



<u>Decision Ref:</u>	2021-0354
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Opening/Closing Accounts
<u>Conduct(s) complained of:</u>	Failure to provide notification /reason for closure
<u>Outcome:</u>	Upheld

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

This complaint concerns the allegedly wrongful closure of a current account held by the Complainant with the Provider.

The Complainant's Case

The Complainant submits that on **15 February 2019** he withdrew funds from an automated teller machine (ATM). He states that later that same day he attempted to make purchases using his banking card but was unable to do so. The Complainant states that he contacted the Provider and was told that he had to attend in branch.

The Complainant attended in branch but the manager was unavailable. He submits that he attended again the following day and the manager told him there had been "*activity on his account*" and he felt "*he will never have an account with the Provider again*". The Complainant submits that the Provider failed to explain anything further to him about the activity on his account, that it failed to explain why it had blocked his card and/or closed his account, and that he had not been given any notice by the Provider in relation to either of these matters.

The Complainant submits that he lost the use of his account and access to funds. He says it left him unable to make necessary purchases for his job/business and for his daily cost of living.

The Complainant states that on **20 February 2019** he received a call from the Provider to advise him that his account had been closed and that, he says, again the reason for the closure was not explained to him.

The Complainant states that he received a letter on **21 February 2019** from the Provider stating that it was happy to receive information from him about a missing card, that the card would be blocked for security reasons and that he would receive a new card from it. The Complainant contends that he never notified the Provider about a missing card.

The Complainant states that he received a letter from the Provider dated **27 February 2019** stating that the Provider had unsuccessfully tried to contact him, but states that the Provider had not tried to contact him.

The Complainant would like his account to be reopened, and compensation.

The Provider's Case

The Provider wrote to the Complainant on **15 February 2019** and thanked the Complainant for letting it know about his card ending 0268. It stated that it acted immediately to protect his account and that it had blocked all cards on his account in case they were in the wrong hands.

The Provider wrote to the Complainant on **21 February 2019** stating that in exercise of its contractual rights it had decided that it would close the Complainant's current account from the close of business on **21 April 2019**.

The Provider, by letter dated **26 February 2019**, thanked the Complainant for letting it know that he was not happy with his recent experience and stated that it had tried to contact him but had not been successful. It stated that it was sorry it had not been able to resolve the matter for him yet and would be in contact before **15 March 2019**.

By letter dated **8 March 2019** the Provider acknowledged receipt of a written complaint from the Complainant, noted that it had written to him on **21 February 2019** advising of its intention to close his account, and stated that having investigated the complaint it had the right to terminate its relationship with any customer upon giving two months' notice to the customer, that it does not have to provide an explanation for such a decision, and relies on account terms and conditions in that regard. It noted that the Complainant had sought an explanation and states that it attempted to contact him without success.

The Complaint for Adjudication

The complaint is that:

- (i) the Provider wrongfully closed his account and blocked his card(s);
- (ii) the Provider failed to give reasons for the account closure (and for blocking the associated card(s); and,
- (iii) the Provider failed to notify him about the closure (and blocking of associated card(s)).

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 9 September 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.

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I should note at this point that, although there appears to have been some overdraft and loan facilities associated with the account, the repayment or otherwise of these are not at issue in this complaint and do not appear to have had any bearing on the conduct of the Provider as it relates to this complaint.

On **15 February 2019** the Complainant used his current account debit card at an ATM to withdraw funds. Later that day he was unable to use the card to effect point of sale transactions.

On the same day, the Provider issued a letter to the Complainant stating as follows:

“Thank you for letting us know about your card (ending in 0268).

We have acted immediately to protect your account. We have blocked all the cards on this account in case they are in the wrong hands. That means that if you happen to find the card again and try to use it, it won't work...”

In correspondence with this office, the Provider has since stated that the card was blocked by reason of a “Garda Order” received by it. It has stated that:

“The letter that was issued from the Bank to the Complainant was a generic letter advising him that his card was now blocked. We acknowledge that, as a result, the letter content was not specific to the Complainant as he had not contacted the Bank about his card. The Bank apologises for any confusion this may have caused”

Unaware that this letter had issued, and having been unable to use his debit card, the Complainant contacted the Provider by telephone that same day. He was told that his card had been cancelled by his branch and he would have to attend at his branch to obtain information about the cancellation. The Complainant noted that it was a Friday evening and so he would now not be able to do anything with the account until the Monday. The telephone agent was not able to assist.

On **18 February 2019** (the Monday) the Complainant telephoned the Provider. He was told that he would have to go to his branch, the telephone agent was unable to provide any further information.

On **19 February 2020** the Provider issued a “termination letter”, advising that the Complainant’s account would be closed by it within 60 days, pursuant to the Provider’s contractual entitlement to do so without reason.

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The relevant contractual term is Section 11 of the *Terms and Conditions for Current and Demand Deposit Accounts* which states:

“11.2 We can close your Account by giving you at least two months’ notice”

On **20 February 2020** the Complainant emailed the Provider to explain his predicament and make a complaint. He noted that he was now unable to buy materials for his business, that he had been told by the branch manager (on 19 February 2019, as she was not in branch on 18 February 2019) that there had been *“activity on my account”*, and he felt he was being treated like a criminal.

On **21 February 2019** the Complainant received the Provider’s card cancellation letter of 15 February 2019 and emailed the Provider to ask why his card was blocked when he did not report it lost.

On **22 February 2019** the Provider received a letter of complaint from the Complainant (dated 19 February 2019) in similar terms to the email of 20 February 2020.

On **25 February 2019** the Provider left a voicemail for the Complainant and a number to call back.

On **26 February 2019** the Provider acknowledged receipt of the Complainant’s complaint.

On **6 March 2019** the Provider left a voicemail for the Complainant and a number to call back.

On **8 March 2019** the Provider issued a Final Response Letter. This letter states:

“I can confirm that [the Provider] has the right to terminate it’s [sic] relationship with any customer upon two months notice to the customer”

“There is no obligation for [the Provider] to give a reason for this decision”

Analysis

The Provider was entitled to close the account on providing 60 days’ written notice. It is not contractually obliged to provide a reason for the closure. I would not force a provider to continue its contractual relationship with a customer, except in the most exceptional of circumstances.

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Section 2.11 of the 2012 Consumer Protection Code (CPC), states that a regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it does not, through its policies, procedures, or working practices, prevent access to basic financial services without prejudice to the pursuit of its legitimate commercial aims.

In the context of this complaint, I have not been provided with any evidence to ground a finding that the Provider has acted in any way contrary to this provision. Therefore, the closure of an account after 60 days' notice in writing is a course of action that the Provider was entitled to take.

However, this entitlement to close an account without giving a reason does not cover the blocking of the Complainant's debit card on 15 February 2019. Not only did the Provider not give any notice of its intention to block the card but having done so, it issued a generic letter which suggested that the card had been blocked due to having been reported as lost.

The Complainant never received an explanation for this.

In subsequent correspondence with this office (on **7 May 2020**) the Provider indicated that its actions were taken on foot of a "*Garda Order*".

There is no doubt that if the Provider had been compelled to block the card on foot of a garda/judicial order, it would be entitled to do so, and it would often be appropriate for that to be done without first notifying the customer. However, the Provider has failed to furnish this office with sufficient information to satisfy me that that is what occurred. By letter dated **6 July 2020** this office informed the Provider that since it had not received any additional information regarding this issue, it would proceed to investigate and adjudicate the complaint.

I can only arrive at my Decision based on the information and evidence with which I have been furnished.

I am satisfied that the Provider was entitled to terminate the bank/customer relationship with the Complainant on 60 days' written notice.

Due to the absence of information regarding the Complainant's card being blocked on 15 February 2019, and primarily due to the fact that the Complainant was furnished with, not simply insufficient, but plainly incorrect information about why his card had been blocked, I am satisfied that the Provider's conduct constituted a falling short of acceptable levels of customer service.

The Provider in its responses to this office (**25 September 2020**) has offered €1,000 as a gesture of goodwill in recognition of the inconvenience and confusion caused to the Complainant.

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As I do not believe this to be sufficient in all the circumstances of this complaint, I uphold this complaint and direct the Provider to pay a sum of €2,000 to the Complainant.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld, on the grounds prescribed in **Section 60(2) (f)** as an explanation for the conduct complained of 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 €2,000, 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 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**

6 October 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.