1 to 5 working days.

The Provider wrote to the Complainant on Thursday **19 December 2019** acknowledging his complaint, advising that the complaint would be investigated, and the Provider would be in touch by **8 January 2020**. The Complainant submitted a complaint to the Provider via its online complaints platform on **20 December 2019** in respect of the conduct complained of during the earlier telephone conversation. A Final Response letter was issued on **8 January 2020**.

I note that the complaint was acknowledged by the Provider within 5 business days and a Final Response letter was issued within 20 business days. This is well within the time limits set out at provision 10.9 of the **Consumer Protection Code 2012** for responding to complaints. While the Complainant may have understood that a *formal response* to his complaint would be received in 1 to 5 working days, having listened to the telephone conversation, I am not satisfied that any such assurance was given by the Provider's agent.

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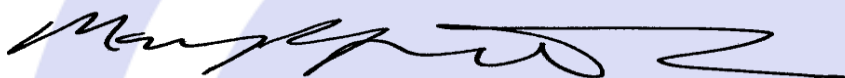
As noted above, the Complainant was advised that the Provider would be in contact with him in respect of the complaint within that period, not a that a formal response would be issued. As a result, I don't accept that the Provider failed to respond to the Complainant's formal complaint in a timely manner.

Having considered the evidence available regarding these matters, I take the view that the Provider did not act wrongfully and accordingly, I am satisfied that it would not be appropriate to 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.



**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

18 February 2021

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.