



<u>Decision Ref:</u>	2021-0304
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Fees & charges applied Dissatisfaction with customer service
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants opened three current accounts with the Provider in **March 2014**. Two of these accounts were opened on an individual basis by the Complainants in their own names. The remaining account was opened jointly by the Complainants. This complaint concerns the Complainants' joint current account.

The Complainants' Case

The Complainants have set out their complaint under six points, as follows:

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 Complainants' joint 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 *“insisted on me calling personally to [Branch A] to close my personal account which is a serious inconvenience for me as I would have to take time off work (there is a cost here for me).”* The Complainants submit that the Provider should act on its customers’ written instruction to close the account.
6. The Provider *“insisted on me again provide (sic) my identification Documents when closing my account. I gave them copy of my identification documents when I first opened the account, I provided them a second time at a later point when requested to do so by letter. I provided a copy of my documentation a third time quite recently (I think it was February – March 2019), when asking them to cancel unused cheques, as part of me preparing to close my person account with them.”*

The Complainants submit that the Provider should honour its commitment to provide free banking for life, stating that this was widely advertised over a prolonged period when their account was opened with the Provider. The Complainants contend that the Provider should not be permitted to just change its mind at will. In the absence of this, the Complainants state that the Provider should compensate them appropriately. The Complainants say they also believe that the Provider should be forced to accept their written instructions, signed by both accountholders, to close their joint account, as it would have done for numerous other matters over a long banking relationship. Since the Complainants opened their account, they say that either Complainant would have been individually able to instruct the Provider on all matters relating to their joint account. The Complainants state that if the Provider insists on them attending its branch to close their account, the Provider should re-imburse them for the half-day of annual leave that they would each need to take in order to go to the Provider’s branch.

The Complainants state they believe that the Provider should not be permitted to keep asking for identification documents. The Complainants say the Provider has been furnished with documentation on three previous occasions (including in the months prior to their complaint to this Office). The Complainants submit that the Provider has a duty of care to mind their information, but clearly the Provider is failing to so do if its needs to keep asking for documentation. The Complainants state it is particularly frustrating that the Provider forced them to bring documentation in person yet again, when closing an individual account.

The Provider’s Case

By way of background, the Provider says the First Complainant attended Branch A on **29 March 2019** on her own, with the intention of closing a current account for herself and the Second Complainant, including their joint account.

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As the Second Complainant was not in attendance, the Provider says the First Complainant brought a letter of authorisation and instruction (signed by both herself and the Second Complainant) authorising the closing of the joint account.

In respect of the Complainants' letter containing an instruction to close certain accounts and also a complaint, the Provider says that during a telephone call on **29 March 2019**, the First Complainant stated that there had been a complaint contained within the letter of authorisation and instruction, and this was the one/same letter that the Complainants had co-signed. During the course of its investigation of the complaint, the Provider says the Customer Service Advisor was asked if she was aware that the letter contained a letter of complaint, to which the Customer Service Advisor stated that 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 Complainants' account from account opening in **March 2014 to September 2017** was €12.00 per quarter but the Complainants 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 customers 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 Complainants 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.

The Provider says the Complainants opened their joint account 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 Complainants.

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The Provider says the account incurred a quarterly maintenance fee of €12.00. The Provider says the Complainants were advised that the quarterly maintenance fee would be waived if the exemption criteria were met. The Provider says the exemption criteria at that time was that €1,500.00 per month or more must be lodged to the account.

The Provider says that as part of the account opening process the Complainants were 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 Complainants signed this form and the 'Account Switch Form' on **26 March 2014**. With their signatures, the Provider says the Complainants confirmed they 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 Complainants' account relating to its entitlement to vary the terms and conditions, and relating to fees and charges. The Provider has also referred 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 Complainants' account was reviewed as part of this process and, as outlined in the Terms and Condition accepted by the Complainants on **26 March 2014**, the Provider notified the Complainants in writing on **19 July 2017** of its intention to increase the maintenance fee on their account. The Provider refers to certain aspects of this letter and states that the letter also outlined the options available to the Complainants together with the exemptions available to them.

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The Provider says it completed a further review of its charges in **January 2019** and wrote to the Complainants 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 Complainants 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**.

As stated above, the Provider says, it clearly outlined and provided the terms and conditions, relevant key information and personal charges brochure to the Complainants at the time of account opening. Throughout this period, the Provider says it was fully compliant with the terms and conditions of the account and in the provision of clear, accurate information.

In respect of the Complainants' written instructions, the Provider says that on the First Complainant's visit to Branch A on **29 March 2019**, she presented written instructions which were signed by both Complainants authorising the closure of accounts.

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. The Provider says the Customer Service Advisor asked the First Complainant if she had identification documentation for both herself and the Second Complainant for verification purposes to enable her to carry out the relevant instructions. The Provider says the First Complainant informed the Customer Service Advisor that she had her own identification documentation but not the Second Complainant's identification documentation. The Provider says the Customer Service Advisor then advised the First Complainant that the Second Complainant would need to be present or his current valid identification documentation would need to be presented for verification to enable the Customer Service Advisor to proceed with the request.

As the Customer Service Advisor was unable to carry out the Complainant's instruction, the Provider says she offered the correspondence back to the First Complainant who accepted it. The Provider says this was to allow either or both of the Complainants to bring the authorisation back to the Provider with current valid identification for verification 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 as it could not verify that the instruction came from both parties on the account, and that the instruction was returned to the First Complainant 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 Complainants at the time of account opening, which had been verified and retained by the Provider on its systems. The Provider says the Customer Service Advisor had to be satisfied in accordance with the terms and conditions of the account and in accordance with the Provider's policy and procedure, as to the identity of the customers before closing their accounts. The Provider says the First Complainant provided identification documentation for herself on her visit to Branch A on **29 March 2019** to enable a separate instruction on another account to be carried out and that the Provider proceeded to verify this.

The Provider says it would have requested identification from the Complainants previously when carrying out certain instructions. The Provider refers again to section 4 of the Terms and Conditions.

As stated above, the Provider says the First Complainant was informed by the Customer Service Advisor that current valid identification was required for both parties to enable the Provider close the account. The Provider says it also reiterated this in its Final Response letter.

The Provider says it never intended to frustrate the Complainants 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 Complainants (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 Complainants to attend the Provider's branch to close their 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.

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 and make an informed decision.

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 its procedure, the Provider says the Customer Service Advisor was required to satisfy herself as to the identity of the Complainants before closing their account. The Provider says the Customer Service Advisor was unable to verify that the request was from the Second Complainant at this time as his identification documentation was not presented on the day.

The Provider says it would have proceeded to close the Complainants' account if identification documentation had been provided for both parties at the branch on **29 March 2019**.

In the Final Response letter, the Provider says it included a phone number to the Complainants and requested that they ring the number to arrange a suitable time to attend the branch. The Provider says this was to assist the Complainants so that they 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 Complainants.

In respect of the manner in which it addressed the Complainants' 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.

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In light of this, the Provider says it would like to offer the Complainants a gesture of goodwill in the amount of €500.00.

The Provider says it would like to re-iterate that the Letter of Notification of change to account dated **24 January 2019** issued to the Complainants, 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 this fee would change.

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

<i>Existing Provider account (in effect until 31 March 2019)</i>	<i>Provider Current Account 4 (New Account) – Effective from 01 April 2019</i>
Exemptions available Lodge at least €1,500 each month. Cheques, drafts or other credits must be cleared funds within the month.	Exemptions available 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.

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.”

The Provider says the Complainants’ account contained the following customer transactions in **May** and **June 2019**:

Date	Lodgement/Withdrawal	Account Balance
20/05/2019	Withdrawal €0.71	€19.83
13/06/2019	Withdrawal [...] €19.83	€0.00

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 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 Complainants did not use the account from **13 June 2019**.

On **2 September 2019**, the Provider says its CEO received correspondence from the Second Complainant dated **20 August 2019** which contained an unsigned handwritten note requesting closure of the account in accordance 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 Complainants 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 account 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 accounts. The Provider says that it regrets that it cannot offer compensation to the Complainants for the changes in its charging structure on the account.

The Complaints for Adjudication

The complaints are that the Provider:

Broke its commitment of free banking for life;

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

Required the Complainants to personally attend its branch in order to close their account;

Requested that the Complainants 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 Complainants' 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 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 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 furnished a copy of its current account brochure for **February/March 2014**. In the first panel of this brochure, it states, as follows:

"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.

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

"[...] 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'.

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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 states at page 16, as follows:

"20 CLOSURE:

- [...]
- (c) *You may close your Account at any time by a written instruction to your branch.*
- (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 Complainants by letter dated **24 January 2019** to notify them that their 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.

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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. [...].”

It appears that each of the Complainants telephoned the Provider separately on **29 March 2019** to make formal complaints in respect of the Provider’s conduct regarding their accounts.

Disappointingly, the Provider has not submitted recordings of these telephone conversations in its response to this complaint despite being requested to provide recordings or transcripts of all telephone conversations between the Provider and the Complainants during **2019** as part its Complaint Response. However, the Provider has provided an ‘EXTRACT RE JOINT ACCOUNT ENDING XXXX2593’ in respect of each of the telephone conversations which took place on **29 March 2019**. In this respect, I note that the Complainants have not taken issue with the accuracy of the information recorded in these extracts.

In respect of the First Complainant’s telephone call, the call extract states, as follows:

“[...]

- [The First Complainant] explained that she had a joint account with her husband and that she had called to [Branch A] at 12:30 pm approximately that day. She said she dropped in a letter signed by both of them authorising the closure of their account. [The First Complainant] stated that the lady wouldn’t accept it and that they both needed to be there.
- She wished to raise another point: That [the Provider] had taken away free banking that they were supposed to get for life with this account.
- She said she was told that day that they would be charged the €18 fee. They got a letter in January that the charges would not apply until 01 April 2019.

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- *There was a letter of complaint within the letter which was refused. [The First Complainant] stated 'she would not take it from me'.*

In respect of the Second Complainant's telephone call, the call extract states, as follows:

"[The Second Complainant] raised a number of issues as part of his complaint as follows:

- *Both [Complainants] had completed a letter of authorisation and instruction to close their joint account ending xxx2953 and the customer service advisor would not accept this although one of the parties to the account was present.*
- *The customer's service advisor refused to accept the letter of complaint contained within the letter of authorisation to close their joint account. The complaint related to the change in fee structure which was being implemented on 01 April 2019.*
- *[The Second Complainant] stated that by declining to accept a letter of instruction and a letter of complaint the Bank was in breach of the Consumer Protection Code. He also stated that the Bank was not adhering to its promise of 'free banking for life' by introducing a quarterly fee from 01 April 2019.*
- *Furthermore he said the Bank was applying a charge of €18 to close each current account although the quarterly fee was not being introduced until 01 April 2019 (as per the Bank's letter of notification on 24 January 2019).*
- *Finally, he stated that both he and [the First Complainant] wished a complaint to be logged as they were separate entities. The [Provider's] agent advised him at the time that she could not add [the First Complainant's] name to the complaint but that [the First Complainant] could make contact later and [a customer service] agent would log a separate complaint for her. [The Second Complainant] was satisfied with this and confirmed that his wife would ring back and log a separate complaint."*

The Provider has furnished the following 'Complaint Template' dated **29 March 2019**, in respect of the First Complainant's complaint:

"Customer was dropping a letter in to close her joint acc with partner had a letter which both of them signed was refused by branch member

She was told that the account would be free for life no charges on the account

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There was a written complaint in the letter for closure of the account however this was refused by branch also

She was told to pay a fee of 18 euro although it said on a letter she received regarding the account close before the first of April to avoid fee however she was told to pay 18 euro to close the account”

The Provider’s system notes dated **30 March 2019** state, in respect of the First Complainant, as follows:

“Customer unhappy as branch refused her letter to close her joint account and there was a complaint within the letter which was also refused by the branch and she was told to pay a 18euro fine although it said in a letter to close account before the 1st of april to avoid fees.”

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

*“Customer called to [Branch A] to close joint and Sole accounts.
First part of complaint relates to joint c/a [...]: 1 – Tried to close joint account in [Branch A] dropped in letter signed by them both – branch would not accept letter to close accounts, 2 – Free banking for the life of account has been taken away, 3 – Was told €18 charge to close the account – customer believed fees not starting until April, 4 – Refusal of staff member to accept complaint – she would not take letter
Second part relates to sole account [...]: 1 – Imposing charges on account which was advertised as free banking for life, 2 – Charged €18 to close account – letter clearly states changes coming into effect from 1st April – wants refund”*

It appears from the Provider’s system notes entry on **5 April 2019**, that one of its agents spoke with the Customer Service Advisor quite soon after the First Complainant’s attendance at Branch A. The relevant note states, as follows:

“[The Customer Service Advisor] was unable to close her husbands or the joint accounts as her husband was not present. [The Customer Service Advisor] gave the letter back to [the First Complainant] so that the same letter could be used when her husband was able to attend the branch. [The Customer Service Advisor] was not aware that the letter contained a complaint as [the Customer Service Advisor] asked the customer to complete a closure form.

I have asked CRC for guidance on how to respond to the portion regarding the free banking as this is outside the scope of the branch.

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I will refund the charges of €18 to the customer once I have received suitable wording from CRC.”

The Provider issued a Final Response letter dated **29 April 2019** to the First Complainant. Beginning at the third paragraph, the letter states, as follows:

“I understand from your complaint that you were unhappy with the service you received in [Branch A] on the 23rd March 2019 when you requested to close your account, your joint accounts with [the Second Complainant] and [the Second Complainant’s] sole accounts. Please note that we are unable to close a joint account or your husband’s sole accounts on the basis of the letter which you presented to the Branch.

Identification is required from [the Second Complainant] in order to process his request and I have been advised that this has been communicated to him by the Customer Resolution Centre. I have spoken with the staff member whom you dealt with on the day and she has advised me the letter was given back to you to allow [the Second Complainant] to use that letter as a closure request when he attended the Branch. The staff member was unaware that there was a complaint in the letter.

Please find enclosed a draft for the amount of €18 which you paid on the day to close your account.

I appreciate that you had received notification that from 1st April 2019 your account would change and you were frustrated with these changes. Please note the Bank continues to review our charging structure to ensure we remain competitive within the current market place. As a result of this review, we have amended our Terms & Conditions as applicable. This change allows us to cover the cost of providing the services available to you on your accounts as well as allowing us to continue to improve as your Bank provider. [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 customer. [...].”

The Provider has submitted 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:

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- *I met [the First Complainant] at approximately 12:30pm on 29 March 2019*
- *[The First Complainant] 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.*
- *I told [the First Complainant] 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 Second 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 First Complainant].*
- *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 First Complainant] 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 First Complainant] 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 Complainants] for the confusion surrounding the events."

Analysis

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

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

I note that the Complainants 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 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 Complainants' application form, I note that there is no reference to free banking or that their account would be subject to free banking. In respect of the declaration signed by the Complainants, 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 Complainants were 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 Complainants acknowledged they 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 Complainants' joint current account nor do I accept that the Complainants' joint account was subject to free banking on an unqualified or indefinite basis.

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Rather, the evidence indicates that the Complainants' joint account was subject to fees and charges, however, should the Complainants satisfy certain exemption criteria, the joint 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 Complainants' joint account and the exemption criteria in respect of account fees and charges.

In terms of the closure of the Complainants' joint account, the evidence is that the First Complainant attended Branch A on **29 March 2019** with a letter of authorisation/instruction, signed by both Complainants, requesting that the Provider close the joint account. The Customer Service Advisor requested identification documentation in respect of both Complainants. While the First Complainant was in a position to produce her own identification, she did not have any identification with her in respect of the Second Complainant. As the Customer Service Advisor was unable to verify the Second 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 joint account and returned the letter to the First Complainant.

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) [...]

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- (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 [...].”*

The Provider has provided 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 Complainants wished to close their account that they 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 Complainants, 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));

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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 the Complainants’ attention or available to the Complainants prior to the First Complainant’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 account, which in my opinion, reasonably understood, would mean either a verbal authorisation or a written authorisation. I note that nowhere in this letter were the Complainants informed that the “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 Complainants in this letter.

Accordingly, it is my opinion that the information available to the Complainants 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 was required to be presented in respect of the Complainants’ account closure request, it is my opinion that this should have been clearly communicated to the Complainants, for instance, in the Provider’s terms and conditions or in its letter of **24 January 2019**, and most definitely in advance 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. It was not reasonable to wait until the Complainants attended a branch with the intention of closing their account to only inform them at this point in time of the need for valid identification.

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It is possible, but not entirely clear, that the Customer Service Advisor is likely to have closed the Complainants' joint account if valid identification was presented in respect of the Second Complainant. However, as the First Complainant did not have any identification in respect of the Second Complaint with her, the Customer Service Advisor was unable to carry out the Complainants' 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 and the communication surrounding it, I do not consider that the Customer Service Advisor refused to accept the Complainants' instruction, rather, in reliance on a process that was not properly communicated to the Complainants, the Customer Service Advisor was unable to carry out the instruction.

The Complainants say that the Provider required them to personally attend at its branch in order to close their 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.

However, having considered the evidence, I note that there is no evidence of the Complainants being informed of any requirement to personally attend one of the Provider's branches, in particular Branch A, in order to close their account prior to **29 March 2019**. Specifically in respect of the First Complainant, it appears from the evidence that she attended Branch A of her own choice and with the intention of closing certain accounts held with the Provider and not on foot of an instruction from the Provider.

Leading on from this, it does not appear that on **29 March 2019**, the Customer Service Advisor told the First Complainant that the Second Complainant would have to personally attend the branch in order to close the joint account. It appears from the evidence that the First Complainant is likely to have been advised that the Complainants' joint account could be closed if valid identification was presented in respect of the Second Complainant or if the Complainants personally attended the branch with valid identification.

It appears to me that the Provider's processes for closing its accounts are not even clear to its own staff and were certainly not properly communicated to the Complainants.

The Complainants say that the Provider required them to produce identification documentation despite such documentation having been previously provided. While the Complainants may have provided identification documentation to the Provider on a number of occasions prior to **29 March 2019**, I accept that the Provider was entitled to request that the Complainants provide valid and up-to-date identification when seeking to carry out particular transactions in respect of their account, such as the closure of an account. However, this should have been clearly communicated to them.

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I also note, in their Complain Form, the Complainants state that the Provider has a duty of care to safeguard their 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 Complainants 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 the joint account and verify the Complainants' identity.

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

In terms of the Complainants' complaint, I note that the Provider's position is that the Customer Service Advisor was not aware that the Complainants' letter of instruction regarding the joint account contained a complaint. In this respect, I note that a copy of this letter has not been furnished by the Complainants. I also note that the Complainants have not furnished any evidence to suggest that the First Complainant informed the Customer Service Advisor that the letter contained a request to log a formal complaint. Based on the available evidence, I am not satisfied that the Customer Service Advisor was aware of, or was informed that, the Complainants' letter contained a request to log a formal complaint. Therefore, I have no evidence that the Provider failed or refused to accept the Complainants' 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 Complainants' 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 Complainants contacted the Provider separately by telephone on **29 March 2019**. It appears from the Provider's extracts in respect of these telephone calls that the Complainants wished to make a complaint in respect of the Provider's conduct regarding their current account. However, when recording the complaint in respect of the joint account, it appears the Provider treated the matters raised by the First Complainant during her telephone call as the basis of the complaint in respect of the joint account.

While it is quite clear from the call extract in respect of the Second Complainant's call that he was also taking issue with the Provider's conduct in respect of the joint account, from the documentation provided, it does not appear that the Provider took this into consideration as part of its investigation into, or response to, the conduct complained of in respect of the joint account, or that Second Complainant's comments in respect of the joint account were recorded on its systems notes as part of the complaint being made in respect of the joint account. Although the issues raised by the Complainants during their respective telephone calls were largely the same, it is my opinion that the Provider should have treated the Second Complainant's comments in respect of the joint account as part of the complaint in respect of this account. However, there is no evidence that it did, in fact, do so.

In respect of the joint account, it appears that 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 the joint account, a refusal to accept a formal complaint, and the application of an €18.00 charge to the joint account.

On considering the Provider's systems notes and Complaint Template in respect of the First Complainant, I accept that the complaint in respect of the joint account was recorded with a reasonable amount of accuracy.

However, when I review the Provider's Final Response letter dated **29 April 2019** ("the FRL"), I note that it is addressed solely to the First Complainant. I also note that the Provider's letter dated **5 April 2019**, acknowledging this complaint, is addressed solely to the First Complainant. In circumstances where I am satisfied that both Complainants raised a complaint in respect of the joint account, it is my opinion that this correspondence should also have been issued to the Second Complainant or to the Complainants jointly.

On considering the FRL, it is quite clear, and very disappointing and a cause for concern, that the Provider appears to have only attempted to address the second and fourth aspects of the complaint. It is not clear why, and the Provider has not offered any explanation as to why, the first and third aspects of the complaint were not acknowledged or responded to in the FRL.

In respect of the second aspect of the complaint, I am satisfied that the explanation as to why the letter of instruction was not accepted was reasonably responded to.

In respect of the fourth aspect of the complaint, I am not satisfied that the Provider offered a satisfactory explanation as to why the Complainants were required to pay the €18.00 charge.

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It appears from the above call extracts that the Complainants may have understood that this charge specifically related to the request to close their account, a sentiment which also appears to have been reflected in the Provider's recording of this aspect of the complaint. In particular, I note the use of language such as "*fine*" in the system note dated **30 March 2019**. However, on considering the FRL, I am not satisfied that the Provider clarified that this was not an account closure charge, but rather the quarterly maintenance fee. In addition, while the FRL referred to the charging of fees, it did not explain why a fee of €18.00 was applied to the Complainants' account. This is particularly disappointing in light of the fact that the Complainants considered that they were entitled to free banking in respect of their account, which was also not addressed in the FRL.

Finally, I note that the FRL incorrectly recorded the date of the First Complainant's attendance at Branch A as **23 March 2019**.

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 complaint.

Goodwill Gesture

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

I accept that this is a reasonable offer "*in light of the manner in which [the Provider] addressed the formal complaint*". However, I believe the Provider's communication with the Complainants in relation to how to close their account and its explanations of its procedures for closing an account were seriously lacking and at times, contradictory.

I am disappointed that the Provider does not seem to recognise that or accept responsibility for its poor and confusing 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 Complainants.

I also direct pursuant to **Section 60(4)(a)** of the **Financial Services and Pensions Ombudsman Act 2017** that the Provider review the communications it issues to its customers to better reflect its procedures for closing accounts.

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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 Complainants, 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 Complainants in the sum of €1,000 (to include the €500 goodwill gesture offered by the Provider) to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider.

I also direct I also direct pursuant to **Section 60(4)(a)** of the **Financial Services and Pensions Ombudsman Act 2017** that the Provider 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

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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.

