



<b><u>Decision Ref:</u></b>	2021-0236
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Current Account
<b><u>Conduct(s) complained of:</u></b>	Fees & charges applied Fees & charges applied Failure to provide product/service information Failure to process instructions
<b><u>Outcome:</u></b>	Rejected

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

This complaint refers to a current account held by the Complainant.

**The Complainant's Case**

The Complainant states that he switched his current account to the Provider to avail of "free banking for life" which was being offered at that time with terms and conditions applicable. On 24 January 2019, the Complainant was informed that his existing bank account was being "retired" and that the alternative and new current account did not have the same waiver of fees and bank charges.

The Complainant states that when he set up his existing current account, banking fees and charges were waived as long as he deposited €1,500 per month. The Complainant states that he complied with the stipulation and even though the Provider has amended its terms and conditions, the Complainant feels that free banking for life should mean free banking for life.

The complaint is that the Provider has breached the terms of its agreement with the Complainant by failing to apply the terms and conditions applicable to his current account on inception. The Complainant wants the Provider to reinstate its initial bank account where he states he continues to deposit €1,500 per month and the charges should be removed from his bank account.

### **The Provider's Case**

The Provider rejects wrongdoing and asserts that the changes to its terms and conditions were legitimate and were in compliance and in line with the terms and conditions of the Complainant's account.

### **The Complaint for Adjudication**

The complaint is that the Provider is not applying the terms and conditions of the Complainant's bank account.

### **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 17 June 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.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

The Complainant opened an account with the Provider on 2 July 2013. The Complainant, in his complaint form, expressly states that at the time of switching his account to the Provider in 2013, the Provider informed him that free banking for life was conditional on the Complainant depositing €1,500 into its account per month.

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The Complainant argues that even if the terms and conditions change, he should still be entitled to free banking for life. I have considered the content of the audio recording provided of the call from the Complainant to the Provider. The Provider informs the Complainant that his account not set up as a "free" banking account. This was disputed by the Complainant. The Provider's employee stated that the account would have been subject to change and that this would have been contained in the terms and conditions.

The Provider has provided a copy of the terms and conditions applicable to the account, effective from 8 May 2013.

In particular, clause 21 of the terms and conditions provides as follows:

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

- (a) *These conditions shall continue to apply to your account unless and until altered by us in accordance with this condition.*
- (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 short notice we will notify you at least two months in advance of any alterations these conditions.*
- (d) *We may notify you of any alteration these conditions by providing you with notice of any alteration published in a national daily newspaper, and/or by notice displayed prominently at our branches, and/or by notice in writing and/or through our website and/or by means of another durable medium, or by any other means required or permitted by law, with details of the alteration or the altered conditions.*
- (e) *If you receive notice of any alteration to these conditions, you may close your account (or switch to another financial institution) and simultaneously cancel all of the facilities granted to you in connection with your account without having to pay any extra charges or interest. However, any early termination charges to which you agreed when you opened your account will continue to apply. Unless and until you close your account your consent to the alterations is implied.*

Accordingly, the terms and conditions of the Complainant's account expressly provided that the conditions and "charges applicable" may be varied by the Provider.

In addition, the Provider has furnished a copy of the promotional material offering the 2013 account. Amongst other things it advertises "no more senseless fees" and "Say goodbye to senseless fees". It goes on to state:

*"We know how senseless fee annoy people. So if you lodge €1,500 every month into a new [Provider] current account you pay no quarterly fees or any other day-to-day transaction fees!"*

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The Provider states that in 2019, it completed a review of its current accounts in order to simplify and standardise its legacy accounts. The Provider then explains that as a result of this review, the Complainant's account was to be retired from 1 April 2019 and the account type would change.

The Provider wrote to the Complainant on 24 January 2019 informing him of the changes that would apply to his current account with effect from 1 April 2019. It goes on to specify that the quarterly maintenance fee exemption criteria was being amended such that the Complainant would need to maintain a cleared credit balance of €2,500 every day in this account in order to avoid paying the quarterly maintenance fee.

Based on the evidence supplied, I accept that the 2013 offer was not a blanket and unconditional "*free banking for life*" offer. The offer was that quarterly fees and daily transaction fees will be waived if €1,500 was lodged into the account every month. The offer was subject to terms and conditions and the terms and conditions applicable to the account in 2013, as set out above, expressly provided that the Provider could amend terms and conditions and can vary the charges applicable on the account. The terms and conditions did oblige the Provider to give two months' notice of any changes.

The Provider ultimately decided to amend the terms and conditions and the charges effective from 1 April 2019. The Provider was entitled to do this under the terms and conditions of the 2013 account. In writing to the Complainant to advise him of the changes on 24 January 2019 the Provider complied with its two months' notice obligation.

Accordingly, there is no evidence that the Provider operated outside of the terms and conditions applicable to the Complainant's account or acted wrongfully or unlawfully and in those circumstances, I do not uphold the 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**

12 July 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.

