



<b><u>Decision Ref:</u></b>	2021-0329
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Current Account
<b><u>Conduct(s) complained of:</u></b>	Fees & charges applied
<b><u>Outcome:</u></b>	Rejected

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

The complaint is concerned with the Complainant's current account which he holds with the Provider.

**The Complainant's Case**

The Complainant argues that the Provider did not provide him with "free banking" when he reached his 60<sup>th</sup> birthday as it had promised to do. The Complainant states that when he opened his current account with the Provider in 1996, one of the terms of the agreement was that on reaching 60 years of age, he would be entitled to avail of free banking where he would not be subject to the usual fees and charges for the maintenance of his current account. The Complainant has argued that this was one of the reasons that he chose to open an account with the Provider, rather than the other banks operating in the state at that time.

The Complainant reached the age of 60 in 2020 and his complaint arises from the fact that the Provider has not made available to him the free banking facilities that he expected would be available to him. The Complainant argues that the Provider ought to afford him with free banking in light of the arrangement that was in place when he opened his current account with the Provider.

The Complainant argues that if the Provider wants to change the eligibility age for free banking from 60 to 66, the new criteria should only be applied to new customers opening an account with the Provider after 2014 and not to existing customers like him.

He argues that he should be entitled to the facility that had been promised to him when he opened his account, and which continued to be available up to 2014.

The Complainant further argues that after being informed by the Provider that free banking was no longer available upon reaching the age of 60, he conducted internet searches. The Complainant argues that the searches indicate that free banking is still available to the over 60s from the Provider. The Complainant has submitted a number of screenshots in support of this contention.

The Complainant has argued that he was distraught at being informed by the Provider that he would no longer be entitled to free banking having reached the age of 60.

The Complainant has rejected the Provider's offer that he would close his existing account and open a basic bank account which attracts no fees, subject to certain conditions, in addition to a refund of charges applied since 2020 and a goodwill gesture of €500. He argues that because his account number would change, he would have numerous obligations to amend his payment details with various companies. Further he disputes that the basic bank account amounts to free banking as fees can be charged in certain circumstances and the Provider can change the terms and conditions with one month's notice. He argues that the Provider should refund the charges on his account since February 2020 in any event and that its compensation offer of €500 is an insult.

The Complainant states that he would like the Provider to resolve the complaint by offering him free banking.

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

The Provider states that the Complainant attended one of its branches on 10 March 2020 querying why fees had been posted to his personal current account. It states that the Complainant provided a screenshot to the Provider's representative from 2013 which stated that customers would receive free banking upon reaching 60 years of age. The Provider states that its representative advised that the terms and conditions of the account had changed since the article was published seven years previously and that eligibility for the account in question was now 66 years of age.

The Provider argues that at the request of the Complainant, a customer service manager spoke to him. The Provider states that the Complainant advised that he had turned 60 years of age and had been promised when his account was opened that he would get free banking from age 60. The Provider states that its customer service manager explained that the account in question was available only to those over 66 years of age. Further, he was advised that the correspondence that the Complainant relied upon from 2013 was not correspondence from the Provider but rather an Irish Times article.

The Provider states that the customer service manager went through a statement of fees provided by the Complainant and offered suggestions on how he could reduce his fees. A final response letter was issued to the Complainant in respect of his complaint on 12 March 2020.

The Provider relies on terms and conditions applicable to the account which it claims allow it to change or vary conditions applicable to an account or introduce new conditions by giving sufficient notice to an account holder. In that regard, it points to clause 9.2 of the November 1996 terms and conditions which applied when the Complainant opened his personal current account in December 1996. It argues that this allows it to amend the terms and conditions of the Complainant's personal current account on notice, subject to the Complainant's right to reject the new terms by closure of his account and the discharge of any outstanding liabilities.

The Provider argues that a similar clause existed in its July 2012 terms and conditions (clause 17) which were in effect at the date of notification of the change to the relevant account in June 2013. The Provider argues that it complied with the obligations imposed on it under the European Communities (Payment Services) Regulations 2009 in respect of notifying customers of the proposed change two months in advance and providing the information in an easily accessible and clear manner. The Provider argues that it issued a press notice on 18 June 2019 in respect of upcoming changes to its personal account terms and conditions and that this notice was published in two daily newspapers on 19 June 2013. It argues in respect of the type of account in question, it notified customers that from 17 February 2014, the age eligibility for the account would change from over 60 to over 66 in line with state pension age. It further stated that customers who already had the account in question would not be impacted by the change.

The Provider argues that it was entitled to amend the terms and conditions of the Complainant's account unilaterally on notice to the Complainant, despite the fact that he was an existing customer. It argues that the Complainant had the ability to reject the change in the terms and conditions by closing this personal current account facility and discharging any outstanding liabilities due. The Provider states that it is satisfied that the press notice published on 19 June 2013 notifying customers of the change in age eligibility for the account was issued in compliance with the terms and conditions of the Complainant's personal current account as effective at that date. The Provider rejects the Complainant's contention that it ought to have amended the terms and conditions for new customers only. It argues that it applied the amendment to all personal current accounts to ensure fairness and transparency across all its customers who would be affected by the changes.

The Provider denies that there is information on the Internet suggesting that the Provider provides free banking to over 60s. In respect of the search conducted by the Complainant (the screenshot of which was submitted in evidence), the Provider argues that this is not from its own website but rather the results page of a search engine entirely unconnected with the Provider.

/Cont'd...

It argues that the search engine results highlight a section of an Irish Times article from 23 September 2013 and the extract states as follows:

*“At present, customers age 60 can apply for [the account] which has no fees. The bank has said that from next February people will qualify for free banking only when they reach 66.”*

The Provider argues that it has no connection with the article and did not publish it on its website and is accordingly not responsible for its veracity or otherwise. Notwithstanding that, the Provider argues that the extract accurately represents the position as regards the account in question at the date of publication of the article that is, 23 September 2013. It argues that while in September 2013, eligibility for the account was 60 years old but, as the article states, the Provider had notified customers that from February next (that is, February 2014), they would qualify for free banking only when they reach the age of 66. The Provider accepts that this is an accurate portrayal of the position on the date. The Provider argues that it is not responsible for the fact that the article is still visible on a search engine and, by extension, that the Complainant was in the position to misread the article and come to the conclusion that the Provider was still advertising free banking for over 60s in 2020.

The Provider argues that it published a press release on 19 June 2013 and identified the following changes were to be made to the account in question, effective from 17 February 2014:

*“From 17 February 2014 the age eligibility for [the account] will change from over 60 to over 66 in line with State Pension age. Customers who already have [the account] will not be impacted by this change.”*

The Provider stated that the changes did occur on 17 February 2014. The net effect of the changes was that existing customers who had not yet reached the eligibility age (that is, over 60) by February 2014 would be impacted by the change. Those that were between the ages of 60 and 66, and thus already held the account in question, would not be affected by the February 2014 changes. New customers post-amendment would not be eligible for the account until they reach the age of 66. The Provider is satisfied that the notice it published clearly explained the above.

The Provider argues that pursuant to clause 17.4 of the terms and conditions of the Complainant’s account in June 2013, the Complainant was deemed to accept the amendment made in respect of the age eligibility for the account if he did not request that the contract be ended by the effective date of the amendment that is, 17 February 2014. The Provider argues that it has no record of a request by the Complainant to end his contract with the Provider regarding his personal current account by 17 February 2014, or at any time before or after that date.

The Provider argues that pursuant to section 149(2) of the Consumer Credit Act 1995, it notified the Central Bank of Ireland of the amendments it intended in respect of the age eligibility and the associated proposed application of fees for persons aged 60 to 66.

The Provider argues that it received no direction from the Central Bank to refrain from imposing the changes on the account.

As at 2 December 2020, the Provider stated that the Complainant had incurred charges in the total amount of €36.95 in respect of the current account since 11 February 2020.

The Provider states that on 13 November 2020, it offered to the Complainant to open a basic bank account, the key feature of which is that there are no fees incurred for maintaining the account, with limited exceptions. It argues that full details of the features of the account were contained in its email of 13 November 2020. The Provider states that it further offered to refund all fees incurred by the Complainant on his current account in 2020, as well as a goodwill gesture in the amount of €500. The Provider states the Complainant has rejected the offer but that the offer remains open for acceptance by the Complainant if he so chooses.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider has wrongfully and/or unreasonably failed to afford the Complainant free banking in circumstances where the Complainant asserts that it was obliged to do so under the terms of his agreement with the Provider.

### **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.

/Cont'd...

A Preliminary Decision was issued to the parties on 26 July 2021, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the issue of my Preliminary Decision, the Complainant made a submission under cover of his e-mail to this Office dated 3 August 2021, a copy of which was transmitted to the Provider for its consideration.

The Provider advised this Office under cover of its e-mail dated 4 August 2021 that it had no further submission to make.

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

At the outset, I note that the Complainant has raised objections to the Provider having submitted his bank account statements into evidence. As advised to him by letter dated 18 December 2020, the Provider is obliged under section 47(3)(a) of the Financial Services and Pensions Ombudsman Act 2017 to furnish information requested by this Office. The Provider was requested to confirm the total amount of fees and charges charged to the Complainant in respect of his current account since he passed his 60<sup>th</sup> birthday and to provide evidence of such charges. The Provider responded to that question and by way of evidence, furnished copies of the relevant statement of account.

The Complainant was assured that all information received from parties to a complaint is exchanged with the other party but is confidential between the parties and this Office. He was also advised that if he continued to have data protection concerns that he should contact the Data Protection Commission in that regard.

The complaint concerns the decision and the disputed entitlement of the Provider to amend its eligibility criteria in respect of its senior years current account which attracts no transaction fees. It is accepted by both parties that when the Complainant opened his current account with the Provider in December 1996, the age eligibility for the account in question was 60 years of age. Under the terms and conditions that existed in 1996, therefore, the Complainant would have been entitled to avail of the account in question when he reached the age of 60. It appears that from February 2014, the age eligibility in respect of the account in question was changed so that only persons who had reached the age of 66 could avail of the transaction fee-free account in question.

/Cont'd...

The Complainant turned 60 in 2020 and was disappointed to learn that he was not eligible for free banking from that point onwards, as he had expected to be based on the conditions in being when he opened his account in 1996. The Complainant disputes the entitlement of the Provider to change the eligibility criteria for customers such as himself who already have an account with the Provider when the change was made in 2014.

For its part, the Provider relies on terms and conditions which allow it to make amendments to its terms and conditions upon the provision of appropriate notice to customers.

The Provider has submitted a press notice which it issued on 18 June 2013 which it states was published by two national daily newspapers on 19 June 2013. The notice advises customers of changes that would come into effect from 19 August 2013 in respect of transaction fees, representing two months notification from the date of the notice in accordance with applicable regulations.

In respect of the senior years account in question, the notice stated as follows:

*“From 17 February 2014 the age eligibility for [the account] will change from over 60 to over 66 years in line with State Pension age. Customers who already have [the account] will not be impacted by this change.”*

In justifying the change, the Provider has submitted terms and conditions for its personal current accounts applicable at various relevant points in time. The personal current account terms and conditions effective from November 1996 provided as follows:

*“4.1 Standard account transaction fees and service charges will apply to the Account, as set out in the Bank’s brochure “Schedule of Fees and Charges for Personal Customers”. Transaction fees and service charges for the provision of the Account, or any overdraft facility provided, may be introduced or altered by the Bank from time to time, subject to approval by the relevant regulatory authority.*

*9.2 The Bank reserves the right at all times to introduce new conditions or to vary existing conditions by giving notice thereof of at least 14 days to the Accountholder, in which circumstances the Accountholder shall be free to dissolve this contract with the Bank and if so doing shall forthwith discharge all and any outstanding liabilities to the Bank.”*

I accept that these were the terms and conditions applicable to the Complainant’s account when he opened a current account with the Provider in December 1996. I also accept that the relevant terms and conditions made provision for the Provider to amend its terms and conditions applicable to the account on a unilateral basis (that is, without the agreement of the Complainant) by the giving of 14 days’ notice, subject to a contract cancellation right on the part of the Complainant if he did not wish to accept the changes.

The next relevant version of the terms and conditions applicable to personal current accounts is from July 2012 and were in operation in June 2013 when the Provider notified customers of its intention to amend the age eligibility criteria and in February 2014 when the age eligibility criteria was actually changed. The most relevant terms and conditions are as follows:

*“17.0 Changes to these Terms and Conditions, Account Transaction Fees and Service Charges*

*17.1 We may add to or change these terms and conditions at any time. We may add new fees and charges or change existing fees and charges at any time.*

*17.2 We will tell you in advance if we add to or change these terms and conditions or if we add new fees and charges or change existing ones. The amount of notice that we will give you will follow the laws and regulations that apply at that time.*

*We will choose the way that we tell you; we can do it by letter, Account statement, electronic mail, telephone (including recorded message) or by an advertisement in an Irish daily or weekly newspaper.*

*17.3 If we change or add to these terms and conditions, and you do not wish to accept the change, you may end this contract (there will be no charge for doing this) and close your Account but first you must pay us any money, interest, fees, charges or Government Duty that you already owe us in connection with your Account.*

*17.4 If you do not ask us to end this contract under Clause 17.3, you are deemed to accept the changes which will tell you about under Clause 17.2 on their effective date.”*

In respect of the terms and conditions that then applied to the senior years account in addition to the general personal current account conditions set out above, the following was provided under the 2012 terms and conditions:

*“1.1 We agree to provide you with [the account] in your name if you are 60 years of age or older and you apply to us for it.*

*2.1 Your account shall be exempt from account transaction fees and specific other service charges; these exemptions are listed in our Schedule of Fees and Charges.”*

I accept that these were the terms and conditions applicable to the Complainant’s account when the Provider implemented the relevant change to the age eligibility criteria for its free fees account in February 2014. I further accept that the relevant terms and conditions made provision for the Provider to amend its terms and conditions applicable to current accounts where notice was given by the Provider, subject to a contract cancellation right on the part of the Complainant.

/Cont’d...



Accordingly, I accept that the Provider had a contractual entitlement to make the relevant change to its eligibility criteria for its free fees account in February 2014 and that its actions were therefore lawful. The next question is whether it was unreasonable or unfair for the Provider to make the change that it did.

The eligibility change that was implemented by the Provider in February 2014 was applied to customers like the Complainant who had not yet reached the age of 60 and therefore were not yet availing of free banking with the particular account. The Provider did not include persons aged between 60 and 66 in its change, however, so any customer who had reached the age of 60 by February 2014 was exempt from the change and was entitled to the advantages of the account in question. I am of the view that this was a reasonable distinction for the Provider to make as the relevant changes only applied to customers who had not yet had the benefit of free banking. When the change was applied by the Provider in February 2014, the Complainant had a personal current account and not a free fees account.

Further, while I appreciate the Complainant's position that his expectation of free banking from the age of 60 was a significant motivation in him choosing to bank with the Provider rather than a competitor bank, the terms and conditions that I have outlined above gave the right to the Provider to make the change that it did. Although the Complainant would have been entitled between December 1996 and February 2014 to free banking with the particular account once he reached the age of 60, that was no longer the case from 17 February 2014 onwards. I cannot accept that his argument that the Provider was or is obliged to provide him with the particular account and the associated fee-free restructure from the age of 60 simply because that was on offer by the Provider when he opened a current account in December 1996. While the Provider is now offering the same account for customers once they reach the age of 66, there is nothing to stop the Provider from making further alterations to its eligibility criteria or fee structure, or indeed from withdrawing the particular account completely, as its existing terms and conditions also allow it to amend those terms and conditions on the provision of sufficient notice to customers.

At all times, the Complainant had and continued to have the option of cancelling his contract with the Provider. He can close his current account and set up an account with another bank at no additional cancellation cost to him.

If that is not his preferred option and he wishes to continue to be a customer of the Provider, the Complainant will continue to be subject to the terms and conditions applicable to the Provider's current accounts, including those terms and conditions which allow the Provider to alter the terms and conditions on notification to customers.

The Complainant has submitted screenshots in evidence which he claims demonstrate that the Provider continues to advertise that it offers free banking to customers over the age of 60. I note the screenshots depict search results from a search engine which is unconnected with the Provider. They are not a screenshot from the Provider's own website. Further, it is clear from the screenshot that the information presented is from 2013 and is not current.

The extracts in question indicate that while the Provider was then (that is, in 2013) offering free banking to persons over 60 years of age, it noted that the age eligibility for the account in question would increase to 66 from February 2014. This is what happened. There is nothing misleading in the article and I accept that there is no inaccuracy that would entitle the Provider to contact the search provider in question to have the results modified or the article taken down. Finally, I accept that the Provider has no connection with the search engine in question or with the underlying article.

While I accept that the Complainant interpreted the search results as indicating that the Provider continued to offer free banking to customers over the age of 60, I am of the view that he misinterpreted the information presented to him. From a careful review of the screenshots in question, accurate information was presented that the Provider was offering free banking to customers over 60 as of September 2013 but would only offer free banking to those over 66 from February 2014 onwards. Further, this information came from a newspaper article and not the Provider's own website which does not contain any reference to transaction fee-free banking for customers over the age of 60. Accordingly, I have been provided with no evidence that the Provider has continued or continues to hold itself out as offering free banking to customers over the age of 60.

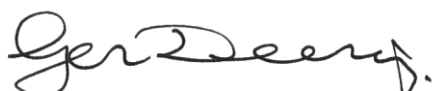
Finally, I accept that the Provider notified its customers in respect of the change to the age eligibility in respect of the particular account in an appropriate and clear manner in June 2013. I am further satisfied that the Provider dealt with the Complainant's complaint in an appropriate and efficient manner. It is clear from submissions from the representatives of the Provider that dealt with the Complainant on 10 March 2020 that they clarified the position in respect of the account to him clearly and comprehensively. I further note that a final response letter was sent to the Complainant extremely promptly, by letter dated 12 March 2020. The content of the final response letter mirrors the response submitted by the Provider to queries raised by this Office, and as set out above.

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

### **Conclusion**

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

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



**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

27 September 2021

/Cont'd...

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.