



<b><u>Decision Ref:</u></b>	2021-0355
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Current Account
<b><u>Conduct(s) complained of:</u></b>	Failure to provide notification /reason for closure
<b><u>Outcome:</u></b>	Upheld

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

This complaint relates to the Complainant's current bank account held with the Provider.

**The Complainant's Case**

The Complainant alleges that the Provider suspended her current bank account and all of its activities for almost 3 days in February 2019. She argues that she received poor customer service and the Provider failed to notify her that her account would be suspended. She submits that she is not satisfied with the outcome of some of the aspects of complaint with the Provider or with the extent of the investigation conducted.

The Complainant states that on 12 February 2019 while at work, she attempted to transfer funds from her bank account to her husband's account but was unable to do so as she could not access the account. When she logged onto her account that evening, the current account was not shown on the system. The Complainant states that she contacted the Provider by "web chat" to gain further information and was directed to ring the customer services team who could not give her any assistance as its system was updating at that time.

The Complainant states that she rang the Provider the following morning at 9 AM on 13 February 2019 and was advised that the account had been locked as customer verification of the account was needed and current proof of identity was required.

By way of background, the Complainant argues that she had drawn down a joint mortgage loan account with the Provider in 2018. As part of this process, she had been asked to provide an ML10 form with photographs as a form of identity. This was submitted as requested. She argues that in July 2018, the Provider's mortgage section appears to have contacted the Complainant's branch to secure a copy of the scanned documents including a copy of the photograph accompanying the ML10 form as the picture was missing from the ML10 form which had been scanned. Sometime after this, the Complainant states that she was asked to submit a second ML10 form to verify her current account.

The Complainant argues that in around 22 November 2018, she was again contacted by the Provider and informed that the photograph was missing from the original ML 10 form and the Provider could not locate the second ML10 form she had provided. The Complainant states that she assured the Provider that she had submitted two ML 10 forms within the previous 12 months. She referred the Provider to a large transaction that had occurred at the time that she submitted the second ML 10 form and requested that the Provider check its records by reference to that date. The Complainant submits that it was agreed on that call of 22 November 2018 with the Provider's employee that if the second ML 10 form could not be found, the Provider would send her a copy of the completed form so that the Complainant could bring this to a Garda station along with new pictures for them to stamp. The Complainant argues that she then heard nothing further from the Provider in respect of the ML 10 form so she presumed that it had been able to resolve the issue.

The Complainant was not aware of any further difficulties in respect of her current account or the identify document request until the account was frozen by the Provider on 12 February 2019.

The Complainant states that she was advised on 13 February 2019 that a third ML 10 form would need to be submitted by her in person to her branch in order to reactivate her current account. She argues that this was extremely inconvenient and she had to take a leave day from her employment to facilitate the Provider's request. She argues that she should not have been forced to submit a third ML 10 form, given that the Provider had made the mistake and hence the onus should have been on the Provider to rectify the problem instead of passing on the obligation to her.

The Complainant argues that she did not receive any correspondence from the Provider advising her of any anomalies on the bank account or the incomplete identity documentation. The Complainant disputes that a letter was issued to her at her home address or to a previous address which she had continued to have access to. She states that the Provider advised her that a letter was sent to her address on 12 December 2018 giving notice of the suspension of the account unless the identity documentation was submitted. The Complainant argues that she did not receive this letter and does not accept that the letter was issued. She refers to the fact that the purported letter which was provided to her as proof that the letter of 12 December 2018 was sent was addressed to an address (her new address) which was not on record with the Provider in December 2018 when the letter was stated to have been sent.

/Cont'd...

She has argued that she did not update the Provider with this new address until January 2019 and hence it was impossible that the letter, which the Provider has purported to rely on as proof that it sent the notification letter in question, could have been sent to the new address (which the Provider then did not have on record on the relevant date).

The Complainant states that she raised a formal complaint with the Provider in March 2019. The Provider advised that following its investigation it would uphold part of the complaint. The Complainant argues that the response to her complaint was not acceptable and did not address all the complaint issues raised.

The Complainant wants the Provider to accept responsibility for its errors, failures and poor customer service and seeks adequate compensation.

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

The Provider argues that it sent a "Notification of Account Closure" to the Complainant on 13 December 2018 which requested that she provide the necessary identification documentation within a timeframe of 60 days. It states that the letter further informed her that if she failed to submit the required information to the branch within that time period, her account would be suspended. The Provider argues that this letter was sent to the correspondence address which was held for the Complainant at that time (the Complainant's old address).

The Provider argues that as part of its regulatory requirements, it must maintain up-to-date records containing copies of all documents required for consumer identification and profile. It argues that it is required to regularly validate the information it holds for customers. By asking customers to update their information, the Provider states it is confident that it is checking its records against information that is current and accurate. While it states that it is obliged to have up-to-date information, it recognises that matters in respect of the handling of the requirement to update the Complainant's information was not handled by the Provider as well as it could have been.

The Provider states that in May 2018, the Complainant drew down a mortgage and photographic identification was required as part of the conditions of the loan. It states the Complainant provided this in the form of an ML 10 form but in July 2018, it was found that the photo was missing from the ML 10 form on file.

During the mortgage application process, the Provider states that the Complainant made a withdrawal of €26,000 from the current account and due to the large amount being withdrawn, the Complainant was required to produce identification. The Provider accepts that the Complainant at this time produced a completed ML10 form to the branch which was unfortunately misfiled and could not be found.

The Provider states that on 22 November 2018, contact was made with the Complainant and she was advised of the situation that had occurred. It argues that the Complainant was under the impression that if the ML 10 form could not be found that the branch would send a copy of her ML10 form for her to get completed at a Garda station. It argues that the branch, however, understood that the Complainant was to attend a Garda station to get the ML10 form and passport photo stamped and completed. It argues that when no identification was received back from the Complainant, the letter of 13 December 2018 was issued.

The Provider accepts that the Complainant had provided the information previously and that it did not update its records correctly through human error, resulting in the Provider having to request that the Complainant provide the information again. The Provider argues that it did not intentionally set out to inconvenience its customer but it does not always get things right and ultimately there was a requirement for it to ensure that the information was up-to-date and correct in line with its regulatory and legal obligations.

The Provider has made a redress offer of €1,000 in respect of the inconvenience the Complainant was caused in this regard.

The Provider argued that its records show that the branch attempted to make contact with the Complainant through phone call and text messaging on 14 August 2018 and on 26 September 2018 but there was no response from the Complainant. It argues that on 22 November 2018, the Complainant was contacted by an employee of the Provider and was informed that the ML10 form submitted for a mortgage in early 2018 was missing the photographic identification and a further ML10 form request was made. The Provider states that it was unable to track down the second ML10 form submitted.

The Provider argues that following from the issue of the letter to the Complainant on 13 December 2018, no response was received and the Provider froze the Complainant's current account on 12 February 2019. It states that on 13 February 2019, the Complainant raised a complaint with it regarding the issue stating that the ML 10 form was presented twice to the Provider and that she did not receive the correspondence sent. It states that the Complainant submitted that a further ML10 form on 14 February 2019 and her account was reactivated.

The Provider states that it fully completed an investigation into the complaint and acknowledged in the outcome that the situation was not handled as well as it should have been. It argues that it has apologised to the Complainant and offered a compensation payment of €1,000 which it considers to be a fair and reasonable offer of redress having considered all aspects of the complaint. It argues that the offer of €1,000 remains open and in place for acceptance by the Complainant at any stage.

The Provider does not agree that the Complainant's account was suspended without giving any notice. It argues that a request for further ML 10 form was made by it on 22 November 2018 and again by letter dated 13 December 2018.

/Cont'd...

The Provider states that it is satisfied that it dealt with the Complainant's grievances satisfactorily as it accepted responsibility for its errors, failures and poor customer service and has offered adequate compensation. Following the Complainant raising a complaint with the Provider by way of telephone call on 13 February 2019, it argues that an acknowledgement letter was sent to the Complainant within five working days (that is, by 19 February 2019). It states that the final response letter was issued on 26 February 2019. The Provider argues that the Complainant contacted it by email on 6 March 2019 expressing dissatisfaction with its response and the matter was reviewed and an updated response and increased offer of compensation was made to the Complainant on 9 April 2019. The Provider argues that it received a further email of dissatisfaction from the Complainant on 13 May 2019 and a final resolution letter was issued to the Complainant on 28 May 2019.

### **The Complaints for Adjudication**

The complaint is that the Provider:

1. Suspended the Complainant's current account from 11 February 2019 to 14 February 2019 without due notification to the Complainant;
2. Failed to correctly administer two ML 10 forms submitted in respect of the Complainant's bank account which validated the Complainant's identity prior to November 2018; and
3. Failed to comprehensively respond to all the issues raised in the Complainant's formal complaint.

### **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

/Cont'd...

A Preliminary Decision was issued to the parties on 10 May 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 Provider made a post Preliminary Decision submission dated 26 May 2021 stating, among other things:

*“You have directed us to make a compensation payment of €4,000 to the customer. Whilst we recognise the late nature of the request, we would like an opportunity to offer the amount of €5,000 as a tangible token of our apology in not offering a satisfactory explanation at the time of response. I apologise for the extremely poor customer service the customer experienced and the distress and inconvenience caused”.*

In response, I wrote to the Provider on 31 May 2021, seeking clarification on the purpose of its communication dated 26 May 2021.

The Provider responded under cover of its letter dated 16 June 2021 stating, among other things:

*“This offer is made by the Provider in recognition of its errors and wrongful conduct which gave rise to the complaint, by way of indication that it takes the view that the compensatory figure indicated in the Preliminary Decision fell short of the appropriate amount, in the particular circumstances of the complaint, and this proposal is made in the context of and in anticipation of the Legally Binding Decision which I will issue in the matter”.*

A copy of this further correspondence was transmitted to the Complainant for her consideration.

The Complainant responded to the Provider’s post Preliminary Decision, by e-mail dated 28 August 2021, as follows:

*“I was concerned that the banks increased offer was a way of getting around being issued with your legally binding decision, but as they have confirmed that that is not the case and they have at last taken ownership for their mistakes and accepted that their approach to my complaint and the service they provided me with prior to that were well below par, I am happy to accept their apology and their offer.*

*I had hesitated about taking my complaint this far, as I was concerned that it would just cause a lot of stress and hassle, but it wouldn't make any difference, but as the bank have finally owned their mistakes and realised that they need to do better, I am glad that I did. It is just a pity that it took so long for them to come to that realisation."*

Having considered the post Preliminary Decision submissions and all the submissions and evidence furnished by both parties to this Office, I set out my final determination below.

The Complainant argues that she was required to provide identification in the form of an ML10 form to drawdown a mortgage with the Provider in early 2018. This was acknowledged and accepted by the Provider. The requirement for an ML10 form (which has to be stamped by the Gardai) is explained by the fact that the Complainant has no driving licence and her passport was expired and unacceptable to the Provider as proof of identify as a result. It would appear that when the ML10 form which was submitted by the Complainant was scanned to the Provider's system, the Complainant's photograph was omitted. So, while the Complainant provided appropriate photographic identification to the Provider in accordance with its request, it failed to retain an accurate copy of the identification that had been submitted.

Subsequently, the Complainant attempted to make a large transfer from her current account in connection with the mortgage in the sum of €26,000. I am unaware of the date that this transaction occurred as neither party has submitted relevant bank account records. In any event, it is common case that the Complainant was asked to submit a second ML10 form on this date to verify her identification. This was provided by the Complainant and the transaction took place. It appears that the Provider has lost this second ML10 form in its entirety.

In respect, therefore, of the first two ML10 forms that were submitted by the Complainant on the request of the Provider and which she had to have authorised by the Gardai, the Provider failed to keep an accurate record of the photograph portion of the first ML10 form and completely lost the second ML 10 form. This situation is not acceptable as the Provider has failed to maintain up-to-date and accurate records.

The Provider has argued in its submission that the Complainant's branch tried to contact the Complainant on 14 August 2018 and 27 September 2018 in respect of photographic identification, having been made aware by its mortgage department that the photograph on the original ML10 form was missing. The Provider has submitted no evidence or records to support this submission and so I do not accept that the Provider has established that any such contact was attempted on the relevant dates.

/Cont'd...

Both parties accept that a telephone call occurred on 22 November 2018 between the Complainant and the branch. On this call, the Provider's employee informed the Complainant that the Provider required a further ML10 form to be submitted to verify the identification as it had mislaid or failed to properly record the first two ML 10 forms that she had submitted for the same purpose earlier in 2018. The parties differ as to what was agreed on that call.

The Complainant argues that she requested that the Provider try to locate the second ML10 form that she had submitted in respect of the large transaction and provided the date of the transaction to assist the Provider in locating the document in question. She argues that it was agreed that if the Provider was unable to locate this, that the Provider would send out the completed ML10 form which it had on file and she would then attend her local Garda station once again to have her photographs stamped and returned to the Provider.

The Complainant argues that as she did not hear anything further from the Provider and it did not send out the ML10 form, she assumed that the situation had been resolved by the Provider by reference to the earlier ML10 forms that she had submitted.

The Provider has argued in its submissions that the Provider's employee understood from the same call that the Complainant would submit a further ML10 form to verify her identification in light of the fact that the Provider did not have appropriate identification on file. No statement has been submitted into evidence from the Provider's employee which sets out that individual's recollection of the conversation which occurred. No call recording or call notes have been submitted into evidence. Rather the Provider has simply made a submission in this regard.

As I have direct evidence from the Complainant as to what was agreed on the call and no direct evidence from the Provider, I accept the Complainant's account of this phone call. I therefore accept that she was entitled to assume that the situation in respect of photo identification had been resolved by the Provider, especially in light of the fact that all parties agree that she had submitted two ML10 forms in the same calendar year. I do not accept the Provider's submission that the Complainant was notified on 22 November 2018 that as the Provider had no valid identification on record for her, that she was requested to re-submit identification.

The Provider argues that it issued a letter to the Complainant on 13 December 2018 notifying her that she was required to provide identification to validate her account and that if this was not received within 60 days, her account would be suspended. The Provider argues that this letter was issued to the Complainant's old address (that is, the address on file for the Complainant in December 2018). The Complainant argues that she did not receive this letter, either at her old address which was on file with the Provider in December 2018, or at her new address which was updated in the Provider's records from January 2019. She argues that she continued to have access to both properties at that time.



The Provider has submitted into evidence a letter dated 13 December 2018 in the following terms:

**“Urgent Notice**

**Immediate action required to prevent closure of your account**

*Dear [Complainant],*

*We have recently contacted you, asking for some information to ensure we are able to comply with the regulatory obligations in legislation to ensure we are able to continue operating your bank account(s).*

*You appear not to have supplied everything we have requested and consequently we have no other option but to cease operating your account(s) from 13 February 2019. This may ultimately lead to closure of your account.”*

The letter did not identify what was required of the Complainant (that is, a further ML10 form or identification) but directed her to contact the relevant branch by telephone or email to supply the information it required.

The letter that the Provider has submitted into evidence is addressed to the Complainant’s new address. The Complainant has argued that her new address was not on record with the Provider until January 2019 and so the Provider could not have sent her this letter. The only address to which such a letter could have been sent was her old address and it was not received there despite the fact that she had continued access to the property at that time. She also states that she did not receive the letter at her new address.

The Complainant has raised this issue on numerous occasions with the Provider, both in her email of complaint and in calls with the Provider, recordings of which I have considered. She has also argued that when she first requested a copy of the letter in question from her branch when the account was suspended), the employee that she was dealing with took some 15 minutes to allegedly find a copy of the letter and when the letter was produced, it included the incorrect address as set out above. The Complainant argues that when she queried this with the employee in question, it was explained that the employee had just drawn up the letter as the Provider does not keep copies of all letters sent

These very serious matters have never been dealt with properly by the Provider. The Provider has never properly responded to the Complainant in respect of the impossibility of having sent the letter that it relies on due to the fact that it did not have the new address on record. Instead, the Provider has simply argued that it sent the letter in question to her old address but has provided an alleged copy of that letter which is addressed to the new address. While it may be that the Provider’s systems automatically generate letters on the basis of whatever address is currently on file (and this is what is implied in a letter from the Provider dated 9 April 2019), this has not been argued as the reason.

/Cont’d...

Accordingly, the Provider has failed to properly explain to the Complainant or to this Office why it seeks to rely on a copy of a letter that it could not have sent. It is simply not good enough that the Provider failed to address this issue with the Complainant when her complaint was first raised. It is also completely unacceptable that no records have been submitted by the Provider to this Office to establish whether the letter was sent and to where it was sent. The only evidence that has been submitted is a letter addressed to the new address which, as would appear from the above, could not have been sent at the time it is asserted it was sent.

On that basis, I accept in its entirety the Complainant's version of what occurred. I accept, therefore, that the Provider did not send a letter to the Complainant on 13 December 2018 notifying her of the closure of the account within a 60 day period unless she provided the documentation requested. On that basis, I accept that the Complainant received no notification from the Provider that it required her to provide a further ML10 form and or a warning that if she failed to do so, her account would be suspended.

I further accept that the Provider attempted to rely on a copy of a letter both in February 2019 and subsequently in the course of the present adjudication that it could not possibly have sent.

The Complainant states that she was unable to access her account on 12 February 2019. She states that she was unable to get information from the Provider until 13 February 2019 as the system had been updating. It was only on 13 February 2019 that the Complainant learned that the Provider had suspended her account on the basis that she had (allegedly) not provided sufficient identification in respect of the account. The Complainant lodged a complaint on that date in respect of the suspension of her account, and the fact that the Provider had mislaid the initial ML10 forms she had provided.

The Complainant was required to submit a third ML10 form to the Provider in order to reactivate her account. She has explained that this meant that she had to take a day of annual leave from her employment and spent most of the day taking buses between various branches and the Garda station in order to provide the relevant proof of identification. For the duration that the account was locked, the Complainant argues that she was forced to cancel a grocery delivery which was extremely distressing as she has a number of children under the age of five and the groceries were required to feed them. She also argues that a phone bill was presented for payment and rejected.

The Complainant argues that she has been informed by the Gardai that an expired passport (which she possesses) is an acceptable form of identity, albeit that it can no longer be used as a travel document. She has been informed that the Gardai are unwilling to provide proof of identity by way of ML10 forms where an individual (such as herself) possesses a valid identification document in the form of an expired passport. On the occasion in question, the Complainant was able to persuade the Garda to stamp the relevant form. This seems to have occurred because the Complainant was so distraught in the Garda station that the Garda took pity on her and stamped the form on that occasion.

/Cont'd...

To compound the distress that day, it appears that the Complainant attempted to submit the ML10 form to another branch that was located closer to the Garda station but that the branch would not accept the identification document she wished to submit (that is, the third ML10 form) unless she also provided proof of her current address by way of utility bill. The Provider now accepts that no proof of address was required at this time and this should not have been requested of her. As a result of the second branch's refusal to accept the ML10 form, the Complainant was required to take yet another bus back to her local branch to submit the required identification. It appears that the suspension on the account was lifted very promptly after the third ML 10 form was provided by the Complainant.

To summarise, the Provider:

- lost the photographs attached to the Complainant first ML10 form;
- lost the second ML10 form in its entirety;
- failed to notify the Complainant that it intended to suspend her account unless she produced a third ML10 form within a set period of time;
- locked her out of her current account without notification for a period of three days;
- required her to submit a third ML10 form (and all within the space of one calendar year); and
- its branch refused to accept the ML10 form that she tried to submit because she did not also have a utility bill to hand (which was not actually a requirement).

These failures led to extreme inconvenience for the Complainant as she had to take an annual leave day to travel between the Garda station and branches to provide a third ML10 form that she should never have been required to provide if the Provider had not mislaid and misfiled the initial two ML10 forms. It also caused her understandable distress, especially as to the grocery shopping that she was relying on to feed her small children.

This all occurred in a context where, on the Complainant's account, her expired passport should always have been an acceptable form of identification for the Provider and where the Gardai have now notified the Provider that it is unwilling to stamp ML10 forms for this purpose in future. While I do not propose to make any finding in this regard as the issue has not been properly ventilated between the parties and does not form part of the complaint, I would suggest that the Provider reassess its policy regarding expired passports and acceptable forms of identification.

As regards the Provider's conduct in this case as set out above, I consider that it breached the following provisions of the Consumer Protection Code 2012 (CPC):

"A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

2.2 acts with due skill, care and diligence in the best interests of its customers;

/Cont'd...

2.4 has and employs effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with this Code;

2.5 seeks from its customers information relevant to the product or service requested;

2.11 without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services;

4.2 A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following:

- a) the urgency of the situation; and
- b) the time necessary for the consumer to absorb and react to the information provided.

11.5 A regulated entity must maintain up-to-date records containing at least the following:

- a) a copy of all documents required for consumer identification and profile;
- e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service."

It is therefore my conclusion that the Provider's conduct was contrary to law and further that it was unreasonable and oppressive in its application to the Complainant. However, I welcome the Provider's belated apology and offer of compensation.

### **The Complaint**

The Complainant raised a complaint with the Provider in respect of these issues on 13 February 2019. An acknowledgement letter was sent to her on 19 February 2019 and two calls occurred between the customer care representative who was looking into the matter and the Complainant on the same date. On both calls, the Provider's agent apologised for the inconvenience caused to the Complainant but did not accept that the Provider had done anything wrong in suspending her account as he had had determined that the Complainant had been notified of the requirement to provide a third ML10 form. Although the Complainant attempted to raise the issue of the purported letter dated 13 December 2018 and the address issue, the agent in question either did not understand the argument she was making or was not willing to address it. The Complainant has argued that the attitude adopted by this agent was unfair as he ultimately asked her if she wanted compensation. On my review of the call, I do not accept that there was anything untoward in the agent's tone, albeit that I do not agree with the conclusions the agent drew in respect of the complaints.

/Cont'd...

As the Complainant had requested to speak to a manager of the agent in question, a call was made by the Provider on 21 February 2019 which amounted to an escalation of the complaint. The agent in question accepted that the Complainant should not have had to provide identification on multiple occasions and also accepted that the second branch should not have refused to accept the ML10 form when the Complainant did not have proof of address to hand. The agent in question indicated that she was considering proposing compensation of €150 to the Complainant and the Complainant indicated she would have to think about whether this was sufficient.

By letter dated 26 February 2019, the Provider responded to the complaint and wrongly stated that the Complainant has acknowledged that its notification letter from December 2018 had been sent to her previous address. In the letter, the Provider apologised sincerely for her experience in relation to the process of having to visit the Garda station three times in relation to the completion of ML10 forms. Compensation in the sum of €200 was offered to take account of *“any lapse in service”* experienced, the length of time the issue had been ongoing, *“any inconvenience the subject of the complaint”* had caused her and *“any external costs”* incurred in dealing with the Provider. It is unsurprising to me that this response letter was not deemed sufficient by the Complainant as it was incorrect as to the facts and failed to properly engage with the kernel of the Complainant’s complaint.

The Complainant responded to the Provider by email dated 5 March 2019 and gave a lengthy explanation of what had occurred and what her complaint related to. As her complaint is summarised above, I do not propose to set out in detail the substance of the lengthy email.

In the email, however, she clarified that her complaints were: the fact that the Provider had lost information, had failed to locate the identification information she provided on previous occasions, failed to follow up from her telephone call of 22 November 2018 by sending out the ML 10 form that it was agreed would be sent, supposedly issuing a letter to her new address six weeks before the Provider had been given the address, and locked her out of her account when she had already provided several copies of identification to the Provider.

The Provider responded by letter dated 9 April 2019. In respect of the relevant parts of the letter, the Provider sincerely apologised for the sequence of events set out in her email of 5 March in relation to the three ML10 forms she submitted to the branch. The Provider stated it was extremely sorry that her experience had fallen below the Provider’s expected levels of customer service. The letter stated that the *“oversight in respect of your lost photograph was caused by human error. Your second ML 10 form was mis-filed within the confines”* of the Provider. The letter stated that while it was regrettable that the documents were misplaced, the confidentiality of the documentation would not have been compromised. The letter stated that the Provider does not issue ML 10 forms and apologised for the differing information she received. The letter acknowledged the inconvenience caused to the Complainant in having to submit multiple ML10 forms but referred to its regulatory obligations in that regard.

/Cont’d...

It apologised that proof of address was asked of her when she attended the second branch as this was not required at the time. In respect of the December 2018 letter, the Provider's letter of 9 April 2019 clarified that the letter had been sent from branch rather than centrally and that:

*"the letter you received from the branch was created from a template letter, rather than (sic) a copy of the letter that was sent to you, and as such contained the address that was held on our records on the date the branch created a copy."*

The letter concluded by apologising to the Complainant for the level of service that she had received which it stated was the result of human error. The Provider increased its offer of compensation to the sum of €1,000.

The Complainant responded by email dated 12 May 2019 indicating that she was still unhappy with the response received. She did not feel that her version of events had been believed by the Provider. The Provider responded by further final response letter dated 28 May 2019 which better clarified the aspects of the relevant complaint that had been upheld or not upheld but did not change the response to any great degree.

While the Provider's initial response to the Complainant's complaint of 26 February 2019 was deficient, I accept that its follow-up investigation was more thorough. As should be clear from the above, I do not accept the conclusions drawn by the Provider in respect of the notification provided to the Complainant that her account would be suspended, though I am of the view that it *"sought to resolve the complaint"* in accordance with provision 10.7 CPC and was in compliance with all required time-limits.

On the basis of the above, and while its initial response to the complaint was lacking, I accept that it later made a more fulsome attempt to address the complaint.

In respect of the first two aspects of the complaint, I am conscious that the Provider offered the sum of €1,000 in compensation to the Complainant prior to her complaint to this Office. This represented an increase from the initial figures of €150 and €200 offered. In my view, all of these figures are inadequate to reflect the numerous failures which I have identified above and the level of inconvenience caused to the Complainant.

I welcome that the Provider eventually offered an apology and €5,000 compensation. However, given that these were not forthcoming until after I issued my Preliminary Decision, I deem it appropriate to uphold this complaint and direct the Provider to make a compensatory payment of €5,000 to the Complainant to properly reflect the Provider's maladministration, the extremely poor customer service, the numerous failings that occurred and the unwarranted inconvenience caused to her as a direct result of the Provider's conduct.

## **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld, pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, on the grounds prescribed in **Section 60(2) (b)** because *the conduct complained of was unreasonable*.

I direct pursuant to **Section 60(4)** and **60(6)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Respondent Provider make a compensatory payment to the Complainant in the sum of €5,000 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

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.

