



<b><u>Decision Ref:</u></b>	2021-0440
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Current Account
<b><u>Conduct(s) complained of:</u></b>	Refusals (banking) Complaint handling (Consumer Protection Code) Failure to provide notification /reason for closure
<b><u>Outcome:</u></b>	Partially upheld

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

The Provider closed the Complainant's account on the basis that the Complainant was allegedly abusive towards its staff. This complaint relates to the Provider's decision to close the account, and the manner in which this decision was communicated to the Complainant.

#### **The Complainant's Case**

On **2 September 2019**, the Complainant attended at the Provider's branch to exchange Sterling into Euro. This service is provided through the Complainant's account and, because his account was overdrawn, the Provider was not able to effect a full exchange of the cash. The transaction did not proceed.

Following the attempted exchange, the Complainant received a phone call from the manager of the Provider's branch. In his complaint of **16 September 2019**, the Complainant submits that the manager stated:

*"...that they were closing my bank account within 5 working days. As a reason he gave false information that I was rude to the cashier. Of course, this is not true. Additionally, he added that they do not want to have such a customer.*

*...I didn't say anything to the cashier. The situation is terrible for me because I was treated unfairly.*

*...The behaviour of the branch manager and this banks is shameful, incompatible with international banking law."*

The Complainant made a complaint to the Provider on **2 September 2019**. During a phone call between the Provider and the Complainant's wife, who was authorised to speak on his behalf, the Complainant's wife suggested that the account may have been closed due to the fact that the Complainant is [a national of another European member state] (recording ending 901).

The Complainant's wife noted to the Provider that she had spoken to the branch manager on the phone, and that she had asked him what it was being suggested that the Complainant had said to the staff member. The manager had replied that he could not tell her that information. She stated that she had asked for the suggested statements to be written in a letter, but the manager would not accede to this request (recording ending 687).

The Complainant further complains that he was harassed via phone call by the branch manager, following his complaint to the Provider.

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

The Provider stated in its reply to the formal investigation of this complaint, dated **24 August 2020**, that the Complainant visited its branch to exchange £50 (fifty pounds Sterling) into Euro. The Provider's policy is that all foreign exchange transactions for existing customers, are processed through that customer's account.

The staff member explained this procedure to the Complainant, and he agreed to it. However, the Complainant's account had an unauthorised overdrawn debit balance of €9.17 (nine Euro and seventeen cent) at the time. As a result, the staff member was unable to exchange the full amount of the Sterling into Euro, and would only have been able to provide the Complainant with the exchanged amount, less the overdrawn balance.

The Provider submits that the Complainant insisted that he should receive the full value for his Sterling, and the staff member explained again that this could not be done. The Provider says in that regard that:

*"The Complainant became aggressive and irate at the cash desk and verbally abused the cashier with expletives which were personally insulting and upsetting, and took back the sterling and left the branch."*

The Provider notes that the branch manager called the Complainant following this incident, and explained to the Complainant why the branch had been unable to facilitate his request of the full currency exchange. Further, it stated:

*"The Manager outlined that it was unacceptable to behave in the manner that he did with the staff member that was doing her best to look after him at the cash desk. The Complainant was given the opportunity to apologise for upsetting the staff member however he refused and disputed saying anything to upset the cashier."*

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*The Manager reiterated that he had upset the staff member and what he said was overheard by other customers in the queue and again gave him the opportunity to apologise, but the Complainant refused. The Manager then advised he was disappointed with his response and would be writing to him in due course advising that the Bank would be closing his account after the required notice of 60 days and the letter would confirm this."*

The branch manager called the Complainant again, after the complaint was received. During this call, the Provider submits that the Complainant stated that he had behaved properly within the branch, and the manager reiterated that the staff member was upset and that the account would be closed. The calls from the branch manager to the Complainant were not recorded.

When asked by this Office to set out the "conduct" of the Complainant that led to the closure of the account, the Provider referred to the above explanation of the Complainant's behaviour in the branch. When asked whether the Complainant had been warned that his "conduct" was "unacceptable", and whether he was offered an opportunity to rectify the situation, the Provider submitted:

*"As there was a queue forming at the cash counter, the cashier kept silent when the Complainant became aggressive and irate towards her as she did not wish to aggravate him further.*

*The Manager of the... branch telephoned the Complainant later that day after he was made aware of the matter by the cashier who was very upset.*

*The Manager outlined what was witnessed by the cashier and other customers in the queue that day and gave him the opportunity to apologise on two occasions during the telephone call, but he refused and confirmed he did not behave in the manner outlined by the Manager."*

The Provider states that it relies upon clause 20 of its terms and conditions with the Complainant, to allow it to close the account.

When asked by this office whether it was satisfied that it had complied with Provision 2.1 of the Central Bank of Ireland's **Consumer Protection Code 2012** (CPC), the Provider stated that it had acted "*honestly, fairly and professional in the best interests of the customer*" by outlining the exchange procedure to him.

It noted that the branch manager gave the Complainant two opportunities to apologise over the phone, but that the Complainant refused. It submits that "*[a]s a result the Manager had no choice but to advise the Complainant that the Bank would be closing his account and would be writing to him in due course."*

This Office asked the Provider to set out its foreign exchange policy and the reasoning behind it, and whether it was satisfied that it had complied with provision 2.11 of CPC. The Provider responded that the method of processing through the customer's account was the policy of the Provider, and that the Complainant was aware of this as he had used this service in the past. The Provider submitted that the staff member had acted correctly and professionally on **2 September 2019**.

In response to the Complainant's contention that the Provider acted shamefully and not in accordance with international banking law, the Provider stated that it strongly disagrees. It notes that its staff member was experienced and was attempting to assist the Complainant on the day in question. Furthermore, it points to the opportunity given to the Complainant to apologise, during the call with the manager. It also states that the Complainant was given two months' notice to close the account.

### **The Complaints for Adjudication**

The complaint is that the Provider wrongfully closed the Complainant's bank account, and through its representative, "*broke Irish law, unlawfully harassed... and threatened [the Complainant] with calls*".

The Complainant wants the Provider to compensate him for "*stress, nerves, fever, harassment*" experienced.

### **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 **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.

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In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

### **Evidence**

I note that in an internal email of **17 August 2020**, the staff member who dealt with the Complainant's account, set out the behaviour of the Complainant on the day in question:

*"He then snapped the sterling back from the counter and was verbally abusive which I found to be personally insulting and humiliating given the fact that a queue had formed in the branch with customers that witnessed his inappropriate behaviour"*

In an internal email of **17 August 2020**, the branch manager summarised his first phone conversation with the Complainant of **2 September 2019**, some 11 months earlier:

*"That afternoon, when I spoke to our customer on the phone... I clearly outlined what he said to our staff member was unacceptable and offered him the opportunity to apologise. The customer confirmed that he did not say those things and refused to apologise for saying them in any event. I reiterated what he had upset the staff member (sic) and what he had said was overheard by customers and again offered him the opportunity to apologise. He again refused and was dismissive on the phone. At that point, I confirmed to him that I was disappointed in his reply and that I would be writing to him to confirm that after the required timeframe, that we would be closing his account, if not closed beforehand."*

In the Terms & Conditions and Personal & Business banking charges, effective from 7 August 2019, the following is set out at page 22:

*"20 CLOSURE*

*...*

*(b) We may also close your Account for any other reason by giving you at least two months prior notice in writing."*

I note that the Provider had a contractual entitlement to close the account for any reason. However, the Provider has a duty under General Principle 2.1 CPC to act fairly in all of its dealings with the Complainant:

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

*1.1 acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;"*

The Provider submits that the Complainant acted abusively towards a staff member in its branch. If this was the case, it would certainly constitute a fair reason for the Complainant's account to be closed. The branch manager called the Complainant to discuss his suggested behaviour in the bank. The Complainant denied the allegation that he had acted in this way.

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As a result of the Complainant refusing to apologise for the disputed behaviour, the branch manager decided to close the Complainant's account.

I consider that the phone call to the Complainant to discuss his behaviour, prior to a decision being made, was an appropriate and fair approach to the issue which had arisen, and constituted an appropriate fair procedure.

In that regard, the manager had become aware of an incident at the branch, leading to an employee of the Provider saying that she felt humiliated and insulted, as a result of her interactions with the Complainant, when he was seeking a currency exchange. The branch Manager explained the situation and indicated that to conclude the issue, he was prepared to accept an apology as an alternative remedy to closing the account. However, there is no evidence that the manager explained to the Complainant the precise behaviour he was to apologise for.

The Complainant's wife has submitted that when she asked the manager to state the specific language that was used, he refused to. As there is no recording of this conversation, it is not clear as to why this information could not have been given to the Complainant.

I note that the Provider's submissions to this office do not contain a specific record of what is alleged to have been said by the Complainant. The most specific record of the disputed behaviour is in the branch manager's internal notes of **2 September 2019**. This refers to "*extremely aggressive... expletives which were personally insulting and upsetting*". The manager's notes from the two phone calls with the Complainant do not refer to the specific words.

Likewise, I note that in August 2020, when the manager explained the content of his phone call to the Complainant on the day in question, he said that he had "*summarised what had happened at the cash desk*" and indeed the Provider's final response letter of 5 September 2019, issued approximately one month after the event at the branch, specified only that:

*"The cashier felt upset in the manner in which you spoke to her and was personally insulted by the expletives used at the cash desk in the presence of other customers."*

I therefore accept the Complainant's wife's assertion on his behalf, that no specific information was given, when she asked for details. The question arises therefore as to whether, in the context of the apology requested, and in the interest of fairness, the precise allegation should have been put to the Complainant.

The Complainant was presented with two opportunities over the phone to apologise for his behaviour. In an internal email on **17 August 2020**, the branch manager stated that "*[h]e had good English and understood everything I said*". I have listened to the phone recordings between the Complainant and the customer support department of the Provider, and I do not accept that this assessment by the manager is accurate.

I note that the Complainant required his wife to act as a translator during every phone call, and a language barrier persisted even with the aid of the Complainant's wife. I note that it was the Complainant's wife who spoke to the branch manager advising that the Complainant did not fully understand the branch manager, and required her to translate, so that he would better understand.

It is clear that the branch manager was presented with a complete conflict of fact between the staff member and the Complainant, regarding the suggested behaviour that gave rise to the difficulty. The Complainant maintained that he did not say anything in appropriate to the staff member during their interaction.

The Complainant's wife asked the branch manager to detail the precise allegation either over the phone or in writing, and this was refused. I note that the decision to close the Complainant's account was taken, when he refused to provide an apology, in a situation where the manager refused to supply further information as to the precise behaviour or insults that it was suggested required that apology. In my opinion, this was unfair, particularly given the existence of a certain language barrier.

Whilst the Complainant has suggested that the Provider has been guilty of breaking Irish or International law, and he says that the Provider's representative "*unlawfully harassed... and threatened*" him with calls, nevertheless, he has not disputed the Provider's position that the branch manager made two calls only to the Complainant. The Complainant has not explained how these calls were a form of harassment or threat, though I note that in the absence of an apology from the Complainant, he was faced with the "threat" of his account being closed.

I am conscious that the ***Payment Services Regulations 2009***, have long prescribed at provision 56, that

*3) If agreed in the relevant framework contract, a payment service provider may terminate a framework contract concluded for an indefinite period by giving at least two months' notice.*

It is clear from the Provider's terms and conditions, of the Complainant's framework contract for his account, quoted above, that the Provider is entitled to close the account, upon giving 2 months' notice to an account holder of its intention to do so. The framework contract makes that entitlement clear, without any requirement for particular circumstances or conditions to exist. That notice period of 2 months, gives an account holder period of time in which to seek facilities elsewhere.

Whilst the Provider is entitled to close the account, following the appropriate period of notice, on the basis of the evidence before me, I am not satisfied that the Provider treated the Complainant fairly in the circumstances.

It is clear from the evidence that the cashier was upset by her interactions with the Complainant, but in seeking an apology from the Complainant regarding the behaviour which she had found so upsetting, I believe the Complainant was entitled to know specifically what he was being asked to apologise for, which the cashier had found so personally insulting on the basis of it being audible to other customers at the branch.

If the Provider had specifically explained the precise communication which had been perceived as extremely aggressive and/or the particular expletives he was understood to have used, he would have been in a better position to decide whether or not he could offer the apology sought by the Provider. It is of course quite possible that in those circumstances, the Complainant would have elected not to apologise or may indeed have firmly disagreed with the detail offered to him. It was however, entitled to know precisely what he was being asked to apologise for, and it is in that context that I consider the Provider's failure to supply him with the specific details, to have been unfair. In my opinion this conduct on the part of the Provider was unreasonable and unjust within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

In those circumstances, I consider it appropriate to partially uphold this complaint and to mark that decision I direct that the Provider make a compensatory payment to the Complainant, as directed below, in order to conclude the matter. This decision and direction however, has no bearing on the closure of the account which the Provider was entitled to close on the appropriate notice period being given, without identifying any specific reason.

### **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld on the grounds prescribed in **Section 60(2)(2)(b)** insofar as the Provider's conduct was unreasonable and unjust.
- 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 €500, 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.



**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.