



<u>Decision Ref:</u>	2021-0061
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Fees & charges applied Delayed or inadequate communication Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the Provider's introduction of charges on the Complainant's current account.

The Complainant's Case

The Complainant contends that the Provider is *"insisting on changing [the] terms of [the Complainant's] account by charging maintenance fees"*.

The Complainant states that he does *"not agree to [the fees] whatsoever"*. The Complainant indicates that he is aggrieved that the Provider wishes to *'charge mickey mouse money to penalise people'* in light of the fact that the Provider has been *"bailed out"* in the past.

The complaint is that the Provider:

1. Has introduced fees that the Complainant is not agreeable to paying;
2. Has proffered poor customer service throughout.

The Complainant wants the Provider to allow his account to remain on its original terms and agree not to introduce fees in respect of the continued operation of his account.

The Provider's Case

The Provider states that the changes introduced following the review of its *"charging structure"* are necessary to *"ensure [that] we remain competitive within the current market place"*.

The Provider contends that it must *"give customers at least two months notice of any changes/amendments to our Terms & Conditions and Personal & Business Banking charges"*. The Provider points out that this is highlighted in its terms & conditions online.

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 26 January 2021, 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.

Following the issue of my Preliminary Decision, the Complainant made a submission under cover of his e-mail to this Office dated 1 February 2021, a copy of which was transmitted to the Provider for its consideration.

The Complainant, in his post Preliminary Decision submission, states:

"[The Provider] was bailed out by the 'taxpayer', so it's not a 'commercial' operation, as such, can't have it both ways.

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Glad to be gone from them, a terrible organisation to deal with, as with all banks in this country and it's only getting worse.

Not surprised at the outcome of the decision, I could have fore-told it a long time ago, unfortunately..."

The Provider advised this Office under cover of its e-mail dated 18 February 2021 that it had no further submission to make.

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

The Complainant opened the current account the subject matter of this complaint in **May 2013**.

In signing the application form for this account the Complainant agreed to be bound by the Provider's "*current Terms and Conditions Personal & Business banking charges booklet [...] which may be amended from time to time*".

The applicable terms and conditions at that time (May 2013) contained the following relevant clauses:

"9 FEES AND CHARGES:

- (a) Details of the fees and charges which are charged by us on Accounts are set out in the Fees Booklet (as published for time to time) which is available on request at any branch of the Bank.*
- (b) Subject to notifying the relevant regulatory authority where applicable, we may from time to time alter such fees and charges, giving 30 days notice in accordance with these Conditions. Where we alter any fees and charges that are applicable to the services provided under the Payment Services Directive, we will give you at least 2 months notice..."*

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

- (b) We may vary these Conditions and the interest and charges applicable on an Account including the interest rate structure from time to time.*
- (c) Unless we are permitted by law to give you shorter notice, we will notify you at least two months in advance of any alteration to these Conditions.*

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(e) If you receive notice of any alteration to these Conditions, you may close your Account (or switch it to another financial institution) and simultaneously cancel all other facilities granted to you in connection with your Account without having to pay any extra charges or interest [...] Unless and until you close your Account, your consent to the alteration is implied”.

Under the fee structure that was in place at that time, a customer qualified for “Fee Waiver” if they lodged €1,500 each calendar month to the account.

On **19 July 2017** correspondence issued from the Provider to the Complainant advising of proposed amendments to the current account terms. Specifically, the account maintenance fee was increasing from €12 per quarter to €18 per quarter. However, the terms provided that a customer would continue to qualify for “Fee Waiver” if they lodged €1,500 each calendar month to the account.

The **August 2017** terms and conditions that flowed from the above changes contain provisions in relation to amendments and variations in identical terms to those set out above.

On **21 December 2018** the Provider notified the Central Bank of Ireland of its intention to change account terms, in accordance with s. 149(1)(a) of the Consumer Credit Act, 1995 (as amended) and in compliance with the account terms and conditions (“*Subject to notifying the relevant regulatory authority where applicable...*”).

On **24 January 2019** the Provider issued a letter to the Complainant advising as follows:

“... we are writing to inform you of some important changes to your [Provider] Current Account, which will take effect from 1st of April. On this date your existing [Provider] Current Account’ will be retired and your account type will change to the ‘[Provider] Current Account 4’.”

*“**Quarterly Maintenance Fee Exemption:** [...] the exemption criteria available to avoid this fee will change on 1st April. From this date you will need to maintain a cleared credit balance of €2,500 every day in your account in order to avoid paying the quarterly maintenance fee...”*

*“**Credit Interest:** With your [current account terms] you currently earn credit interest of 1.00% variable on cleared credit balances up to €1,500. The [new account terms offer] credit interest of 0.01% variable on balances up to €1,500...”*

*“**What action do you need to take?***

There is no need to take any action as a result of this letter.

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While the exemptions on maintenance fees remain competitive, below are some other options available to you if you are not happy to proceed with the changes outlined above:

You may choose to close your account or switch providers....”

On **11 February 2019** the Complainant telephoned the Provider to express his dissatisfaction with the contents of the above letter, and the proposed changes to the terms of his account. He was advised that he could change to an account with a different fee structure, but this was not acceptable to the Complainant. There followed a lengthy discussion between the Complainant and Provider’s agent, however no progress was made other than logging the query as a complaint.

A Final Response Letter issued on **19 February 2019**, which states that the changes introduced following the review of the Provider’s *“charging structure”* are necessary to *“ensure [that] we remain competitive within the current market place”*.

The Provider noted that it must *“give customers at least two months notice of any changes/amendments to our Terms & Conditions and Personal & Business Banking charges”*, and stated that this is highlighted in its terms & conditions online.

The Complainant closed his account with the Provider on **28 February 2019**.

Analysis

The Complainant is aggrieved by the Provider’s actions in imposing a variation in the terms and conditions on the account he held with it. He believes that the Provider is not entitled to vary account terms in the manner that it has.

The August 2019 terms and conditions were in force at the time that the conduct the subject matter of this complaint occurred. They provide that the Provider is entitled to vary the terms and conditions from time to time, subject to notifying the customer within the appropriate period of time. In this case, the required notice period was 2 months.

There is no dispute about the Provider’s compliance with the 2 month notice period. Whilst the Complainant did take issue with the fact that the Provider did not furnish him with proof that the Provider had notified the Central Bank of Ireland, the Provider was under no obligation to furnish such correspondence to the Complainant, and in any event has furnished proof of this to this office during the investigation of this complaint.

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The Complainant's complaint is, essentially, that he feels the Provider is not entitled to alter the terms and conditions of his current account. The simple fact of the matter is that the Provider is entitled to do so, and this entitlement is set out in the account terms and conditions.

If a customer does not wish to accept the altered terms and conditions that are proposed, the customer can (as the Complainant did) close their account or switch provider. While a customer is of course entitled to attempt to negotiate terms, a provider is under no obligation to agree to the particular terms that a customer seeks.

I note the Complainant has taken issue with banks being run "*for profit*". However, the plain fact is that banks are businesses that are entitled to make a profit. The level of fees/charges that any bank decides to apply is a matter within its commercial discretion.

The Provider has complied with its contractual and regulatory obligations regarding notice of the proposed changes.

The Complainant has asserted that the Provider has proffered poor customer service. It responded to his complaint by way of detailed Final Response Letter 8 days after he made his complaint by telephone. As for the telephone call itself, the Provider's agent dealt with the Complainant's enquiry in a clear and polite manner.

For the reasons outlined in this Decision, I do not uphold this complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

8 March 2021

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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.

