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| <u>Decision Ref:</u> | 2021-0439 |
| <u>Sector:</u> | Banking |
| <u>Product / Service:</u> | Savings Account |
| <u>Conduct(s) complained of:</u> | Delayed or inadequate communication Dissatisfaction with customer service Disputed transactions Failure to provide correct information |
| <u>Outcome:</u> | Rejected |

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to a joint bank account. The Complainants submit that they were not notified of the closure of the account in 2004, and they rely on a bank deposit book to argue that the Provider still retains the Complainants' funds, which they seek to withdraw from the account.

The Complainants' Case

The Complainants held a joint bank account with the Provider, which was opened in **1987**. The Complainants have provided a photocopy of a deposit book that notes the balance in the account on **29 January 2002** as €982.02 (nine hundred and eighty-two Euro and two cent). The Complainants submit that this was the last transaction made on the account, until the first Complainant attempted to withdraw money from the Provider's branch in **February 2020**. The first Complainant then discovered that the account had been closed.

In the complaint of **1 July 2020**, the first Complainant submitted that she was "*adamant*" that the funds were in the account. She submitted that she was not aware that the account had been "*dormant*", and that "*n[o] communication ever received (sic)*".

The Complainants are seeking the return of the funds held in the account, as stated in the deposit booklet to be €982.02.

The Provider's Case

In the Final Response Letter of **19 February 2020**, the Provider stated that the Complainants' account was no longer held on its records, and no funds were held in respect of the account.

It noted that the account had not been in use for the previous 15 years and that, in such cases, the Provider would have been legally obliged to transfer the account funds to the National Treasury Management Agency (NTMA), in line with the ***Dormant Accounts Act, 2001***. However, the Provider submitted:

"We have checked Bank records to see if any funds related to your names and this Account Number were transferred to the NTMA during this time period, and found that no funds in relation to this account were sent to The NTMA. This shows that the Savings Account (Book) had to be closed by the account holder(s) prior to fifteen years ago."

The Provider conducted a further IT search for any computer records relating to the file, and found one record which shows that the account was closed on **11 May 2004**.

The Provider submits that it does not hold any other records relating to the Complainants' account. It relies on provision 11.6 of the ***Consumer Protection Code 2012*** (CPC), noting that it did not have a duty to retain the Complainants' records for longer than six years from the date when the account was closed.

In its final response letter, the Provider stated:

"In the circumstances, the Bank is satisfied that this account closed in the normal manner, with return of funds to the account holder/s in 2004. A closing account statement would have issued shortly after closure."

In relation to the Complainants' deposit book, the Provider submitted that the information recorded in the book *"simply represents a record of a deposit held... at a point in time, similar to how a Bank Account statement would."* It noted that the figure in the Complainants' book was handwritten, and that this alone could not be taken as evidence of either the existence of a bank account, or verification of an account balance.

In its Final Response Letter, the Provider stated that deposit books were phased out over 25 years ago and, where customers continued to use the books, the Provider was no longer obligated to update such books. It noted that the use of the book would always be subject to the Provider's verification, and that withdrawals on the account could be made without the use of a deposit book.

The Provider stated that it always relied on the information held in its computer system to provide an accurate reflection of accounts, and that deposit books were *"generally, for*

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customer reference only.” It noted that where the books were retained as a record, they were “held in addition to Account Statements.”

Consequently, the Provider submits that the Complainants’ deposit book cannot be used as proof of funds still held in the bank. It notes that funds could have been withdrawn without the book, or indeed that a replacement book could have been issued.

When asked by this office whether the relevant account required both of the Complainants’ authorisation for funds to be withdrawn, the Provider stated that this would be governed by the Mandate form filled out at the time of the creation of the account. As the Provider holds no records for the account, barring the IT search record, it could not identify who held the authority to withdraw funds in **2004**.

Similarly, the Provider could not indicate whether a replacement deposit book had been issued, or how the Complainants’ funds had been removed from their account. In its response to this Office, the Provider reiterated its submission that a closing statement would have issued to the Complainants, but clarified that it does not have a copy of this statement. The Provider could not identify how or when it communicated with the Complainants between **2002** and **2020**, owing to the elapse of time.

In response to the first Complainant’s submission that she is “*adamant*” that the funds are still held by the bank, the Provider stated:

“[T]he Provider must stress that it is not possible that the funds remained in the account. The Provider’s internal IT system shows the account was closed on 11 May 2004. The provider has no extant record of any dealings regarding the account, which indicates that the account must have been closed at least 6 years ago, as the Provider does not keep records longer than it is obliged to pursuant to the Consumer Protection Code 2012. The Provider’s records indicate that no transfer of funds in the name of the Complainant took place to the NTMA during the relevant period, which indicates that the account must have been closed at least 15 years ago. In the circumstances, the Provider respectfully submits that the Complainant is mistaken in her recollection.”

The Complaint for Adjudication

The complaint is that the Provider has refused to permit the withdrawal of funds from the Complainants’ account having wrongfully closed the Joint Deposit Savings Account on **11 May 2004** without notifying them.

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

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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 **28 October 2021**, outlining the preliminary determination of this office 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, the final determination of this office is set out below.

Evidence

The Complainants' provided a copy of their joint account deposit book. The relevant part of this book is as follows:

| Withdrawal | Lodgment | Date | P.B. Comp'd | Balance |
|------------|----------|----------|-------------|---------|
| | | 27/3/27 | 4 | 317-35 |
| 200 | | 19/5/27 | | 117-85 |
| | 200 | 29/10/18 | | 317 85 |
| | | | | |
| 20/3/01 | | | | 192 77 |
| | 60 | 5/6/01 | | 252 77 |
| 29/01/02 | 729 | 25 | | 982 02 |

The Provider's internal IT search for the Complainants' account produced one record. The relevant part of this record is as follows:

| | |
|-------------------------|--------------|
| 7 (PR)-EDTE-LAST-MOV | 6/GRP |
| 9 (PR)-EDTE-LAST-MOV-YY | 2/NUM 4 |
| 9 (PR)-EDTE-LAST-MOV-MM | 2/NUM 5 |
| 9 (PR)-EDTE-LAST-MOV-DD | 2/NUM 11 |
| 7 (PR)-EDTE-LAST-LED | 7/AN 11MAY04 |
| 7 (PR)-EDTE-AC-CLOS | 6/GRP |
| 9 (PR)-EDTE-AC-CLOS-YY | 2/NUM 4 |
| 9 (PR)-EDTE-AC-CLOS-MM | 2/NUM 5 |
| 9 (PR)-EDTE-AC-CLOS-DD | 2/NUM 11 |

The Provider outlined the method by which this record could be understood, noting that “*LAST LED*” refers to the ‘last ledger’ and the most recent activity on the account.

I accept the Provider’s submission that the deposit book provided by the Complainants is a record similar to a bank account statement. It is a form of evidence of funds held in the Complainants’ account on **29 January 2002**. However, it is not persuasive evidence of the existence of the account, or the funds held in the account, at any point following this date.

As noted by the Provider, it is possible that the funds were withdrawn without the deposit book, that a new deposit book was issued, or that the deposit book was simply not updated at the time of withdrawal.

Although it is unfortunate that the Provider does not have records relating to the closure of the account and destination of the disputed funds, I accept that the Provider was not obliged to hold such records beyond a period of six years following the closure of the account. I have had regard to provision 11.6 of the Central Bank of Ireland’s Consumer Protection Code (“CPC”) in particular:

“11.6 A regulated entity must retain details of individual transactions for six years after the date on which the particular transaction is discontinued or completed. A regulated entity must retain all other records for six years from the date on which the regulated entity ceased to provide any product or service to the consumer concerned.”

I note that the Provider made additional efforts to obtain the singular IT search record provided. This record shows that the account was closed in **2004**. In relation to the complaint that the Complainants were not notified of this closure, I am cognisant of the fact that there is little evidence available to address this central issue. The Complainants have submitted that no communication was ever received, and the Provider is not in a position to provide evidence to the contrary. However, the Provider has detailed the procedures that were in place at the time following the closure of the account.

I accept that the IT record submitted by the Provider is evidence that the account was closed and on the balance of probabilities, I consider that it is more likely than not that the Provider complied with its procedures at the time of the closure of the account, in 2004.

Having regard to all of the above, I take the view that the evidence available does not support the Complainants’ position that there is a balance in their historical account which should now be made available to them for withdrawal, or that the Provider wrongfully closed the said account in 2004, without notifying them. Accordingly, there is no basis upon which I consider it reasonable to 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.



**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

22 November 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.