



<b><u>Decision Ref:</u></b>	2021-0154
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Lodgements
<b><u>Conduct(s) complained of:</u></b>	Failure to provide accurate account/balance information
<b><u>Outcome:</u></b>	Rejected

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

The Complainants held a number of accounts with a financial services provider (**Entity 1**). In **September 2000**, the First Complainant lodged IR€40,000 (punts) to a current account jointly held by both Complainants. During **2009/2010**, Entity 1 merged with the Provider which resulted in the Complainants' accounts being transferred to the Provider. The Complainants later tried to access the funds in their current account but were unable to do so.

#### **The Complainants' Case**

In their Complaint Form, the Complainants refer to documentation relating to complaints made to the Provider regarding the whereabouts of funds in the amount of IR€40,000 lodged to a current account held with Entity 1 during **September 2000**. The Complainants also refer to the responses received from the Provider. In this respect, the Complainants say in its most recent response, the Provider says their money must be in a dormant account. The Complainants suggest that the Provider's response is that "... *after all* [the Provider's] *researching* [it] *was unable to locate this amount in the* [Provider] *and suggested it did not move from* [Entity 1] *to* [the Provider]."

In an email to this Office dated **24 April 2019**, the Complainants state as follows:

*“We do not know what has happened to [account 9901] £40k which are documented in letter from [Entity 1] September 2000.  
It is documented that [the Provider] received this £40k that we are looking for and gave it a different a/c #.  
However [the Provider] have never communicated with us as to the whereabouts of this money.*

*If [the Provider] states that the money was withdrawn we need to see proof of withdrawal signatures of myself or [the Second Complainant] or both. ...”*

In a letter to this Office dated **11 June 2019**, the Complainants say that:

*“We never closed our account with [Entity 1] or [the Provider].*

*We need to see proof of a withdrawal of €25,000 from the branch of [Entity 1]. ...*

*We started to look for the money in 2010 with [the Provider’s agent] in [the Provider’s branch]. It was he who told us that there was money in the account ...”*

In a letter to this Office dated **9 September 2019**, the Complainants say the money in question was lodged in good faith with Entity 1. In a further letter to this Office dated **16 November 2019**, the Complainants say that:

*“The [Provider] have never responded to our request for evidence of money in – money out, signed for, of the accounts that have been furnished to them by us ...*

*The [Provider] has a duty of care to mind our money and we ask the following:*

*When the [Provider] merged/took over [Entity 1] why were we not contacted with regard to the money in our account. If we owed money to the [Provider] we would have received nasty letters.*

*If this account was dormant why was it not moved to the Central Bank?*

*As we have not received any evidence of movement of money from the account, are we to surmise that something sinister has occurred and that some misappropriation (however accidental) has taken place? ...”*

The Complainants have also provided a copy of the letter dated **29 September 2000** from Entity 1 acknowledging the lodgment of the funds to their current account.

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### The Provider's Case

The Provider explains that the banking business of Entity 1 transferred to the Provider on **15 February 2010** and prior to the transfer, Entity 1 wrote to all customers on several occasions during **2009** and **2010** updating them on the details of the transfer to the Provider. The Provider says due to the 10/11 year passing of time since those letters were issued, it no longer holds a copy of those letters. In responding to this complaint, the Provider says there is no obligation on it, to hold copy customer letters from **2009** and **2010**, given the 10/11 year time timescale that has elapsed.

The Provider notes that the Complainants have included with their submission as part of this complaint, a copy of two such letters from Entity 1 addressed to the Second Complainant dated **29 June 2009** and **1 October 2009**. The Provider submits that in view of these letters, the Complainants were clearly written to by Entity 1 regarding the transfer of their accounts to the Provider. The Provider says it is reasonable to conclude that if the Complainants had been issued with such letters, they would have been issued with all relevant correspondence in respect of the transfer, if it had happened.

The Provider refers to a booklet issued to Entity 1 customers like the Complainants in **2009** prior to the transfer of its banking services to the Provider and a template covering letter. The Provider says the purpose of the booklet was to explain to Entity 1 customers the changes that would happen on the transfer of their accounts to the Provider. The Provider points to Page 2 of this booklet, which stated:

*"Using this booklet*

*To make things as easy as possible for you we have reduced the number of changes you'll experience when your account(s) move to [the Provider]. This booklet explains what your [Entity 1] account(s) and services will be called once the merger is complete and any changes that may occur to the features of your account(s)."*

On pages 4 and 5, the Provider says that the various Entity 1 current and savings accounts were listed by name and customers were informed of the new account name and what specifically would change in respect of account number and sort code (i.e. in that a new sort code and account number would be applied to any accounts held). Similarly, the Provider says that on Page 11 of the booklet, it sets out details of how existing Entity 1 mortgage loan accounts would change, following transfer to the Provider.

The Provider advises that it could find no evidence that the Complainants held accounts with it prior to the transfer of their banking activity from Entity 1 in **2010**. Following completion of the transfer in **February 2010**, the Provider says that any accounts that were open in the Complainants' names with Entity 1 were transferred to the Provider and given new account numbers and sort codes which was in accordance with what Entity 1 customers had been advised at the time of, and prior to the merger.

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In respect of a letter from Entity 1 dated **29 June 2009**, the Provider says this letter was to update Entity 1 customers on what would happen in **October 2009** (in that a dedicated Welcome Help Desk was being set up in their local branch). This letter also confirmed that:

*“What will happen in October?”*

*You will remain a [Entity 1] customer. You don’t need to take any action and your accounts, its numbers and any other arrangements you have with [Entity 1] will stay the same. Rest assured however we’ll write to you about any further changes as we move into the next phase of the merger.”*

The Provider says a letter dated **1 October 2009**, stated that:

*“Even after 19 October any account(s) you have with [Entity 1] will stay the same until **the merger is completed next year**”*

The Provider says it has highlighted the above text as it wishes to emphasise that account details remained the same until such time as the merger was complete. The Provider says that from **February 2010**, the Entity 1 accounts that transferred to it, were designated new account numbers and sort codes.

The Provider has set out the details of the Complainants’ accounts held by the Provider since the completion of the transfer. The Provider has also set out details of previous mortgage loan accounts held with Entity 1. The Provider says the account which is the subject of this complaint with ledger number 9901 is the ledger number for a current account and there is no evidence that it was open in **2009** and transferred to the Provider in **February 2010**.

The Provider advises that if the account had been open in **2009/2010**, it would have transferred to it in **February 2010** and the Provider would have a record of this account. The Provider says that in its opinion, the account was not open at the time of the transfer and it believes that it was closed in **2001**.

In terms of tracing this account, the Provider says it has been the subject of two separate complaint investigations between **December 2015** and **February 2016**, and **December 2016** and **January 2017**. The Provider says the timeline it prepared in response to this complaint investigation and its complaint responses dated **29 February 2016** and **13 January 2017** show some of the attempts made by the Provider to try get information on this particular account.

The Provider says it checked or reviewed the following to locate information on the account:

*“...*

- We have searched bank records retained (either in bank premises or offsite in our archives) for this 9901 account and no information outside of what had been referred to in this response has been located.*

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- *The event the Complainants are asking about happened 20 years ago, (and 17 years before matters were referred to your Office) which is outside our standard process for record retention.*
- *Searches were undertaken in the Bank's dormant accounts records and nothing was located.*
- *Mortgage Statements were reviewed to check for any information that might assist the Complainants in trying to locate information on account [9901] ...*
- *The Complainants restructured their mortgage in 2004 (completed in 2005). We have reviewed the documentation held on our records relating to this restructure to see if there is any mention of or reference to the 9901 account .... We have found no information on that account in the documentation we hold from 2004 and 2005. ...*
- *The Bank's legacy systems in [Entity 1] were reviewed and no additional information was located outside of what has been outlined in this response as having been located."*

The Provider says there are no destinations or repositories to which the funds may have been transferred at the time of the transfer of the banking business of Entity 1 to the Provider in **February 2010**.

The Provider says it is fully satisfied that the account in question is not subject to the Dormant Accounts Act 2001. The account would not have met the criteria for dormancy and, consequently, is not subject to the Act. The Provider says under the Dormant Accounts Act, a dormant account is defined as *"an account having no customer initiated transaction for a period of not less than 15 years."* The Provider says accounts that meet these criteria are automatically closed and funds, as at 31 March, are transferred to the National Treasury Management Agency (**NTMA**) in April each year.

The Provider says that the Complainants have provided a letter from Entity 1 dating from **September 2000**, confirming a lodgment of IR£40,000 to the account. The Provider says that if no transactions had occurred on the account after this date, which the Complainants believe to be the case, then the date for dormancy would have been 15 years after this (i.e. **September 2015**). Consequently, any balance in the account would have transferred to the NTMA on **1 April 2016**. The Provider says the fact remains that there were no funds in the account in **September 2015** or on **31 March 2015**.

The Provider says that if funds had been in the account they would have transferred to the Provider on **15 February 2010** with all of the other accounts that had been held under the Complainants' Entity 1 customer number. The Provider says that it holds no record of the account number/customer number which is the subject of this complaint, on its register of transfers to the NTMA. The Provider also says that it has not engaged with the NTMA in respect of this matter as the account did not fall under the Dormant Accounts Act. The Provider says it cannot seek to recall funds from the NTMA that were never in fact transferred to the NTMA.

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As part of the investigation into matters in **January 2016**, the Provider says that one of its agents in its Complaint Handling Centre recorded the following information in their investigation notes:

*"I also checked customer's account, as per the details provided [current account customer number] and this account cannot be viewed due to a change in platforms (NOT A MORTGAGE ACCOUNT). New account showing as being [savings account number]. When I checked this account it is showing as being dormant. I emailed (the Bank's Retail & Corporate Operations Department) asking if I can sight any details on this account, as it is dormant. I also asked how I can order a copy of a statement on this account. I was advised to order a statement, as this will be the only way I can sight the transaction in question. It was also confirmed there had been no transactions on the account since 02/10/2006.*

*I ordered statements for account [savings account number] (which is the account showing a being dormant). I also ordered a statement for an account [Facility Account].*

*The details on the letter provided, and also following my review of (bank internal systems), shows as [current account customer number], this account is no longer visible and due to a merge in systems / bank this was changed to [savings account number] and when the merge to [the Provider] took place a further account was given, which is [savings account number] – statement that has been ordered."*

Having cited the above investigation notes, the Provider says the notes record that the disputed current account changed to an Entity 1 account number and sort code in **2006** and a Provider account number and sort code in **2010**. The Provider says it wishes to clarify that the current account number did not change to either of the account numbers cited in the investigation notes at any stage, and it was incorrectly noted that the account was renumbered in **2006** and **2010**. The Provider refers to the correct account numbers which are set out in the table provided as part of its Complaint Response. These accounts were the Complainants' (i) savings account, (ii) facility account and (iii) mortgage account.

The Provider says it is also its policy that if an account has no customer initiated transactions for 5 years and 9 months, the account will remain open but will have a 'Dormancy flag' placed on it. The Provider says that if a customer wishes to reactivate an account, this can be done by the Provider but it requires a customer to verify their identity. The Provider says this is why its complaint response letter dated **29 February 2016** directed the Complainants to their branch as the branch is best placed to progress any request relating to the removal of a dormancy flag.

The Provider says that it apologised to the Complainants that its complaint response letter dated **29 February 2016** implied that the current account was dormant. The Provider says it discussed the matter with the staff member who the Complainants say they had their interaction with, in **2010**.

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The Provider says this individual does not recall any meeting with the Complainants in **2010**. The Provider says that while it is not suggesting that the meeting did not take place, it says it is not reasonable to expect a staff member to recall a meeting from 10 years earlier.

While its staff member does not recall the meeting, the Provider advises that the staff member's view is that if it had been the case that the 'money was in the account' then the Complainants would have been given access to it. The Provider says that as this did not occur, the true situation is that the Provider held no such account. The Provider says the staff member would have been unable to advise the Complainants that funds were in the account, where there was no evidence of the account in question.

The Provider says there is no evidence, nor have the Complainants provided any evidence, that the current account with Entity 1 was converted to a Provider account. The Provider says the accounts that were held by the Complainants under their customer number with Entity 1 in **2010** transferred to the Provider but this did not include the current account at issue, which did not transfer.

The Provider advises that it has taken numerous steps since **2016** to try to locate information for the Complainants and has spent numerous hours searching for information. The Provider submits that there is also an obligation on the Complainants to maintain and keep their own records that they may require.

The Provider says the disputed account is a current account and it is standard practice in banking that statements on current accounts would issue at least annually. The Provider says that the only evidence the Complainants have provided in respect of their position is a letter from **September 2000** confirming the lodgment was made at that time.

In respect of the complaint response letter dated **13 January 2017** and the reference to a withdrawal of €25,000 from the Complainants' account, the Provider says this was from the Facility Account in **February 2005** and not, as per its complaint response letters, from the current account which is the subject of this complaint. The Provider also refers to account statements for the Facility Account in this respect. The Provider apologises that its complaint response letter referred to €25,000 as having been withdrawn from the disputed account, when in fact it had been withdrawn from the Facility Account.

The Provider says it does not hold records of any transactions on the account which is the subject of this complaint (nor is it obliged to) from **September 2000**. The Provider says that the account in question was closed before the transfer of the banking business of Entity 1 to the Provider, in **2010**.

The Provider also refers to an extract from an Entity 1 legacy system which it says supports the view that the account closed in **2001**:

<i>"Account Description</i>	<i>Active</i>	<i>Late</i>	<i>Balance</i>
<i>3001 RCA Cust. Facility A/C</i>	<i>30/09/06</i>	<i>0</i>	<i>6.35</i>
<i>9901 RCA Customer Current A/C</i>	<i>26/10/01</i>	<i>0</i>	<i>0.00"</i>

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The Provider says the above extract states that the current account was active on **26 October 2001** which the Provider says means the account was last active in **2001**. The Provider says that if this is compared with the other account referenced in the extract (which it states was active on **30 September 2006** with a balance of €6.35) this ties in with the Provider's position and explanation as to how the Facility Account was renumbered in **October 2006** and again in **February 2010**. The Provider says there is no such renumbering of the current account, so the last record the Provider has been able to locate in respect of the current account is the above extract. Based on the evidence, the Provider says that its position is that the current account was last active on **26 October 2001** with a nil balance.

The Provider also refers to an Entity 1 legacy record which states:

*"10/05/2000 O/D 25000 Agreed. Ref ...*

*20/04/2001 Borrs came in to [Entity 1] – meet with [staff member] – will accept 5000 in full and final settlement of 9901 account over next 6 months"*

The Provider says the above note confirms that an overdraft of IR£25,000 was agreed on the current account in **May 2000**, four months before the IR£40,000 lodgment in **September 2000**. The Provider says that subsequently, in **April 2001**, 8 months after the lodgment, a 6 month 'full and final settlement' arrangement was made with Entity 1 in relation to the current account. The Provider says this would tie in with the evidence that the current account was last active in **October 2001** – if the Complainants had come to a full and final settlement with Entity 1 in **April 2001** over a 6 month period, 6 months from **April 2001** is **October 2001**. The Provider says this supports the position that the account was closed 8 years before the transfer of accounts to the Provider.

The Provider says it is satisfied that there is no obligation on it to have a record of a transaction dating from **September 2000**. The Provider says matters were first brought to its attention in **2015**, however, its record keeping obligations in respect of a transaction in **2000** ceased by **2006**.

The Provider says it can understand the Complainants' frustration and disappointment and it acknowledges there has been some confusion with regard to how certain information about other accounts was given to the Complainants.

### **Challenge to Jurisdiction**

By email dated **10 October 2018**, the Provider wrote to this Office requesting that it decline to investigate the complaint on the grounds that it was outside of the time limits prescribed by the **Financial Services and Pensions Ombudsman Act 2017** for the making of a complaint. Following further correspondence on the matter, this Office issued a Preliminary Opinion on **10 July 2019** that the complaint fell within the jurisdiction of this Office.



In response to this, by letter dated **14 August 2019**, the Provider maintained the position that this Office should decline to investigate this complaint as it was not made within the prescribed time limits. In addition to this, the Provider argued that this Office should decline to investigate the complaint on the basis that it was frivolous, vexatious or not made in good faith (**section 52(1)(a)**) and that the conduct complained of was at too remote a time to justify investigation (**section 52(1)(c)**).

Following further correspondence on the matter, this Office issued a Final Determination as to jurisdiction on **30 January 2020**, where it was determined, for the reasons set out in this letter, that the complaint fell within the jurisdiction of this Office and would proceed to formal investigation.

### **The Complaint for Adjudication**

The complaint is that the Provider failed to account for, and provide access to, funds in the amount of IRE40,000, lodged to the Complainants' joint current account in **September 2000**.

### **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 Complainants were 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 April 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.

No additional submissions were received from the parties, within the period permitted, and accordingly, the final determination of this office is set out below.

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## 2000

I note that in a letter to the Complainants dated **29 September 2000**, Entity 1 wrote to the Complainants in respect of the lodgment and the allocation of two cheques totalling IR£80,000, as follows:

*"The cheques were lodged as follows:-*

*A cheque in the name of [Entity 1] amounting to £25,000 was lodged to mortgage account [ending 9401] ...*

*A cheque in the name of [the First Complainant] amounting to £55,000 was lodged in two separate amounts. A sum of £15,000 was lodged to mortgage account [ending 9401] & £40,000 was lodged to the current account, [ending 9901] ..."*

## 2009

While not referencing any particular account, Entity 1 wrote to the Second Complainant on **29 June 2009** regarding its merger with the Provider. The fourth paragraph of this letter explains:

***"What will happen in October***

*You will remain a [Entity 1] customer. You don't need to take any action and your account(s), its numbers and any other arrangements you have with [Entity 1] will stay the same. ..."*

In a letter to the Second Complainant dated **1 October 2009**, Entity 1 advised that

*"Even after 19 October any account(s) you have with [Entity 1] will stay the same until the merger is completed next year. ..."*

An information sheet and booklet appear to have been enclosed with this letter. I note that the information sheet advised that new Provider account numbers and sort codes were created for some Entity 1 accounts and the reader was directed to the booklet for further information.

At page 5 of the booklet, it outlines the changes that would occur in respect of current accounts. In particular, it states that current account customers would receive a statement of the final balances in their Entity 1 account and a separate statement recording the opening balance on the new Provider account. This section goes on to explain that a new Provider cheque book would also issue in respect of the account and a credit book, where applicable.

## 2016

In response to a complaint made by the Complainants regarding the account the subject of this complaint, the Provider wrote to the Complainants on **29 February 2016**, as follows:

*"I sighted the correspondence you provided, dated 29 September 2000, confirming a credit of funds, in the amount of £40,000, to your account ...*

*Unfortunately I am unable to view the transactions, relating to this account ... as this account is now dormant. However, if you wish to discuss the status or any transactions pertaining to this account, you can contact any of our ... branches ..."*

It appears that during **July 2016**, the First Complainant completed a 'Dormant Account Claim Form' in respect of the account the subject of this complaint. On this form, the First Complainant indicated that the account was opened on "29<sup>th</sup> September 2000 (?)". The First Complainant also indicated that the account was "Never used" and ticked a box on the form indicating that the documentary evidence she had in respect of the account, was a letter.

## 2017

In response to a further complaint, by letter dated **13 January 2017**, the Provider advised the Second Complainant following her attempts to re-activate the dormant account that appeared to contain the funds in question, as follows:

*"On the 14<sup>th</sup> of November after further investigation, dormant accounts advised [staff member] to order historic statements which she has done for the following account:*

[The Savings Account]

[The Facility Account]

*The statements showed the following:*

[The Savings Account] *was closed in April 2011.*

[The Facility Account] *showed a nil balance as far back as 22<sup>nd</sup> October 2009.*

*Legally we are obliged to retain records for a maximum of 7 years. However [staff member] requested the duplicate statement team to undertake further investigations. They were able to provide this to her. The document showed a withdrawal was made on the 1<sup>st</sup> of February 2005 in a [Entity 1] Branch for the sum of €25000.*

*Following my investigations I am unable to uphold your complaint re: missing funds. Based on our extensive investigations we can establish that a withdrawal was made at a [Entity 1] Branch."*

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## ***Analysis***

It is not in dispute that the sum of IR£40,000 was lodged to the Complainants' Entity 1 current account during **September 2000**. This is clearly evidenced from the letter dated **29 September 2000**. However, the Complainants seek access to these funds and have been seeking access for a number of years, but have been unable to do so because, according to the Provider, the account in **October 2001** had a nil balance and it says that the account never transferred to the Provider at the time of the merger in **February 2010**.

The Complainants' position is that the account is held with the Provider and that the funds are still there. They say that the account was not closed by them, the funds were never withdrawn, the account was never used, and their position is borne out by the statement made by the Provider's staff member in **2010** and the complaint response letters issued by the Provider in **2016** and **2017**.

While the letter of **29 September 2000** is sufficient to prove that the lodgment was made at that time, more than 20 years ago, I am not satisfied it is sufficient to prove that the funds were never withdrawn, that the account was not closed, or that the funds remained in the account, or indeed that the account still exists today.

Regarding the existence of the account, I note that the Complainants have not supplied any documentary evidence showing its existence or the balance in the account at any point after **September 2000**. As this was a current account, I would expect the Complainants to have been able to produce an account related letter, or statement for example. These are documents which I am satisfied the Complainants would likely have had, even if, as per their evidence, the account was never used. It is my view that if the Complainants have correspondence dating back to **September 2000**, it is not unreasonable to expect them to also have some form of other documentation relating to the current account since that time, and in more recent times.

The Complainants have not supplied any evidence to show that the current account was in existence at the time of the merger or that it was transferred to the Provider approximately a decade after that lodgment. The booklet provided to the Second Complainant in **October 2009**, advised of the documents a current account holder could expect to receive. As can be seen, there was quite a lot of documentation that the Complainants were likely to have received around the time of the merger, regarding the existence and transfer of the current account if this was transferring, but none of these have been made available. Further to this, the Provider has been unable to produce any record of the transfer of the current account at the time of the merger or any record that it held this account following the merger.

Referring to the Entity 1 legacy records, it is the Provider's position that the account was last active in **October 2001** and that the account was in fact closed. The Provider has cited from Entity 1 legacy records in support of its position that an overdraft was agreed on the current account in **May 2000** and that the account was overdrawn prior to or at **20 April 2001** with a settlement of this overdrawn balance being agreed in the amount of €5,000.

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The Provider has also cited a legacy record which identifies the balance on the current account as 0.00 in **October 2001** with it last being active on **26 October 2001**. The Provider has sought to establish the reliability of its submissions in this respect by reference to the account statements it has produced in respect of the Facility Account.

It is assumed by this Office that it is because of the form which the original legacy record takes, that only an extract of the contents was communicated by the Provider, in response to this complaint, rather than a copy being submitted in evidence. This is disappointing but I note that the Complainants have not sought to dispute the Provider's reliance on this legacy record. The legacy record in question would appear to contradict the Complainants' evidence that the account was never used. Rather, it suggests that the account was indeed used, and to an extent that it became overdrawn.

It also appears to me that lodging the funds in question to a current account when the Complainants also held a savings account with Entity 1, at the relevant time, would suggest an intention to put those funds to use. While I am not satisfied that the legacy records relied on by the Provider, confirm that the current was closed, as it suggests, I am satisfied these records indicate that the account had a nil balance in **October 2001** which would also suggest that the funds lodged in **September 2000** had been used by then, and that the account may have become inactive from **October 2001**. While the Complainants say the account was never used, the legacy records referred to by the Provider would suggest the account was not used from **October 2001**, rather than from the earlier date of the lodgment the previous year, in **September 2000**.

It is the Complainants' evidence that one of the Provider's staff members confirmed that the funds were in the account in **2010**. The staff member in question does not recall this meeting and the first written reference to the Complainants' recollection of this meeting, appears to have been a letter to the Provider dated **June 2018**, which was approximately 8 years after the meeting took place. However, even if this meeting was brought to the attention of the Provider during its investigation of the first complaint, which appears to have commenced around **December 2015**, this was still 5 years after the event.

As a result, it seems that a number of years had passed by the time the Complainants began to recollect this meeting. There is also no documentation evidencing this aspect of the meeting and the Complainants have not provided any detail of this particular part of the meeting, beyond stating that the staff member confirmed the existence of the funds. In particular, the Complainants have not advised how the staff member was in a position to confirm the existence of the funds, the database or records he referenced or the information that was available to him or that he accessed. Further to this, it is important to emphasise that even if such a statement was made, it cannot be viewed in isolation and must be considered in the context of all of the available evidence. Consequently, based on the fact that there are unlikely to have been any records of this current account available to the Provider's staff member at this time regarding the current account, I believe it is unlikely that the staff member could have confirmed that there were funds in this current account.

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Indeed, if it was the case that the Complainants sought access to the money in **2010** and received confirmation of its existence at that juncture, it is not clear why the Complainants did not seek to withdraw money from the account at that time.

The evidence nevertheless shows that when investigating the Complainants' complaints, there was confusion on the part of the Provider's staff members as to which of the Complainants' accounts they were dealing with and referring to. As can be seen, this resulted in incorrect, confusing and misleading information being conveyed to the Complainants regarding the existence of the current account. It is disappointing that this happened and would suggest that the Provider's investigations were not carried out with a sufficient level of attention to detail.

More disappointing still, is that the errors of the first complaint response were not identified in the course of the second investigation, nor does it appear that the Provider's staff members fully appreciated that it was account ledger number 9901, that was the subject of the investigation or, at least, that it was a current account that was at issue and not the Facility Account or Savings Account. This was further compounded by the fact that the First Complainant listed the customer number and ledger number for the current account in the Dormant Account Claim Form, yet the subsequent complaint response letter only referred to the Facility Account and Savings Account and identified a withdrawal from the Facility Account, as the basis for the Provider's position for not upholding the complaint.

However, despite the shortcomings surrounding the Provider's investigations in **2016** and **2017** in response to the Complainants' complaints, I am satisfied, based on the measures taken to investigate the matter, that if the current account had been in existence at the time of the merger or transferred over to the Provider, some form of record is likely to have been discovered. However, this was not the case.

Having considered the matter in detail, I am satisfied that if the account in question had transferred to the Provider, either the Provider or the Complainants would have some documentation or record to show that this occurred. However, neither party has supplied any evidence which would suggest that the account was in existence at the time of the merger, and that it transferred with the Complainants' other accounts, to the Provider.

Based on the evidence available, it is my opinion that while there was a lodgment of IR£40,000 to the Complainants' current account in **September 2000**, this money is likely to have been used through the normal operation of the account and I accept that the account subsequently held a nil balance in **October 2001**.

### ***Goodwill Gesture***

In its Complaint Response, the Provider says that:

*"... in acknowledgement of and as a tangible token of apology for any confusing information provided to the Complainants in respect of their accounts and for the considerable length of time this matter has been ongoing we would like to offer the Complainants redress of €2,000.*

/Cont'd...

[O]ur offer of €2,000 made on the basis above will remain open and in place for acceptance by the Complainants at any stage.”

I consider this goodwill gesture to be a reasonable sum of compensation for the confusion and the customer service failings on the part of the Provider. In these circumstances, on the basis that this offer remains available to the Complainants, I do not consider it necessary or appropriate to uphold this complaint. It will be a matter instead for the Complainants to make direct contact with the Provider if they wish to accept that compensatory offer for the confusion which arose.

### **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**

19 May 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.