



<u>Decision Ref:</u>	2021-0303
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service Fees & charges applied
<u>Outcome:</u>	Partially upheld

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

The Complainant opened two current accounts with the Provider in **March 2014**. The first account was opened on an individual basis and in the Complainant's own name. The second account was opened jointly by the Complainant and his wife. This complaint concerns the level of customer service received by the Complainant in respect of his individual current account.

The Complainant's Case

The Complainant says there are several parts to his complaint and has set these out under six points.

1. The Provider broke its commitment to provide free banking for life.
2. The Provider refused to accept a hand delivered letter instructing the Provider to close the Complainant's account.
3. The Provider refused to accept a hand delivered letter of complaint.

4. The Provider issued a Final Response letter *“but conveniently ignored some of the issues raised in my complaint. Their offer is not satisfactory.”*
5. The Provider continues to attempt to have the Complainant personally call to Branch A to close his account *“which is a serious inconvenience for me as I would have to take time off work”*. The Complainant further states that *“(there is a cost here for me, I work in the city centre and essentially I’d need to take a half day off work).”* The Complainant submits that the Provider should act on a customer’s written instruction to close an account.
6. The Provider has asked the Complainant to again provide identification documentation. The Complainant says he provided this documentation when he opened his account and again at a later point when requested to do so by letter. The Complainant says he recently provided a copy of his documentation in early **March 2019** when asking the Provider to cancel unused cheques as part of his preparations to close his account.

The Complainant submits that the Provider should honour its commitment to provide free banking for life, stating that this was widely advertised over a prolonged period when he opened his account with the Provider. The Complainant contends that the Provider should not be permitted to just change its mind at will. In the absence of this, the Complainant states that the Provider should compensate him appropriately. The Complainant says he also believes that the Provider should be forced to accept his written instructions, as it would have done for numerous other matters over a long banking relationship. The Complainant states that if the Provider insists on him attending its branch to close his account, the Provider should re-imburse him for the half-day of annual leave that he would have to take in order to make himself available.

The Complainant states he believes that the Provider should not be permitted to keep asking him for identification documents. The Complainant says the Provider has been furnished with documentation on three previous occasions (including in the months prior to his complaint to this Office). The Complainant submits that the Provider has a duty of care to mind his information, but clearly the Provider is failing to so do if its needs to keep asking for documentation. The Complainant states it is particularly frustrating that the Provider is trying to demand documentation yet again, when closing his account.

The Provider’s Case

By way of background, the Provider says that on **29 March 2019**, the Complainant rang its customer service line and asked for a complaint to be logged as he had a number of issues that he wished to raise with the Provider.

The Provider says the Complainant informed its agent that at approximately 12:30pm that day, his wife attended Branch A on her own, with the intention of closing their current accounts, including the Complainant's sole account ending 2447. The Provider says the Complainant stated that his wife had brought a letter of authorisation and instruction signed by him to Branch A authorising the closure of his account.

During the course of the Provider's investigation of the complaint, the Provider says its Customer Service Advisor was asked about the meeting with the Complainant's wife earlier that day. The Provider says the Customer Service Advisor was asked whether she was aware that the letter contained a letter of complaint and stated that, at the time, she was not aware of this.

The Provider says it rejects that there was an advance commitment to free banking for life without the adherence to fee exemption criteria. The Provider says the quarterly maintenance fee applicable on the Complainant's account from account opening on **26 March 2014 to September 2017** was €12.00 per quarter but the Complainant availed of the exemption criteria from that time and therefore did not pay the quarterly fee.

The Provider says it is satisfied that all advertising was clear with regard to the exemption criteria applicable to the current account to enable a customer to avail of 'free banking'. The Provider refers to a copy of the brochure that was available at the time of account opening; in particular, page 2, which states:

"Terms & Conditions apply. The [Provider] Current Account is not available to business customers. Quarterly Account Maintenance fee of €12.00 applies. You will be exempt from paying the Account Maintenance fee by lodging at least €1,500 to your account each month (allowance is not made for cheques, drafts or other credits lodged until value has been received).

This criteria may change in the future."

The Provider says it understands that the Complainant did not want to maintain the account when the exemption criteria changed effective from **1 April 2019** whereby the fee exemption criteria changed from lodging €1,500.00 minimum per month to maintaining a daily cleared credit balance of €2,500.00 in the account.

The Provider says the Complainant opened his sole account and a joint account with his wife on **26 March 2014** having switched from another financial services provider. The Provider says its current account terms and conditions and personal charges brochure outlining fees and charges applicable on the account at the time were provided to the Complainant.

The Provider says the account incurred a quarterly maintenance fee of €12.00. The Provider says the Complainant was advised that the quarterly maintenance fee would be waived if the exemption criteria were met. As stated above, the Provider says the exemption criteria at the time was: *"That €1,500 per month or more be lodged to the account"*. The Provider says that as part of the account opening process the Complainant was notified clearly of the terms and conditions applying to the account at the time of opening. The Provider says the account opening process requires the completion of a 'Personal Current Account Application Form' and that the Complainant signed this form and the 'Account Switch Form' on **26 March 2014**. With his signature, the Provider says the Complainant confirmed that he had:

- received the Provider's 'Terms of Business' Letter and the current booklet, 'Terms & Conditions and Personal & Business Banking charges';
- read and had an opportunity to become acquainted with, understood and agreed to be bound by the Terms & Conditions and Personal & Business Banking charges in relation to the account and that the terms and conditions may be amended from time to time.

The Provider has also set out a number of terms and conditions in respect of the Complainant's account relating to its entitlement to vary the terms and conditions, and relating to fees and charges. The Provider also refers to pages 44 and 45 of the Personal Charges Brochure.

In **July 2017**, the Provider says it undertook a review of its charging structure and decided to standardise and simplify its legacy accounts. The Provider says it wanted to ensure that its product offerings could remain competitive within the then current marketplace. As part of this review, the Provider says it made a commercial decision to increase maintenance fees and remove individual transaction fees and charges on other current account types in an effort to simply its portfolio, to increase transparency and to cover the cost of providing a full suite of current account products to customers. The Provider contends that it is entitled to make such a decision as a commercial business.

The Provider advises that the Complainant's sole account and the joint account were reviewed as part of this process and, as outlined in the Terms and Condition accepted by the Complainant on **26 March 2014**, the Provider notified the Complainant in writing on **19**

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July 2017 of its intention to increase the maintenance fee on these accounts. The Provider refers to certain aspects of this letter and states that the letter also outlined the options available to the Complainant together with the exemptions available to him.

The Provider says it completed a further review of its charges in **January 2019** and wrote to the Complainant on **24 January 2019** to advise of the impending changes/amendments. The Provider says this included the amendment to the quarterly maintenance fee exemption criteria relating to the account effective from **1 April 2019**.

The Provider says that it notified the Complainant two months prior to introducing a change to its terms and conditions and outlined the key information in its correspondence dated **19 July 2017** and **24 January 2019**.

In respect of the Complainant's written instructions, the Provider says that during the telephone call on **29 March 2019**, the Complainant stated that when his wife visited Branch A that day she presented a written instruction signed by both parties authorising the closure of the joint account and also a separate instruction to close the Complainant's sole account.

The Provider refers to section 4 of the Terms and Conditions in respect of certain identification requirements. In line with the Terms and Conditions and its policy and procedure, the Provider says its Customer Service Advisor was required to satisfy herself as to the identity of both customers before closing the accounts and therefore requested sight of the customers' identification documentation for verification purposes. The Provider says the Complainant's wife did not bring identification documentation for the Complainant on the day and hence, the Customer Service Advisor informed her that she was unable to carry out the instructions at the time.

The Provider says its Customer Service Advisor then informed the Complainant's wife that the Complainant would need to be present or his current valid identification documentation would need to be presented for verification to enable her to proceed with the request to close the account.

As the Customer Service Advisor was unable to carry out the Complainant's instruction, the Provider says she offered the correspondence back to the Complainant's wife who accepted it. The Provider says this was to allow either the Complainant or the Complainant and his wife to bring authorisation back to the Provider with current valid identification at their convenience when proceeding to close the account.

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The Provider says the Customer Service Advisor did not retain a copy of this letter and was unaware that the letter of authorisation also contained a letter of complaint.

The Provider says it is satisfied that it could not carry out the instruction in the letter properly and promptly at that time and that the Customer Service Advisor had returned the instruction to the Complainant's wife to facilitate a prompt and proper execution of the instruction once valid identification documentation was provided at a later stage.

The Provider says that up-to-date identification was received previously from the Complainant at the time of account opening, which had been verified and retained by the Provider on its systems. The Provider says it is required to ensure that identification documentation is kept up-to-date regularly in accordance with statutory and bank regulations. The Provider says it may have requested identification from the Complainant previously when carrying out certain transactions. The Provider again refers to section 4 of the Terms and Conditions.

As stated above, the Provider says, the Customer Service Advisor had to be satisfied as per the terms and conditions of the account and as per the Provider's policy and procedure, as to the identity of the customer before closing his accounts.

The Provider says the Final Response Letter issued on **26 April 2019** correctly informed the Complainant that identification was required in order to process his request.

The Provider says it never intended to frustrate the Complainant by requesting current valid identification and assures that it is aware of its obligations regarding the protection and retention of customer data and takes this into consideration when implementing its policies. The Provider says it did not inform the Complainant (or imply) that it did not have up-to-date identification documentation on file or recorded on its system, as required.

The Provider states that when certain transactions (such as account closure) are being processed, the Provider requires identification to be presented for verification purposes.

In terms of the requirement for the Complainant to attend the Provider's branch to close his account, the Provider says its policy is that customers attend a branch in person as it can carry out due diligence and that it continually aims to reduce the potential for fraud being perpetrated against customers.

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On closing a current account, the Provider says its procedure includes the completion of a 'Request to Close Current Account' form which allows the customer the opportunity to review the account features which will be lost on account closure.

The Provider cites the following parts of section 20 of the Terms and Conditions, stating that a customer can close their account:

*"c. by written instruction to your branch
d. If your account is a joint account all joint account holders must agree to the closing of the account. At our discretion and in exceptional circumstances we reserve the right to close a joint account on the instruction of only one of the joint account holders."*

In accordance with section 4, the Provider says section 20 of the Terms and Conditions and the Provider's policy and procedure, the Customer Service Advisor was required to satisfy herself as to the identity of the Complainant before closing his accounts. The Provider says the Customer Service Advisor was unable to verify that the request was from the Complainant at this time as his identification documentation was not presented on the day for verification.

The Provider says it would have proceeded to close the Complainant's account if his identification documentation had been provided for verification at branch on **29 March 2019**.

In the Final Response Letter, the Provider says it included a phone number to the Complainant and requested that he ring the number to arrange a suitable time to attend the branch. The Provider says this was to assist him so that he could be facilitated promptly and speedily when attending the branch. The Provider says it was never its intention to cause upset or inconvenience for the Complainant.

In respect of the manner in which it addressed the Complainant's complaint, the Provider says that on reviewing the Final Response Letter, while it did address the aspects of the complaint, a more detailed explanation would have been helpful. In light of this, the Provider says it would like to offer the Complainant a gesture of goodwill in the amount of €500.00.

The Provider says it would like to bring further clarification to the Complainant regarding the implementation of the changes to its charging structure as per its letter of **24 January**

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2019. The Provider says the Letters of Notification of changes to account issued to the Complainant clearly outlined that there would be no increase in the maintenance charge of €18.00 following the change on **1 April 2019** but the exemption criteria to avoid the fee would change.

The Provider says its letter of **24 January 2019** outlined that the exemptions available to the Complainant were, as follows:

Existing Provider account (in effect until 31 March 2019)	Provider Current Account 4 (New Account) – Effective from 01 April 2019
<p>Exemptions available</p> <p>Lodge at least €1,500 each month. Cheques, drafts or other credits must be cleared funds within the month.</p>	<p>Exemptions available</p> <p>The following will result in an exemption from the €18 quarterly fee for the maintaining the account: Maintain a minimum cleared credit balance of €2,500 in your account every day.</p>

The Provider says the letter advised that the charging quarters were **1 January, 1 April, 1 July** and **1 October** and there was no change to this.

The Provider cites the following passage from its letter of **24 January 2019**:

“Please be aware that if you choose to close your accounts all parties on the account must provide authorisation to close and you must repay any money and charges due on the account including any interest due on this up to the date of repayment in line with your terms and conditions. If you choose not to close your account within 2 months, you are deemed to have accepted the changes by continuing to use the account from the effective date of the notified charges.”

In the Final Response Letter, the Provider says it informed the Complainant that the maintenance fee of €18.00 (that may be applied on closure if the exemption criteria were not met) had been refunded to the account. The Provider says the refund was made on **2 April 2019**. The Provider says the Complainant’s account contained the following transactions during the next charging quarter:

Date	Lodgement/Withdrawal	Account Balance
20/05/2019	Withdrawal €0.71	€0.00
12/06/2019	[...] Clams €25.00	€25.00

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13/06/2019	Withdrawal [...] €25.00	€0.00
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The Provider says that as the account contained transactions during this quarter and the exemption criteria were not met, the account incurred an €18.00 quarterly maintenance fee for this period (debited on **6 August 2019**).

On **1 November 2019**, the Provider says interest of €0.43 was applied to the account which had accrued on overdrawn balances. The Provider says this was applicable for the charging quarter debited on **1 November 2019** in accordance with the terms and conditions of the account. The Provider says the Complainant did not use the account from **13 June 2019**.

On **2 September 2019**, the Provider says its CEO received correspondence from the Complainant dated **20 August 2019** which contained an unsigned handwritten note requesting closure of the account in line with previous instructions. The Provider says a complaint was logged and investigated and a Final Response letter issued on **6 September 2019**.

In respect of the request for compensation for not adhering to a commitment for free banking for life, the Provider says it is satisfied that the Terms and Conditions were provided to the Complainant from the outset regarding fees and exemptions on the account. The Provider says, within its rights, it deemed it necessary to review its account offerings, simplify and standardise its legacy accounts, and has detailed its reasons for doing so. The Provider further states that the Central Bank of Ireland has approved the changes applied to the account. The Provider says it regrets that it cannot offer compensation to the Complainant for the changes in its charging structure on the account.

The Complaints for Adjudication

The complaints are that the Provider:

Broke its commitment to provide free banking for life;

Refused to accept a hand delivered instruction regarding the Complainant's account;

Required the Complainant to personally attend Branch A in order to close his account;

Requested that the Complainant provide identification documentation despite such documentation having been previously provided; and

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Failed to address all of the issues raised as part of the Complainant's complaint.

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 13 August 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 Provider has provided a copy of its current account brochure for **February/March 2014**. In the first panel of this brochure, it states, as follows:

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"We want to make banking better. So we developed the new [Provider] Current Account. It gives you everything you'd expect from a regular current account and a whole lot more.

Here are just some of our great new Current Account features.

No more senseless fees

We know how senseless fees 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!

[...]

There are some other charges e.g. if an item is returned unpaid on your account or if you use your [...] card for a non-euro currency transaction outside of the EU. And if you don't lodge €1,500 every month, you'll have to pay €12 a quarter. See our Terms and conditions. [...]."

In the third panel, it states, as follows:

"Terms and conditions

Terms and conditions apply to the current account and the services we've outlined. [...] Please see the Terms and conditions, Personal & business banking charges booklet for more information."

Overleaf, it states in the first panel that:

"Terms & Conditions apply. [...] Quarterly Account Maintenance fee of €12.00 applies. You will be exempt from paying the Account Maintenance fee by lodging at least €1,500 to your account each month (allowance is not made for cheques, drafts or other credits lodged until value has been received). This criteria may change in the future. [...]."

The Complainant signed a 'Personal Current Account Application' form dated **26 March 2014**. I note the following parts of this application form:

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"[...] I/We have had the necessary time to consider and query the information provided to me/us in relation to my/our application.

[...]

I/we have also received the Bank's 'Terms of Business' letter. I/we have also received the Bank's current booklet 'Terms & Conditions and Personal & Business banking charges'.

I/we have read and have had an opportunity of becoming acquainted with, have understood and agree to be bound by the above booklet 'Terms & Conditions and Personal & Business banking charges' in relation to the facilities applied for above, which may be amended from time to time. [...]."

The Provider has also provided a copy of its terms and conditions booklet dated **22 January 2014**. In terms of fees and charges, section 9 states at page 10, as follows:

"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 from 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 and introduce new fees and charges, giving 30 days notice in accordance with these Conditions. [...]*
- (c) You may be eligible to apply to have certain fees and charges exempted. The conditions under which fees and charges are discounted and/or exempted are available on request at any branch of the Bank. [...]."*

In terms of variations to the terms and condition (including fees and charges) and account closures, section 20 and section 21 state, at page 16, as follows:

"20 CLOSURE:

[...]

- (c) You may close your Account at any time by a written instruction to your branch.*

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(d) *If your Account is closed, you must immediately pay all sums owing on your Account [...]. Interest, fees and charges will be charged up to the date of closure.*

[...]

(f) *These Conditions shall continue to apply to you until such time as your Account is closed, or we are repaid all amounts owing on your Accounts, whichever is later.*

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.*

[...]

(e) *If you receive notice of any alteration to these Conditions, you may close your Account [...].”*

In the ‘Personal & Business Charges’ section of the terms and conditions booklet, it states at page 44 that:

“This brochure provides full details of account and service fees and charges and explains how these charges may affect you.

You may be eligible for any exemption for certain fees and charges. The eligibility criteria for fee and charge exemptions are contained in this brochure. [...].”

In terms of exemptions, it states, further down page 44, that:

“You may be exempt from paying the account maintenance fee by lodging (See Note 1) at least €1,500 to your account each month.

Note 1: allowance is not made for cheques, drafts, or other credits lodged until value has been received.”

The Provider wrote to the Complainant by letter dated **24 January 2019** to notify him that his account type would change to a new account type from **1 April 2019**. On the second page of this letter, certain options were outlined and amongst these options was the option to close the account.

In this respect, the letter stated, as follows:

“You may choose to close your account or switch providers. If you’d like to switch providers please contact your new bank who can arrange to close your account with [the Provider].

Please be aware that if you choose to close your account all parties on the account must provide authorisation to close and you must repay any money or charges due on the account including any interest due on this up to the date of repayment in line with your terms and conditions. If you choose not to close your account within 2 months, you are deemed to have accepted the charges by continuing to use the account from the effective date of the notified charges. [...].”

The Complainant telephoned the Provider on **29 March 2019** to make a complaint. The Complainant explained that he held an account in his own name and another account, jointly with his wife.

The Complainant explained that the first aspect of his complaint was that he and his wife *“were offered free banking at the time and you have since changed your pricing”*. The Complainant explained that the second aspect of his complaint related to an attempt that day to close both of the accounts. The Complainant told the Provider’s agent that his wife attended Branch A that afternoon. The Complainant explained that the Customer Service Advisor refused to take a letter of instruction in respect of the joint account, which was signed by both account holders instructing the Provider to close that account and also to accept a complaint on the basis of the fee(s) on the account. The Complainant stated that he considered the Provider to be in breach of the agreement at the time the parties opened their accounts which was the offer of free banking for life. The Complainant then stated that the Customer Service Advisor refused to take written instructions from a customer in relation to the closure of the joint account. The Complainant further stated that the Customer Service Advisor refused to accept a letter which contained a request to log a formal complaint. The Complainant continued by explained that the Customer Service Advisor refused to accept a second letter signed by the Complainant requesting the

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closure of his sole account and that this letter also asked for a formal complaint to the logged.

The Complainant explained there were five aspects to his complaint. First, there was *“the breach of the Banks’s terms in terms of the change of pricing where it had committed to free banking”*; second, the refusal to accept a letter of instruction to close the joint account; third, the attempt to apply an €18.00 charge on each account;

fourth, the refusal to accept a letter noting that the parties wanted a formal complaint logged in respect of the joint account; and fifth, the same points in respect of the Complainant’s sole account. The Complainant explained that he wished to log a formal complaint in respect of these matters and proceeded to summarise the various aspects of his complaint again.

The Provider’s system notes dated **29 March 2019**, contain the following entry in respect of the Complainant’s complaint:

“Branch staff did not accept letter to close joint a/c. Charge applied to a/c’s to close them of €18. Staff in branch refused to accept letter of complaint.”

In the Provider’s ‘Complaint Template’ dated **29 March 2019**, it records the complaint in the following terms:

*“Policy changes on current account in relation to free banking.
Branch staff did not accept written letter to close joint account
Charge applied to account to close them of 18 euro
Staff in branch refused to accept letter of complaint”*

It appears from the Provider’s system notes that a review of the Complainant’s call took place on **2 April 2019**. This entry states, as follows:

“Customer rang to make a complaint. Firstly that himself and his wife have accounts that they were offered free banking at the time and [the Provider] have since changed the pricing. His second complaint is that he made an attempt to close those accounts. His wife went to [Branch A] near 12:30pm today and spoke to [a Provider] staff member [the Customer Service Advisor]. [The Customer Service Advisor] refused to take a letter of instruction with regards to our joint a/c which was signed by both joint holders and presented by his wife in person instructing her to close that account and further more to accept a complaint on the basis of the changes to the fees. He considers [the Provider] to be in breach of an agreement as

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at time they opened their account they were offered free banking. Also [the Customer Service Advisor] refused to take a written instruction from their customer as regards to closing the account, it was signed by both account holders. She also refused to accept a letter which contained a request to log a formal complaint. She refused to accept a second letter signed by himself to close his individual current account and this letter also requested to log a formal complaint.

They then attempted to apply €18 charge, this charge on the correspondence should not take (sic) effect until April. This is why they are trying to make alternative banking arrangements. They are trying to apply a charge of €18 per account.

He considers the bank to be in breach, one refusing to take the customers instructions, two with regards to attempting to apply charges, three refusing to accept written instruction to make a formal complaint and this is in respect to both sets of accounts. The joint account and his individual account. [...]

He stated that it is fundamentally a mistake by the branch not to log a complaint as per the CPC.”

As part of the Provider's investigation into the Complainant's complaint, in an internal email dated **2 April 2019**, the following information is communicated in respect of the Customer Service Advisor's recollection of the events of **29 March 2019**:

“I've spoken to [the Customer Service Advisor] who was on the customer service desk at the time. She advised that [the Complainant's wife] visited the branch without her husband.

[The Complainant's wife] asked to close the accounts and [the Customer Service Advisor] advised that she couldn't close the joint or her husband's sole accounts as with any account amendment she needed to see a copy of her husband's ID before she could proceed. [...]

Regarding the letter of complaint, [the Customer Service Advisor] thinks this may have been included in the original letter to close and gave it back to [the Complainant's wife] so that [the Complainant] could use the same letter to close his own accounts and the joint account at a later time.”

The Provider issued a Final Response letter dated **26 April 2019**. Beginning at the third paragraph, the letter states, as follows:

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"I understand that following notification that the Bank is introducing changes to our [Provider] Current accounts that you chose to close your account ending 2447 and joint account ending 2593. I note that your wife attended [Branch A] to close your joint account ending 2593; however she was informed that you would need to pay the maintenance fee for this quarter in order to complete same, and you would like this fee to be waived.

Firstly I regret to hear that your recent experience has damaged your relationship with [the Provider], resulting in you choosing to close the above accounts. [The Provider] rates customer satisfaction very highly and I assure you it would never be our intention to frustrate or appear unhelpful towards any of our customers and I regret if you perceive this to be the case. Please be assured you have been a valued customer of the Bank and your custom has been greatly appreciated.

At [the Provider] we place a strong priority on staff training. Training is comprehensive and continuous and the emphasis is placed on the requirement of the clients at all times. All efforts are made to ensure our customers receive a professional and efficient service and I apologise if you feel that your experience was contrary to this.

I have consulted with [Branch A] and they have agreed to waive fee of €18 in order for you to close the accounts. This refund was processed on 2nd April 2019. When the accounts are closed the appropriate fee will apply which will net off against the refund already applied on the account. In order to complete the closure of the account, please make arrangements to attend at [Branch A] in the coming days with a copy of this letter along with Photographic Identification and Proof of Address. You can do this by getting in contact with us on [telephone number]. [...]."

As part of its response to this complaint, the Provider has furnished the following statement from the Customer Service Advisor dated **10 August 2020**:

"From my recollection the events of 29 March 2019 regarding complaint reference [number] were as follows:

- I met [the Complainant's wife] at approximately 12:30pm on 29 March 2019*
- [The Complainant's wife] handed a letter to me stating that she and her husband wanted the accounts closed.*
- As per Bank policy I was required to verify that the instruction was authorised by both parties before I closed the account.*

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- *I told [the Complainant's wife] that her husband would need to be present or that she could present two forms of identification to enable me close the account.*
- *As [the Complainant] was not in attendance and [the Complainant's wife] did not have his identification documentation with her I handed the letter back to [the Complainant's wife].*
- *I did not know that there was also a letter of complaint and I don't recall if the customer informed me that there was a letter of complaint there also.*
- *I handed this letter of authorisation back to [the Complainant's wife] as it may have been required at a later stage to close the accounts once the relevant identification documentation was produced when both of them or either of them returned to the branch to close the accounts.*
- *I do not recall if the customer complained about having to provide identification documentation at the time.*
- *I do not recall [the Complainant's wife] stating that it would be inconvenient for them to call to the Branch at a later time to close the account.*

I apologise to [the Complainant and his wife] for the confusion surrounding the events."

Analysis

The Complainant says that the Provider broke its commitment of free banking for life. In his Complaint Form, the Complainant says the Provider's commitment to free banking was widely advertised for a prolonged period at the time he opened his account. The Complainant further says that the Provider should not be permitted to change its mind regarding this commitment.

While the Complainant contends that the Provider committed to free banking for life, I note that the Complainant has not identified, or provided copies of, the specific advertisement(s) where this commitment was made. Significantly, the Complainant has not provided any documentation which would suggest that such a commitment was made.

I note that the Complainant signed an account opening application form dated **26 March 2014**. In respect of the Provider's current account advertising at this time, I note that in the **February/March 2014** brochure referred to above, there is no commitment to free banking for life. This brochure advises that fees are in fact applicable to current accounts but that fees can be avoided if certain exemption criteria are met. The brochure further identifies the quarterly maintenance fee as €12.00. The reader is also referred to the

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Provider's terms and conditions and charges booklet. It is also stated on this brochure that the relevant exemption criteria may change in the future.

In terms of the Complainant's application form, I note that there is no reference to free banking or that the account would be subject to free banking. In respect of the declaration signed by the Complainant, I note that specific reference is made to the Provider's "*Terms & Conditions and Personal & Business banking charges*", which would suggest that certain charges were applicable to the account the Complainant was about to open. It is also stated the account terms and conditions could be amended from time to time.

I note that by signing the application form, the Complainant acknowledged that he had:

"read and have had an opportunity of becoming acquainted with, have understood and agree to be bound by the above booklet 'Terms & Conditions and Personal & Business banking charges' in relation to the facilities applied for".

In this respect, section 9 of the terms and conditions booklet advises that fees and charges are applicable to Provider accounts, fees and charges may be altered or new ones introduced, and that an account holder may be eligible to apply to have certain fees and charges exempted. At section 21(b), it is stated that the Provider could vary the charges applicable to an account.

The 'Personal & Business Charges' section of the terms and conditions booklet advises that fees and charges are applicable to the Provider's accounts and that an account holder may be exempt from fees and charges. This section of the booklet further advises that if at least €1,500.00 is lodged to an account each month, an account holder may be exempt from the account maintenance fee.

Accordingly, having considered the evidence, I do not accept that the Provider made a commitment to provide free banking for life in respect of the Complainant's current account nor do I accept that the Complainant's current account was subject to free banking on an unqualified or indefinite basis. Rather, the evidence indicates that the Complainant's current account was subject to fees and charges, however, should the Complainant satisfy certain exemption criteria, his account would be exempt from certain fees and charges, such as the account maintenance fee. Further to this, I accept that the Provider was entitled to vary or amend the fees and charges applicable to the Complainant's account and the exemption criteria in respect of account fees and charges.

In terms of the closure of the Complainant's account, the evidence is that the Complainant's wife attended Branch A on **29 March 2019** with a signed letter of authorisation/instruction requesting that the Provider close the Complainant's individual

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current account. The Customer Service Advisor requested identification documentation in respect of the Complainant. However, the Complainant's wife did not have any identification in respect of the Complainant at the time. As the Customer Service Advisor was unable to verify the Complainant's identity, the Provider says that in accordance with the account terms and conditions (section 4) and its policy and procedure, the Customer Service Advisor was unable to close the Complainant's account and returned the letter to the Complainant's wife.

I note that section 4, at page 8, of the terms and conditions, states, as follows:

"4 CUSTOMER INFORMATION:

- (a) *The Criminal Justice (Money Laundering and Terrorist Financing) Act (2010) (as amended, re-enacted or replaced from time to time) and the EU's Third Anti Money Laundering Directive (Directive 2005/60/EC) as implemented in Ireland require us to satisfy ourselves as to your identity and the identity of any other Customers on an Account before opening an Account, permitting transactions on an Account or providing certain services.*
- (b) *We shall make such enquiries and/or request such information and/or documentation from you as may be required in accordance with statutory and bank regulations.*
- (c) *We shall be under no obligation to comply with any directions in relation to an Account, including without prejudice to the generality of the foregoing, withdrawals or transfers without such forms of identification as we shall deem necessary.*
- (d) *[...]*
- (e) *We will retain and use the information provided by you (whether in the application for the Account or otherwise) [...] for the purposes of processing the application for the Account, managing and administering the Account [...] as well as for any other purpose to which you have consented. [...]*
- (f) *[...]*
- (g) *We may make such enquiries about you as we from time to time consider appropriate [...]."*

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The Provider has supplied excerpts from its policy and procedures in respect of withdrawals, lodgements and current account closures. In respect of the closure of a current account, it states that:

“As of the 26/08/2017 when closing any Current Account the ‘Current Account Closure Form’ must be completed and signed by the customer and staff member, to confirm that the customer is aware of the potential loss of features and benefits to their individual current account. Once the form has been signed the account can be closed, subject to all other requirements being fulfilled. [...]”

In terms of the closure of an account, I note section 20(c) of the term and conditions states that an account may be closed *“at any time by a written instruction to your branch.”* In the event of an alteration to the account terms and conditions, section 21(e) permits an account holder to close their account. In the Provider’s letter of **24 January 2019**, it states that if the Complainant wished to close his account that he must provide *“authorisation”*.

Having considered this matter carefully, I accept that the Provider is entitled to seek to verify an account holder’s identity prior to carrying out an account related instruction such as an instruction to close an account. However, if the Provider requires customer identification in respect of an account closure request, it is my opinion that reasonable efforts should be made to communicate this requirement to a customer. In this respect, I note that Provision 2.2 of the **Consumer Protection Code 2012** (“the Code”) requires the Provider to act with due skill, care and diligence in the best interests of its customers; Provision 2.6 requires the Provider to make full disclosure of all relevant material information in a way that seeks to inform the customer; and Provision 4.1 states that all information provided by the Provider is clear, accurate and up to date.

While the Provider relies on section 4 of the terms and conditions to explain why identification was required in respect of the Complainant, on considering the terms and conditions, I note that the terms and conditions do not expressly state that either (i) in the case of an account closure request generally (pursuant to section 20(c)); or (ii) in the specific instance of an account closure request arising from a variation to the terms and conditions (pursuant to section 21(e)), that valid identification must be provided.

The Provider has furnished an excerpt from its policy and procedures, however, I note that no reference is made to the requirement for valid identification in respect of an account closure. While this excerpt refers to *“all other requirements”*, these requirements have not been specifically identified by the Provider. I would also note that the Provider has not furnished any evidence to suggest that the relevant policy and procedures were brought to

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the Complainant's attention or available to the Complainant prior to his wife's attendance at Branch A on **29 March 2019**.

In addition to this, it appears from the above excerpt that a Current Account Closure Form is required in order to close an account, which I note, does not appear to be referred to in the terms and conditions or the letter of **24 January 2019**. The Provider has also provided a copy of its 'Closure of Current Account' form, however, this form does not contain any reference to a requirement for valid identification.

In respect of the Provider's letter of **24 January 2019**, this letter simply states that an "authorisation" is required in order to close the Complainant's account, which in my opinion, reasonably understood, would mean either a verbal authorisation or a written authorisation. I note that nowhere in this letter was the Complainant informed that his "authorisation" must be accompanied by valid identification. If valid identification and/or an Account Closure form was required, it is my opinion that the Provider should have communicated this to the Complainant in this letter.

Accordingly, it is my opinion that the information available to the Complainant in respect of the Provider's account closure procedure was misleading, incomplete, inaccurate and not reflective of the actual procedure that would be employed by its Customer Service Advisor.

In circumstances where valid identification and an Account Closure form were required to be presented in respect of the Complainant's account closure request, it is my opinion that this should have been clearly communicated to the Complainant, for instance, in the Provider's terms and conditions and, in particular, in its letter of **24 January 2019**, and most definitely in advance of any branch attendance. This is especially so in circumstances where the Provider's policy is to request identification in order to carry out an account closure request/instruction.

I do not accept it was reasonable to wait until an accountholder attends a branch with the intention of closing their account to only inform them at this point in time of the need for valid identification. I believe the Provider's communication was seriously lacking in this regard.

The evidence suggests that the Customer Service Advisor would likely have closed the Complainant's account if valid identification was presented. However, as the

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Complainant's wife did not have any identification in respect of the Complaint with her, the Customer Service Advisor was unable to carry out the Complainant's instruction. In the circumstances of this complaint, while I am satisfied that there were serious shortcomings on the part of the Provider in terms of its account closure process, I do not consider that the Customer Service Advisor refused to accept the Complainant's instruction, rather, in reliance on a process that was not properly communicated to the Complainant, the Customer Service Advisor was unable to carry out the instruction.

The Complainant says that the Provider required him to personally attend at its branch in order to close his account. In its Complaint Response, the Provider says its policy is that customers attend a branch in person to allow the Provider to carry out due diligence and to reduce the potential for fraud. I also note that a number of additional submissions were made by the parties in respect of this aspect of the complaint.

I note that there is no evidence of the Complainant being informed of any requirement to personally attend one of the Provider's branches or specifically Branch A in order to close his account prior to **29 March 2019**.

It is not clear whether on **29 March 2019**, the Customer Service Advisor told the Complainant's wife that the Complainant would have to personally attend the branch. It appears from the evidence that the Complainant's wife is likely to have been advised that the Complainant's account could be closed if valid identification was presented in respect of the Complainant or if the Complainant personally attended the branch with valid identification.

However, it is clear that the Complainant in the letter dated 26 April 2019 received very direct instructions to "*make arrangements to attend [Branch A] in the coming days with a copy of this letter along with photographic identification and proof of address*".

In a submission dated **15 September 2020**, the Complainant refers to the Provider's "*insistence on me not only attending their branch in person to close the account, but to have to attend [Branch A]*."

Responding to this aspect of the Complainant's submission, the Provider stated in a submission dated **29 September 2020**, as follows:

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“The Bank regrets that its suggestion in the Final Response Letter to the Complainant, to attend [Branch A] to close his account, caused further frustration to the Complainant.

The reason that [Branch A] was suggested was that the original letter of authority to close the account was presented to [Branch A] at the outset. As mentioned in (1) above [Branch A] had processed the refund of stamp duty paid on the unused cheques to the Complainant’s account following completion of the Cheque Stamp Duty Refund form, duly signed on 20 February 2019.

The Bank wished to minimise the inconvenience for the Complainant hence the inclusion of the Bank’s [...] contact centre phone number to enable him to ring to make an appointment. [...].

Had the Complainant informed the Bank that [Branch A] was inconvenient the Bank would have facilitated an appointment at any Branch of his choice at a suitable time.”

In a further submission dated **4 October 2020**, the Complainant states, as follows:

“I believe you already have a copy of the letter(s) from [the Provider], calling for me to attend [Branch A], to close the account [...] you can see for yourself that they were nothing like as flexible and helpful, as the [Provider] would like you to believe. They simply stated that I must attend [Branch A].”

In the Final Response letter, it states in the penultimate paragraph on the first page, as follows:

“In order to complete the closure of the account, please make arrangements to attend at [Branch A] in the coming days with a copy of this letter along with Photographic Identification and Proof of Address. You can do this by getting in contact with us on [phone numbers].”

In the Provider’s letter of **6 September 2019**, it states, in part, as follows:

“Kindly note that you were advised that in order to close the joint account ending 2593 and your sole account ending 2447 you needed to call into the branch in person with your wife with photographic id and proof of address.

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[W]e once again recommend setting up an appointment in your local Branch in order to close your account as the Branches are very busy currently. You can do this by getting in contact with us on [phone numbers].”

In light of Provider’s failure to address the Complainant’s complaint concerning a refusal to accept the letter of instruction/authorisation in respect of his account in the Final Response letter (discussed below), it is understandable that the Complainant would have understood, having regard to the above correspondence, that the Provider was not willing to accept a letter of instruction and that a branch attendance was required.

It appears to me that the Provider’s processes for closing an account are not even clear to its own staff and were certainly not properly communicated to the Complainant.

The Complainant says the Provider required him to produce identification documentation despite such documentation having been previously provided. I note that a number of additional submissions were made by the parties in respect of this aspect of the complaint. In a submission dated **19 September 2020**, the Provider advised that the Complainant’s identification documentation was presented at, and retained by, Branch A on **20 February 2019**. While the Complainant may have provided identification documentation to the Provider on a number of occasions prior to **29 March 2019** and as recently as **20 February 2019**, I accept that was reasonable for the Provider to request that the Complainant provide valid and up-to-date identification when seeking to carry out particular transactions in respect of his account, such as the closure of his account.

I also note that, in his Complaint Form, the Complainant states that the Provider has a duty of care to safeguard his information and that it is failing to so do if its needs to keep asking for identification documentation. In this respect, I note that the Provider’s request for identification on **29 March 2019** does not appear to have arisen from any loss or destruction of the identification documentation previously provided by the Complainant or the need to update its records. As noted above, the Provider’s request for identification was in the context of the particular instruction to close his account and verify his identity.

Accordingly, in the context of this aspect of the complaint, I am not satisfied that there was anything unreasonable or wrong in the Customer Service Advisor requesting identification in respect of the Complainant.

In terms of the Complainant’s complaint to the Provider, I note the Provider’s position is that the Customer Service Advisor was not aware that the Complainant’s letter of instruction contained a complaint. In this respect, I note that a copy of this letter has not been furnished by the Complainant. I also note that the Complainant has not furnished any evidence to suggest that his wife informed the Customer Service Advisor that his letter

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contained a request to log a formal complaint. Therefore, I have no evidence that the Customer Service Advisor was aware of, or was informed that, the Complainant's letter contained a request to log a formal complaint. Therefore, I do not accept that the Provider failed or refused to accept the Complainant's request or instruction to log a formal complaint.

When it comes to the Provider's investigation of and response to a formal complaint, I note that the General Principles at Chapter 2 of the Code require the Provider to act in the Complainant's best interests and to handle complaints speedily, efficiently and fairly. In addition, Provision 10.7 states that the Provider must seek to resolve a complaint with a customer and Provision 10.9(d) states that the Provider must, in part, attempt to investigate and resolve a complaint.

The Complainant made a formal complaint to the Provider on **29 March 2019**. In respect of the Complainant's sole/individual current account, the complaint related to the Provider's breach of an agreement relating to free banking, a refusal to accept a letter of instruction regarding the closing of his account, a refusal to accept a formal complaint, and the application of an €18.00 charge to his account. On considering the Provider's systems note and Complaint Template, I am satisfied that the Complainant's complaint was recorded with a reasonable amount of accuracy.

However, when I review the Provider's Final Response letter dated **26 April 2019**, it is quite clear, and very disappointing and a cause for concern, that the Provider appears to have only attempted to address the fourth aspect of the Complainant's complaint. It is not clear why, and the Provider has not offered any explanation as to how, the three remaining aspects of the complaint were not responded to.

Additionally, I would also note that the Provider's response to the fourth aspect of the complaint is not satisfactory. In the course of the conversation on **29 March 2019**, the Complainant questioned the Provider's entitlement to apply the €18.00 charge to his account which he noted was not to come into effect until **1 April 2019**. This was also recorded on the Provider's system notes.

As can be seen from the Final Response letter, the Provider did not seek to explain why this charge was being applied to the Complainant's account and simply offered to refund the charge.

Having considered this aspect of the complaint, I am very disappointed with the manner in which the Provider responded to the complaint. Accordingly, I accept that the Provider failed to properly investigate, address and respond to the Complainant's complaint.

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Goodwill Gesture

In its Complaint Response, the Provider states that in light of the manner in which it addressed the Complainant's complaint, it would like to offer a goodwill gesture in the amount of €500.00.

I accept that this is a reasonable gesture "*in light of the manner in which [the Provider] addressed the Complainant's complaint*". However, I find the Provider's communications with the Complainant in relation to how to close his account and its explanations of its procedures for closing an account to be seriously lacking and at times, contradictory.

It is worrying that the Provider does not appear to accept any responsibility for these poor communications.

For this reason, I partially uphold this complaint and direct the Provider to pay a sum of €1,000 (to include the €500 goodwill gesture offered by the Provider), to the Complainant.

I also direct the Provider to review the communications it issues to its customers to better reflect its procedures for closing accounts.

Conclusion

My Decision pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b)** as the conduct complained of was unreasonable in its application to the Complainant, and on the ground specified in **Section 60(2)(f)**, as an explanation for the conduct was not given when it should have been.

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 €1,000 (to include the €500 goodwill gesture offered by the Provider), 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 the Provider to review the communications it issues to its customers to better reflect its procedures for closing accounts.

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

7 September 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.