



<u>Decision Ref:</u>	2022-0022
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Savings Account
<u>Conduct(s) complained of:</u>	Application of interest rate Delayed or inadequate communication Complaint handling (Consumer Protection Code) Dissatisfaction with customer service
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns the Provider's administration of the Complainants' fixed term deposit accounts and the level of customer service provided to the Complainants.

The Complainants' Case

In a submission dated **30 September 2018**, the Complainants say that in **2017**, the Complainants attended Branch A and opened identical accounts on **12 April 2017** and **11 May 2017**. The First Complainant says that:

"By identical, I mean, both were 12 month fixed term deposit accounts, the rate was 0.75%, and the amount was €75k which was presented as a personal cheque each time, written there and then."

Prior to maturity of the accounts, the First Complainant says the Complainants received standard reminders giving details of the closing balances and a breakdown of the interest paid and DIRT (deposit interest retention tax) deducted. The First Complainant says that for the 'April 12th account', the closing balance was €75,348.55; and for the 'May 11th account', the closing balance was €75,353.40.

The First Complainant says he queried the difference between these balances with the Provider's 'Maturity team' at its Head Office but he did not receive a return call, as promised. The First Complainant says he then notified his branch contact by email on **2 May 2018**, who eventually received an answer and conveyed this to the First Complainant on **10 May 2018**.

The First Complainant says although the source of the answer was not disclosed, the content was totally inaccurate and appeared to be a 'get this query off my desk' response, showing little or no knowledge of the subject or basic banking. The First Complainant says he then raised the issue formally with branch and provided a tabulated document in respect of the two accounts.

The First Complainant says the branch-led investigation was taken over by the Customer Resolution Centre by way of letter dated **9 May 2018**. This letter was not received until **15 May 2018**, which the First Complainant says was the start of a series of unexplained delayed responses from the Provider throughout this saga. The First Complainant says his email of **17 May 2018** was never answered.

Following this, the First Complainant says there ensued a series of letters from the Customer Resolution Centre "*advising [of] "incomplete investigations" and extending the complaint process by, usually an additional month*". The First Complainant has provided the following table in respect of this correspondence:

#	Dated	Received	From	Resolution date
1	May 30th		[...]	Not specified
2	June 28th	July 4 th	[...]	July 26th
3	July 26th	Aug 1 st	[...]	Aug 24th
4	Aug 24th	Aug 30th	[...]	Sep 21st
5	Sep 21st	Sep 27th	[...]	Oct 19 th ***

*** On examination of this letter, the postmark was dated Sept 26th

Throughout the period of these letters, the First Complainant says he emailed the Customer Resolution Centre to ascertain what was going on and what exactly was being investigated given that there had been no interaction, apart from the notifications of delay. The First Complainant says none of his emails were answered, even though read receipts confirmed the same day receipt by the Provider.

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The First Complainant says attachment 5 of the documentation accompanying this submission (which appears to be an email to the Customer Resolution Centre dated **1 August 2018**) presents a logical link to the second part of the unanswered complaint.

Given that the accounts opened with the Provider were 12 month fixed term deposit accounts, the First Complainant says there was little need to monitor them online but he registered for online banking with the Provider. Once activated during **April 2017**, the First Complainant says that on the rare occasion he used the facility, he received bogus (phishing) emails. The First Complainant says he attempted to forward these to the Provider, with little attention or success. The First Complainant says this was more than coincidence and that he eventually wrote to the Provider's IT Service Manager, as directed by the Provider's Head Office, on **14 May 2018**. The First Complainant says this letter has never been answered or referred to by the Provider despite the rather serious issue of phishing emails being used from a Provider domain address.

The Complainants set out their complaint, as follows:

"Our complaint is that [the Provider] have failed to adequately communicate with its customers on any of the issues raised and have failed to resolve the matters within a reasonable timescale. They can certainly not claim any awards for listening to their customer feedback, particularly when it involves such grossly inaccurate responses from their support staff who advise their front-line branch representatives. Equally, they have not resolved, clarified or explained any of the issues raised."

In resolution of this complaint, the Complainants state in their Complaint Form that:

"The financial loss is minimal but the IT related threat could be significant. Answers and remedial plans would be sufficient as well as an apology for (a) failing to deal with the issues raised appropriately, (b) the inappropriate initial answer which was so far off the mark and totally inaccurate, and (c) for failing to communicate or engage."

The Provider's Case

The Provider says that account ending 6832, a 1 year fixed term deposit account, was opened on **12 April 2017** in Branch A with a financial services provider ("Bank A") cheque in the amount of €75,000.00 ("Account 1"); and account ending 9000, a 1 year fixed term deposit account, was opened on **11 May 2017** in Branch A with a Bank A cheque in the amount of €75,000.00 ("Account 2").

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In respect of Account 1, the Provider says the Complainants attended Branch A on **12 April 2017** (Wednesday) requesting to open a 12 month term deposit account on a rate of 0.75% and wished to lodge €75,000.00 drawn on a Bank A account. As the Complainants were new customers to the Provider, the Provider says the branch was unable to lodge the cheque on **12 April 2017** as photographic identification and address verification received on **12 April 2017** had to be forwarded to Head Office for verification. The Provider says a hold was automatically placed on the account until Head Office reverted confirming that the Complainants were compliant. The Provider says Branch A was notified that the Complainants were compliant on **13 April 2017** and the cheque was lodged to the account on **13 April 2017** (Thursday).

The Provider refers to its internal procedures for cheque lodgements at 'Schedule of Evidence 8', as follows:

*"Value Received (available for interest) – after 1 business day
Available for Funds – After 5 business days"*

The Provider says it does not receive funds for Euro Domestic Cheques until the following day – known as 'Value'. Similarly, the Provider says it does not allow 'Value' to its customers until it (the Provider) has been paid. Therefore, the funds were not available for the calculation of customer interest until the following business day. The Provider says the Complainants were advised of this on the day of opening the account. As a result, the Provider says the funds commenced earning interest when the Provider received value on the next business day, on **18 April 2017** (Tuesday after the Easter weekend).

The Provider refers to the terms and conditions relating to the Complainants' accounts at page 43, under the heading '5. Interest' and sub-section (b), as follows:

"Interest is calculated on a daily basis on the cleared balance. Allowance is not made for cheques lodged until Value has been received"

The Provider also set out the following timeline:

Wednesday, 12 April 2017	Account opened
Thursday, 13 April 2017	Account compliance & cheques lodged to account
Friday, 14 April 2017	Good Friday (Bank closed)
Monday, 17 April 2017	Easter Monday (Bank closed)
Tuesday, 18 April 2017	Next business day

The Provider refers to the terms and conditions at page 10, under the heading 'Business Day' and the definition of the term 'business day'.

As outlined above, the Provider says the next working day after Thursday, **13 April 2017** was Tuesday, **18 April 2017** which was when the Provider received Value for the cheque lodgement and when interest began to be calculated. The Provider says interest was calculated from **18 April 2017** until **12 April 2018** (359 days). The Provider says the interest figure was €553.25 gross or €353.76 net of DIRT, which was credited to Account 1 upon maturity.

The Provider says the formula for the calculation of interest is, as follows:

$$(\text{Balance} \times \text{Number of days where interest is accruing} \times \text{Interest rate})/365$$

The Provider says this would equate to:

$$(75,000.00 \times 359 \times 0.0075)/365 = \text{€}553.25$$

The Provider says this breaks down into interest that was credited in the amount of €348.55 and DIRT at 37% of €204.70.

In respect of Account 2, the Provider says the Complainants visited Branch A on **11 May 2017** and opened a 12 month term deposit account on a rate of 0.75%. The Provider says the sum of €75,000.00, drawn on a Bank A account, was lodged to Account 2.

As noted above, the Provider says funds are not available to earn interest until the following business day. The next working day, the Provider says, was Friday **12 May 2017** and this is when it (the Provider) received Value for the cheque lodgement and when interest began to be calculated.

As a result, interest was calculated from **12 May 2017** to **11 May 2018**. The Provider says the interest figure was €560.95 gross or €353.41 net of DIRT, which was credited to Account 2 upon maturity. The Provider sets out the interest calculation, as follows:

$$(75,000.00 \times 364 \times 0.0075)/365 = \text{€}560.95$$

The Provider says this breaks down into interest that was credited in the amount of €353.41 and DIRT at 37% of €207.55.

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The Provider says it is not standard practice to wait for a cheque to clear before it starts to allow interest to accrue. As outlined above, the Provider says it does not receive funds for Euro Domestic Cheques until the following day – known as Value. Similarly, the Provider says it does not allow Value to a customer until it (the Provider) has been paid. Therefore, funds are not available for the calculation of customer interest until the following business day. The Provider says it does not back date the accrued interest on cheques from the date they are lodged once they have been cleared as they receive Value from the next business day after lodgement and hence interest begins to accrue on that business day.

The Provider refers to the terms and conditions at page 19, under the heading ‘13. Lodgements’ and sub-section (h), as follows:

“In the case of a lodgement made with the Bank of a cheque or a draft drawn on a Bank within Ireland, the normal clearing period is 5 Business Days from the date of the lodgement.”

Referring to the above definition of Business Day at page 10 of the terms and conditions, and section 5(b) at page 43, the Provider says the date of the accrual of interest depends on the actual day a lodgement of a cheque is made. Also, the Provider says, this depends on whether there are non-business days that immediately follow the lodgement date and the number of those non-business days. The Provider says the number of those non-business days, after a cheque lodgement is made, means the number of days that elapse before interest starts to accrue, and this can vary depending on the time of the year.

The Provider says the letter that is posted to all customers who open a fixed term deposit account contains the following wording:

“If you have to make any lodgements by euro domestic cheque, then these funds will start earning interest from the next working day. Sterling cheques and all other cheques will take 5 and 8 working days respectively to avail of interest.”

In terms of issuing correspondence, the Provider says the First Complainant contacted it by telephone on **2 May 2018** in relation to his complaint, and the details of the complaint were noted and logged accordingly. As per the **Consumer Protection Code 2012** (“the Code” or “CPC”), the Provider says a regulated entity must acknowledge each complaint on paper within five business days of the complaint being received. The Provider says an acknowledgement letter issued to the First Complainant on **9 May 2018**. The Provider says the letter would have been placed in the basket for posting on the day, and if the post had already been collected at the time of issuing the letter, the letter would then be posted the following day.

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Referring to the requirements of Provision 10.9(c) of the Code, the Provider says that on **30 May 2018**, a further letter issued to the First Complainant (day 20) advising that the matter was still being investigated. The Provider says this letter would have been placed in the 'CRC Post basket' for posting on the day. The Provider says further letters were issued on the dates listed below and again, once issued, would have been placed in the CRC post basket for posting on the day:

28 June 2018 – further holding letter (CPC)
26 July 2018 – further holding letter (CPC)
24 August 2018 – further holding letter (CPC)
21 September 2018 – further holding letter (CPC)
19 October 2018 – further holding letter (CPC)
7 November 2018 – final response letter (CPC)

During **2018**, the Provider says the Post Room in its Head Office instigated a new procedure around the collection and posting of external correspondence. As a result of this procedure, the Provider says, in some cases while the post was collected internally, there was a delay in the post actually leaving the Provider. On becoming aware of this shortcoming, the Provider says the Post Room immediately stopped the newly introduced procedure. The Provider says it apologises for any inconvenience caused to the First Complainant by this shortcoming. The Provider says that once its correspondence enters the postal system, it no longer has control over it.

On **2 May 2018**, the Provider says the First Complainant emailed a staff member in Branch A querying the difference in interest payable on Account 1 and Account 2. The Provider says the staff member contacted Head Office on **3 May 2018** looking for advice on the matter. Unfortunately, the Provider says, the Head Office did not fully investigate the query and, on receiving information from Head Office, the branch staff member responded to the First Complainant on **10 May 2018**. The Provider says the response given to the First Complainant was incorrect and did not outline the correct reason for the difference in the interest payable on both accounts. The Provider says it wishes to apologise for this mis-information. While it is satisfied that both accounts operated correctly, the Provider says it failed to provide the First Complainant with a correct explanation in **May 2018** as to why the closing balances on both accounts were different from each other.

In terms of its response to the First Complainant's complaint, the Provider sets out the following timeline.

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2 May 2018

The Provider says the First Complainant telephoned the Deposit Maturity team to enquire firstly about Account 2 which was maturing on **11 May 2018**. The Provider says the First Complainant advised that he did not wish to re-invest the maturing funds but needed to know what he should do to get a cheque or transfer done in order to receive the funds. The Provider says the agent who spoke with the First Complainant advised that he could attend branch on the maturity date or any date after that between 10am and 3pm, Monday to Friday and the branch could organise a bank draft or electronic transfer.

The Provider says the First Complainant then outlined that he had opened an account with the same amount of funds a month apart in **2017**, the first account matured in **April 2018** and that he received gross interest of €553.25, and on the account that was due to mature on **11 May 2018**, that he would receive €560.95 in interest. The Provider says the First Complainant wanted to know how the interest could be different if both accounts had the same amount invested over the same period of time with the same interest rate.

The Provider says the agent, on checking both accounts, confirmed that the account maturing on **11 May 2018** was calculated correctly and advised that when a cheque is lodged to the account, the interest begins to accrue on the next working day. The Provider says the agent mentioned that the other account which matured in **April 2018**, the initial cheque of €75,000.00 was not lodged to the account until the next business day (**13 April 2017**) when the actual account was opened on **12 April 2017**. The Provider says its agent advised that as he was unable to confirm why there was a difference of interest on both accounts, he would raise a complaint with the Customer Resolution Centre to have it investigated. The Provider says the agent advised the First Complainant that the Customer Resolution Centre would have written confirmation (acknowledgement) sent out to him within the next five working days.

2 May 2018

The Provider says the agent in the Deposit Maturity team passed details of the complaint to the Customer Resolution Centre to be logged and investigated, and that the Customer Resolution Centre logged a complaint on **2 May 2018**.

Also, the Provider says, the First Complainant emailed a staff member at Branch A in relation to the same issue. The Provider says the First Complainant advised that he had received the maturity letter for Account 2 and was concerned with the difference in interest payable on this account compared to Account 1, which had a maturity in **April 2018**.

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The Provider says the First Complainant felt the interest payable should have been the same on both accounts as the term, interest rate and amount were exactly the same.

3 May 2018

The Provider says the branch staff member wrote to the First Complainant by email advising that she would look into the matter and revert to him. The Provider says the First Complainant was also advised that he could collect the cheque from the branch on **11 May 2018**.

9 May 2018

The Provider says a CPC acknowledgment letter issued to the First Complainant.

10 May 2018

Unfortunately, the Provider says the issue was not fully resolved by Head Office and on receipt of information from Head Office, the branch staff member contacted the First Complainant by email on **10 May 2018** outlining the following:

“that the difference is due to the first lodgement being a cheque and the second was a draft which had a different clearing pattern”

The Provider says it would like to sincerely apologise for this incorrect information and for any inconvenience caused.

The Provider says the First Complainant sent an email to the branch staff member advising that he did not agree with her findings.

The Provider says a number of further emails were sent between the First Complainant and branch and in one of these emails the First Complainant advised that on checking his records, both accounts were opened by a personal Bank A cheque. The Provider says the branch also logged a complaint regarding the matter on **10 May 2018** (reference ending 419).

11 May 2018 The Provider says the First Complainant sent an account comparison by email attachment to the staff member in Branch A in respect of the two accounts. The Provider says the branch also issued a CPC acknowledgement letter to the First Complainant in relation to the complaint logged on **10 May 2018**.

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14 May 2018 The Provider says the First Complainant issued a letter to the Manager, IT Services, in Dublin in relation to phishing emails he had received.

16 May 2018 The Provider says the First Complainant emailed Branch A and advised he had received a letter from the branch dated **11 May 2018** (reference ending 419) regarding his complaint and that he had also received another letter from the Customer Resolution Centre (reference ending 770). The Provider says the branch confirmed that the staff member named in the letter from the Customer Resolution Centre would be his point of contact going forward. The Provider says the staff member was not aware there was a second complaint logged for the same issue with the Customer Resolution Centre and would close off the complaint in the branch to allow the Customer Resolution Centre proceed with its investigations.

17 May 2018 The Provider says the First Complainant emailed the Customer Resolution Centre outlining his queries.

24 May 2018 The Provider says Branch A closed its complaint (reference ending 419) and the Customer Resolution Centre was to continue with its investigations into the complaint and respond accordingly.

The Provider says CPC holding letters issued to the First Complainant on **30 May, 28 June** and **26 July 2018**.

1 August 2018 The Provider says the First Complainant emailed the Customer Resolution Centre (for the attention of the Manager) advising that he was still awaiting a response to his issues.

16 August 2018 The Provider says the First Complainant emailed the Customer Resolution Centre (for the attention of the Manager) looking for an update on the issues raised.

24 August 2018 The Provider says a CPC holding letter issued to the First Complainant advising that the matter was still being investigated.

31 August 2018 The Provider says the First Complainant emailed the Customer Resolution Centre (for the attention of the Manager) requesting an update on the issues raised.

The Provider says CPC holding letters issued to the First Complainant on **21 September** and **19 October 2018** advising that the complaint was still being investigated. On **7 November 2018**, the Provider says a Final Response Letter issued by the Customer Resolution Centre outlining the Provider's findings.

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The Provider says it appreciates that it failed to give the First Complainant a correct explanation to his query in **May 2018**. While the branch did attempt to assist the First Complainant by contacting Head Office, the Provider says it is unfortunate that an email was issued by branch to the First Complainant on **10 May 2018** with incorrect information before Head Office had fully investigated the matter.

While the matter was logged with the Customer Resolution Centre as of **2 May 2018**, the Provider says it would like to sincerely apologise for the delay in issuing a final response. The Provider says the Customer Resolution Centre would always aim to respond to all complaints within 40 working days however it took longer than the Provider would have preferred. As previously outlined, the Provider says it complied with the CPC by keeping the First Complainant updated by letter every 20 working days.

The Provider says while it was following CPC guidelines and issuing letters every 20 days regarding the complaint, unfortunately due to the high volume of queries received at the time, it was not possible to acknowledge receipt of all emails received from the First Complainant while the investigation was ongoing.

During **2018**, the Provider says it received a large number of queries in relation to tracker mortgage accounts which in turn affected its ability to respond to the First Complainant and other customers in the timeframe that it would have hoped. The Provider says any customer that contacted the Customer Resolution Centre for updates while awaiting a final response letter was advised that the Provider would prioritise their complaint. The Provider says it regrets to note the First Complainant's dissatisfaction and would like to sincerely apologise for the delay in issuing a final response.

The Provider says it agrees that it could have taken further steps in **May 2018** to address the First Complainant's concerns in relation to the differences in the closing balances between the two accounts. The incorrect information given and the delay in issuing a Final Response Letter, the Provider says, led the First Complainant to believe that the service provided was below his expectations, and the Provider apologises for this.

The Provider says it apologises for the level of service received in relation to this matter. While satisfied that both accounts were operated correctly, the Provider says it failed to provide the First Complainant with the proper explanation in **May 2018** as to why there was a difference in the closing balances on the two accounts.

In terms of the call back promised to the First Complainant, the Provider says the First Complainant telephoned the Deposit Maturity team on **2 May 2018**. Having listened to the telephone conversation, the Provider says there is no mention/promise of a call back.

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However, if the First Complainant wishes to confirm if it was another department that promised the call back, and a specific date, the Provider says it would be happy to look into the matter further.

In respect of the phishing emails, the Provider says the First Complainant contacted it at its 'info' email address on **28 April 2018** at 13:36 enclosing a copy of a phishing email he had received on the same day at 12:20pm from a Provider online banking email domain and was concerned about this email. The Provider says the First Complainant advised that he had *"not responded to the e-mail in any way and that his laptop was secure and scanned for malware etc., fully and regularly."* At 13:40pm, the Provider says one of its agents responded to the First Complainant by email advising that this was part of a fraudulent phishing scam that had recently been brought to the Provider's attention, and advised that the email received by the First Complainant did not originate from the Provider, that the Provider's Internet Security Department was actively taking steps to shut down the fraudulent site and was conducting a full investigation into the matter. On receiving this email, the Provider says the First Complainant responded by thanking the agent for emailing him and advised that he wished to have the matter 'examined'.

The Provider says the query raised by the First Complainant was addressed in the email of 13:40pm and no new response was required. However, the Provider says that an automated response issued to the First Complainant on **28 April 2018** at 13:45pm acknowledging his email and highlighted the phishing text, as follows:

*"[The Provider] will never e-mail or text you asking for:
Your account details, your [internet banking] number, your [...] Interest Password,
your [...] Personal Access Number (PAN), your Visa Card CVV number or any other
personal details. If you ever get an e-mail, text message or pop-up asking for any of
these please contact us on [...]"*

The Provider says it acknowledges the automated response stated that *"we aim to reply to all queries within 2 working days"* which could have led the First Complainant to believe he would receive a further response from the at 'info' address. The Provider says it wishes to apologise for any confusion caused.

On **14 May 2018**, the Provider says the First Complainant wrote a letter for the attention of the Manager, IT Services, enclosing a copy of another phishing email dated **14 May 2018** at 12:48 and again was very concerned. The First Complainant confirmed he had not actioned the email and advised he had *"not received any response to my specific query raised in my e-mails to [email address] at 13:36 and repeated at 13:44"*.

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On **18 May 2018**, the Provider says the Senior Manager of IT Security and Governance, on receipt of the First Complainant's letter of complaint, contacted the Manager of the Customer Resolution Centre enclosing the letter as IT are a non-customer facing department. The Provider says it was agreed that as the customer had a complaint logged with the Customer Resolution Centre as of **2 May 2018**, the Customer Resolution Centre would take over the new issue and respond to it when addressing the First Complainant's complaint.

Regrettably, the Provider says the Senior IT Manager did not advise the First Complainant that the Customer Resolution Centre would be responding to the matters raised in his correspondence as part of its final response to the complaint. The Provider says it wishes to sincerely apologise for this error and any inconvenience caused as a result. The Provider says the Final Response Letter issued on **7 November 2018** outlined the Provider's position regarding the phishing emails.

In **April 2018**, the Provider says it was aware of a number of phishing scams in circulation including the phishing scam reported by the First Complainant on **28 April 2018**. The Provider says phishing attacks on financial institutions can be a regular occurrence, and depending on the extent of such attacks, a decision will be made by the Provider in order to ascertain the best course of action in relation to issuing a mass communication to its customers (1.6 million) through numerous channels which usually includes its website, banking online, and social media platforms. In addition, the Provider says it takes phishing sites very seriously when it is made aware of them and employs third parties to actively look for:

- Fake Provider sites and Apps
- Domain registrations purporting to be Provider related
- Emails containing malware with Provider brand specific text

As a financial institution, the Provider says it cannot stop customers from receiving phishing emails and the majority of phishing emails are generated automatically and are not issued to a defined customer listing. The Provider says it is difficult to determine where customers' emails are compromised given the large scale data breaches that happen worldwide to all types of social media sites. The phishing emails, when issued, are sent to a large number of email addresses in the hope that some recipients are customers of the intended financial institution. In addition to the preventative measures mentioned above, the Provider says the best course of action to help prevent phishing is communication to customers in relation to what the Provider will and will not ask. The Provider also refers to a message contained on its website and social media platforms, which is in similar terms to the above-cited passage from its automated email dated **28 April 2018**.

The Provider also refers to a passage from its Final Response Letter in respect of the phishing emails. In addition, the Provider says it has liaised with An Garda Síochána and the 'BPFI (FraudSmart)' in relation to mass communications to the general public.

The Complaints for Adjudication

The complaints are that the Provider:

Wrongfully or unfairly applied different interest rates on Account 1 and Account 2, and delayed in accruing interest to these accounts;

Dealt with concerns regarding phishing emails in an unacceptable manner; and

Dealt with the Complainants in an unacceptable manner.

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 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 25 November 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.

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Following the issue of my Preliminary Decision, the Complainants made a submission under cover of their letter to this office, together with enclosures dated 6 December 2021. A copy of which was transmitted to the Provider for its consideration.

The Provider advised this office under cover of its letter dated 21 December 2021 that it had no further submission to make.

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

The Provider's Complaint Response

By letter dated **9 December 2019**, this Office wrote to the Provider enclosing a Summary of Complaint which incorporated a Schedule of Questions and a Schedule of Evidence Required. In this letter, the Provider was asked to provide its response to the Summary of Complaint within 20 working days. As such, the Provider's response was due on or before **8 January 2020**.

A response was not received from the Provider within the requested timeframe. This Office wrote to the Provider by email dated **3 February 2020** requesting an update as to when the Provider expected to furnish its response to the complaint. By email dated **4 February 2020**, the Provider apologised for the delay in its response and requested an additional 15 working days to furnish its response, which was granted by the Office the same day.

By email dated **8 April 2020**, the Provider requested an opportunity to engage directly with the Complainants with a view to resolving the complaint. This Office responded to the Provider on **16 April 2020** noting the advanced stage of the complaint and requested that the Provider furnish its response to the complaint by **23 April 2020**. It was also noted that if the Provider wished to make a settlement proposal, this could be included in its complaint response.

By email dated **5 May 2020**, this Office wrote to the Provider noting the absence of a response to its previous email and the absence of a response to the complaint. The Provider was requested to respond to the complaint as soon as possible. Not having received a response from the Provider, a further email was issued by this Office on **20 May 2020** calling for a response to the complaint as a matter of urgency. A response was not received to this email.

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This Office wrote to the Provider again by email on **15 June 2020** requesting an update on matters. The Provider responded to this email on **16 June 2020** to advise that the Provider had issued its response on (Thursday) **11 June 2020** stating that it *“may not have made our post until Friday.”* However, a further response was received from another of the Provider’s agents on **16 June 2020** stating that the Provider’s response would issue in the coming days.

It is most disappointing and unacceptable that it took over six months for the Provider to issue a formal response to this complaint. Furthermore, I am very disappointed at the Provider’s failure to engage with this Office in terms of keeping this Office updated as to the progress being made in compiling its complaint response and also in responding to the correspondence issued by this Office.

Background

The Complainants signed a ‘Savings and Investment Application’ dated **12 April 2017** in respect of a ‘Term Deposit’ account, (Account 1). In the ‘Special Instructions for Fixed Term/Call Accounts’, it states, as follows:

Amount	€75,000.00	Currency	Euro	Call/Term	365
Gross Rate	0.7500	AER		Start Date	12/04/2017
Maturity Date	12/04/2018	Maturity Instructions	Rollover of Funds”		

On the second page of the application form, which is signed by the Complainants, it states that:

“I/We have received the Bank’s ‘Terms of Business’ and the Bank’s brochure on Personal & business banking charges. I/We have also received the Bank’s current booklet ‘Terms and Conditions’. I/We have also read and have had real opportunity of becoming acquainted with, have understood and agree to be bound by the Savings and Investments ‘Terms and Conditions’, which may be amended from time to time.”

The Complainants also signed a Statement of Suitability dated **12 April 2017** in respect of Account 1.

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The Complainants opened a further term deposit account in **May 2017** (Account 2) on the same terms as Account 1. In this respect, I note that an application form in essentially identical terms to Account 1 was signed by the Complainants and dated **11 May 2017**. The only apparent difference between Account 1 and Account 2 is that the State Date and Maturity Date for Account 2 were **11 May 2017** and **11 May 2018**, respectively. The Complainants also signed a Statement of Suitability dated **11 May 2017** in respect of Account 2.

In respect of Account 1, I note that a Bank A cheque dated **12 April 2017** in the amount of €75,000.00 is recorded on the account statement as being lodged/posted to this account on **13 April 2017**. The account statement also indicates that interest in the amount of €348.55 was credited to the account on **12 April 2018**.

In respect of Account 2, I note that a Bank A cheque dated **11 May 2017** in the amount of €75,000.00 is recorded on the account statement as being lodged/posted to this account on **11 May 2017**. The account statement also indicates that interest in the amount of €353.41 was credited to the account on **11 May 2018**.

It appears that a letter dated **11 May 2017** issued to the Complainants in respect of Account 2 outlining certain information in respect of the account, the Complainants' entitlement to make further lodgements and withdrawals, information on where to view the account terms and conditions and the prevailing DIRT rate.

In respect of cheque lodgements, the letter stated, as follows:

"If you have to make any lodgements by euro domestic cheque, then these funds will start earning interest from the next working day. Sterling cheques and all other cheques will take 5 and 8 working days respectively to avail of interest."

It appears that a telephone call took place between the First Complainant and the Provider's customer service team on **28 April 2018**. Following this, the First Complainant emailed the Provider on **28 April 2018** at 13:36, in respect of a suspicious/fraudulent email he received which appeared to originate from the Provider, as follows:

"Further to my telephone conversation with [Agent], I am forwarding on the email received this afternoon for the attention of your Fraud Prevention team.

I confirm that I have not responded to this mail in any way.

/Cont'd...

I am particularly concerned about (a) the sending address being within [the Provider] domain and (b) the coincidence with my recent use of [the Provider's online banking service]. I very rarely use [the Provider's online banking service] but did so last week when closing one of my 12 month fixed deposit accounts. The time before that was back when I was setting up the accounts and [the Provider's online banking service] in April/May 2017. I received a similar bogus email then as well and none since up to today. This is too much of a coincidence to ignore.

My laptop is secure and scanned for malware etc fully and regularly. [...]."

The Provider responded to this email at 13:40, as follows:

"I can advise that this was a part of a fraudulent 'phishing' scam that has recently been brought to our attention.

Please be assured that this email did not originate from [the Provider]. We are unaware of how your email address was obtained however we can assure you that it did not originate from this Bank.

Our Internet Security Department is actively taking steps to shut down the fraudulent site and are conducting a full investigation.

[The Provider] would never request that such details be provided by our customers via email. Please be assured that the security of [the Provider's] website has not been compromised in any way, however if you have any concerns about the security of your Accounts, we recommend that you contact us immediately on the contact number below and/or amend your online security details."

The First Complainant responded to this email at 13:44, as follows:

"Thank you for that but the sending email address and the coincidence I raise need to be examined."

It appears from the Provider's evidence that an automated response issued to the First Complainant at 13:45. However, I note that a copy of this email does not appear to have been provided by the parties.

/Cont'd...

The First Complainant telephoned the Provider's Deposit Maturity line on **2 May 2018**. At the beginning of the call, the First Complainant referred to the upcoming maturity of Account 2, advising that he did not wish to 'renew' and queried the process for withdrawing the funds from the account. The Provider's agent then explained the withdrawal process.

Following this, the First Complainant told the Provider's agent that he opened identical accounts one month apart in **2017**, the first of which matured in **April 2018** with gross interest of €553.25 and, in respect of the account due to expire in **May 2018**, interest of €560.95 would be due. The First Complainant queried why there was a difference in the interest amounts given that each account was for the same term, interest rate and amount.

The Provider's agent attempted to ascertain why there was a difference between the interest due on each account but was unable to do so. The Provider's agent then advised the First Complainant that he would have to log a complaint in order to have the matter reviewed as he was unsure as to whether a mistake had been made in the calculation of the interest amounts. The Provider's agent advised the First Complainant that he would log a complaint. The Provider's agent asked for the name of the branch in which the accounts were opened, with the First Complainant confirming this as Branch A. Following this, the First Complainant suggested that he could contact Branch A directly if that would assist matters. Moments after this, the Provider's agent advised that the complaint would be acknowledged within five working days.

By email dated **2 May 2018**, the First Complainant raised the following query with Branch A in respect of the interest earned on the accounts:

"The query arises regarding the interest payable on this account ([Account 2]; Gross €560.95) compared with the account that matured in April ([account number]; Gross €553.25)! Should they not be exactly the same given that the rate, amount and term were identical?"

Branch A responded to this email on **3 May 2018** advising the First Complainant that the matter would be looked into and that the branch would revert to the First Complainant, possibly the following day. Branch A also emailed the Provider's Deposit Services team on **3 May 2018** querying the difference in interest between the two accounts. Following a further exchange of emails, in an email dated **9 May 2018**, Deposit Services suggested that the difference between the two accounts was that the lodgement in respect of Account 1 was by cheque and the lodgement in respect of Account 2 was by draft, thereby giving rise to differing clearing periods.

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By letter dated **9 May 2018**, the Customer Resolution Centre wrote to the First Complainant to acknowledge his complaint (reference 770).

By email dated **10 May 2018**, Branch A offered the following explanation to the First Complainant in respect of the different interest amounts:

“If the amount lodged to [Account 1] was done by cheque, you calculate the interest based on the full year minus 5 days (time taken to clear a cheque), you get €553.25,

As the amount lodged to [Account 2] was lodged by draft (possibly cleared on the day).

They are saying that the difference is due to the first lodgement being a cheque and the second was a draft which had a different clearing pattern.”

Responding the same day, the First Complainant stated, as follows:

“[T]hat cannot possibly be true. I can refer back to my banking exams in the early 70’s where credit is deemed absolute on the date of lodgement once the cheque has successfully cleared. A draft is nothing more than a certified cheque but still had a five day inter-bank clearing cycle.

The response conveyed is nonsense and shame on the provider of it. You may convey my disappointment to that source with a copy of this email, if you wish.

Our query remains unanswered [...].”

In a further email on the same day, the First Complainant advised Branch A that the lodgements in respect of both accounts were by cheque. It appears that a telephone conversation took place between the First Complainant and Branch A following this email.

By letter dated **11 May 2018**, Branch A wrote to the First Complainant to acknowledge his complaint (reference 419).

The First Complainant wrote to 'The Manager, IT Services' at the Provider's Head Office on **14 May 2018** in respect of phishing emails he received, as follows:

"I write to bring your attention, yet again, to another errant email I received this afternoon (and, NO, I did not action it in any way!). I attach a printed copy of same along with the correspondence string re that last occurrence, on April 28th.

Firstly, I have not received any response to my specific query raised in my emails to [information@\[Provider\].ie](mailto:information@[Provider].ie) at 13:36 and repeated at 13:44.

Yet, exactly the same has happened again today, making the co-occurrence even greater i.e. I have only ever received this type of email directly after accessing [the Provider's online banking service]. I do so very rarely but a 100% success rate in attracting phishing emails when I do. I have only ever had One Year fixed deposit accounts with you and closed two of them in successive in recent months, the last being on May 11th. I would have been online the day before the closures.

I also raised the issue of the phishing e-mails being able to use an address from your .IE Domain. Maybe there is some variation in characters used but I cannot see it. I am concerned when an organisation as large as yours appears not to be able to protect its own domain security.

I prefer not to complain but it would appear that to do so is the only way of getting such feedback into your system. By all means, therefore, you may treat this letter as a complaint. [...]."

By email dated **16 May 2018**, the First Complainant emailed Branch A in respect of the branch letter dated **11 May 2018** and the Customer Resolution Centre letter dated **9 May 2018**, advising that both letters had arrived at the same time. In this email the First Complainant queried whether both letters concerned the same subject matter and who the point of contact would be going forward. Branch A responded to the First Complainant the same day, in part, as follows:

"I can confirm that [...] the Customer Resolution Centre will be the point of contact going forward.

Apologies but I wasn't aware that the Customer Resolution Centre were looking into the matter as well. I will arrange to have the record [419] that was assigned to me closed so no further correspondence will issue from me."

/Cont'd...

The First Complainant responded to this email, as follows:

“I thought you had raised the record and they had taken it on. I was not aware that another process had started other than yours. I hope the others have as much detail as you do. I doubt it because I didn’t have any contact with them before now.”

The First Complainant emailed the Customer Resolution Centre on **17 May 2018** noting that Branch A had passed *“all my input on this matter to your earlier today.”* In this email, the First Complainant stated that:

“I escalated this issue with the branch because (a) I had had no response from the Maturity Team with whom I had raised it at the beginning of May (simultaneously with my branch contact) and (b) because of the grossly inaccurate response conveyed to me by the branch on May 10th.

Three questions, (1) How come I heard from the branch (conveying the errant response) before I got your initial letter sans (sic) any response? (2) Why did it take until May 9th for your initial letter to issue and (3) Why was delivery of your letter (9th May) delayed until 15th?”

By letter dated **30 May 2018**, the Customer Resolution Centre wrote to the First Complainant advising that the complaint was still being investigated and that it would be in contact as soon as the investigation was complete. The Customer Resolution Centre wrote to the First Complainant again on **28 June 2018** in somewhat similar terms to its previous letter but further indicated that it hoped to be in a position to issue a response to the complaint by **26 July 2018**. This letter also included contact details for this Office.

The Customer Resolution Centre wrote to the First Complainant on **26 July 2018** (in similar terms to its letter of **28 June 2018**), this time indicating that it hoped to be in a position to issue a response to the complaint by **24 August 2018**.

The First Complainant wrote to the Customer Resolution Centre by email on **1 August 2018** indicating his dissatisfaction with the manner in which his complaint and phishing related correspondence was being handled by the Provider, as follows:

“These outstanding complaints have been outstanding since mid-May 2018. I received yet another letter, the third of its kind, in this evening’s post, pushing the investigation timescale out by another month.

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The first issue was the difference between the interest payments on two identical 12 month fixed term deposit accounts. The initial response was so far off the mark in terms of accuracy, it prompted a formal complaint. The second issue was addressed to the IT Services Manager on 14th of May by letter. I have had zero response or acknowledgement of that since, although I was assured, by a member of your team, that both matters were being investigated under the same reference number.

The letter received today is no different from its two predecessors and still does not give any indication what it still being investigated or why it is taking so long to deal with what appear to be very definitive issues with few variables. I am concerned that these matters are not being afforded the appropriate attention and would request that the case, with both issues, be escalated to management oversight in order to achieve some semblance of an explanation / resolution.”

The First Complainant emailed the Provider again on **16 August 2018** noting that he had not received a response to his previous email. The Customer Resolution Centre wrote to the First Complainant on **24 August 2018** (in similar terms to its letter of **28 June 2018**), indicating that it hoped to be in a position to issue a response to the complaint by **21 September 2018**. In an email dated **31 August 2018**, the First Complainant referred to the Customer Resolution Centre’s recent letter and stated that he had not received a response to his email of **1 August 2018**. The First Complainant further stated that:

“I must now demand contact from a member of the Customer Resolution team to explain the delays being encountered and, indeed, confirmation of the matters being “investigated”.”

The Customer Resolution Centre wrote to the First Complainant on **21 September** and **19 October 2018** (in similar terms to its letter of **28 June 2018**), indicating that it hoped to be in a position to issue a response to the complaint by **19 October** and **19 November 2018**, respectively.

The Provider issued a Final Response Letter dated **7 November 2018**. In this letter, the Provider referred to the First Complainant’s previous correspondence and apologised for the delay in issuing a response to the complaint. In respect of the interest payable on Account 1, the Provider explained the delay in receiving funds to the account was associated with the Easter non-business days. The Provider also apologised for the loss of interest and inconvenience the lodgement delay caused.

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In order to rectify this error, the Provider advised that a credit interest adjustment of €7.71 gross or €4.86 net was due in respect of the account. The Provider further requested that the First Complainant contact the Provider to arrange payment.

Addressing the phishing emails, the Final Response Letter stated, in part, as follows:

“Please be advised the Bank’s fraud team undertake a thorough investigation of these matters. I understand you reiterated your concerns in your second email on the same day and received an automated response advising the Bank aims “to reply to all queries within 2 days”. I understand that you did not receive any follow up contact in relation to this second email as advised in the automated response and for that I apologise. I have spoken with the Bank’s IT & Fraud department and they confirm the concerns raised by you in your follow up email were addressed and acted upon by the Banks Internet Security Department. Having spoken to our Fraud department in relation to the matters that you have raised they advise that if a customer is getting a phishing email after each time they log in to [the online banking service] the issue is most likely on the device or browser. [The Provider] cannot be responsible for each end users device, it is the responsibility of the customer to ensure their devices are maintained and free of virus before logging in to any online banking facility. We would advise customer to no longer log in to any secure personal services including the online banking service] from that device and to bring it to an authorised reputable computer expert to scan for malware or other malicious software.”

Following this, the Provider offered a goodwill gesture to the First Complainant in the amount of €150.00 for the inconvenience caused by the matters the subject of his complaint.

Analysis

It is not in dispute that Account 1 and Account 2 were essentially identical. Therefore, the same amount of interest should have been earning on both accounts. However, as queried by the First Complainant in **May 2018**, there was a difference in the amount of interest earned on each account at maturity, with Account 1 earning €348.55 and Account 2 earning €353.41.

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In its Complaint Response, the Provider explains the difference in interest as arising from the time that passed when verifying the Complainants' identities (as they were new customers when Account 1 was opened) and that 'Value' is not received in respect of cheque lodgements until one business day after the cheque has been lodged, meaning the calculation of customer interest does not begin until this date.

The Provider says the Complainants were advised when they attended Branch A on **12 April 2017** to open Account 1 that interest would not begin to accrue until the next business day. In a submission dated **20 June 2020**, the Complainants say this is untrue and the first they knew about clearing times was in **2018** at the time of the maturity of Account 2. Responding to this point in a submission dated **24 July 2020**, the Provider says the branch staff member who dealt with the Complainants on **12 April 2017** was currently on a career break but it had spoken to the branch manager who stated that the staff member in question was an experienced member of staff and would have outlined all details of the account; would have advised that funds would not be lodged on the day the account was opened as the Complainants were new customers and would first have to be verified by the Provider; and would have advised that interest would only begin to accrue on the first business day following the lodgement of the cheque.

Although the Provider has outlined what the staff member would have told the Complainants regarding the opening of Account 1, the Provider has not tendered any evidence to show what was actually discussed, whether based on an account provided by the relevant staff member or by reference to any contemporaneous documentation recording the discussions between the parties on the date in question. While I accept that some form of discussion is likely to have taken place between the relevant branch staff member and the Complainants on **12 April 2017** regarding the opening of Account 1, I have no reason to doubt the Complainants' recollection and therefore I accept that the Complainants were not advised that interest would not begin to accrue until the next business day following the lodgement of the cheque.

In its Complaint Response, the Provider refers to "*the letter that is posted to all customers who open a fixed term deposit account*" which contains the following wording:

"If you have to make any lodgements by euro domestic cheque, then these funds will start earning interest from the next working day. Sterling cheques and all other cheques will take 5 and 8 working days respectively to avail of interest."

In their submission of **20 June 2020**, the Complainants say while they received the letter referred to by the Provider in respect of Account 2, no such letter was received in respect of Account 1. In its submission of **24 July 2020**, the Provider says this 'Welcome letter' did not issue to the Complainants in **April 2017** because funds were not credited to the account on the day the account was opened.

In its submission of **24 July 2020**, the Provider has furnished a copy of the welcome letter that issued to the Complainants in **May 2017**. On reviewing this letter, I can see that some very important account related information is contained in this letter. It is disappointing that a welcome letter did not issue to the Complainants in respect of Account 1, particularly given the nature of the information contained in this letter. Further to this, it is both disappointing and concerning to see that because funds were not lodged to Account 1 on its opening date, the Complainants were not issued with a welcome letter.

Having considered the matter, it appears the Provider was seeking to rely, to some degree, on the above cited passage from the welcome letter in response to whether the Complainants were informed of when interest would begin to accrue on Account 1 and Account 2 in respect of cheque lodgements. In circumstances where the Provider was aware, and should have been aware, that this letter did not issue in respect of Account 1, it is my opinion that the Provider should have noted this in its Complaint Response when referring to this letter. However, the Provider's reference to the welcome letter in its Complaint Response was rather vague.

It is the Provider's evidence that welcome letters are issued to all customers who open fixed term deposit accounts. However, on considering the Provider's submissions, I do not accept this position. It appears that such letters, as in the Complainants' case, only issue if funds are lodged to an account on the account opening date. If it is the Provider's intention that welcome letters issue to all customers who open fixed term deposit accounts without qualification and regardless of when funds are lodged, it appears that there may have been a flaw in the Provider's process for issuing welcome letters. If this is not the case, it would appear then that the Provider only issues welcome letters to customers who lodge funds to their term deposit account on the day it is opened. However, this would seem to be a rather arbitrary approach to take.

On signing the application forms for Account 1 and Account 2, the Complainants acknowledged that they had the opportunity to read and become acquainted with the terms and conditions applicable to each of these accounts.

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As part of the documentation furnished by the Provider in response to this complaint, the Provider has provided a copy of its 'Terms & Conditions' dated **31 March 2017** and its 'Terms & Conditions' dated **4 December 2019**. In an email dated **22 October 2020**, the Provider stated that the terms and conditions applicable to Account 1 and Account 2 when they were opened are the terms and conditions dated **31 March 2017**.

In the course of its Complaint Response, the Provider has cited a number of terms and conditions. However, the terms and conditions I cite below do not match the wording of the terms and conditions cited by the Provider in its Complaint Response. In this respect, it appears that the terms and conditions cited by the Provider are based on the wording contained in the **4 December 2019** version of the terms and conditions. However, in so far as concerns the conduct the subject of this complaint, I am of the view that the applicable terms and conditions are those in effect between **April 2017** and **May 2018**, being the **31 March 2017** terms and conditions ("the Terms and Conditions").

In terms of the Provider's account opening requirements, I note that section 4(a) of the Terms and Conditions states, at page 12, as follows:

"The Criminal Justice (Money Laundering and Terrorist Financing) Act (2010) [...] and the EU's Third Anti Money Laundering Directive [...] require us to satisfy ourselves as to your identity and the identity of any Customers on an Account before opening an Account, permitting transactions on an Account or providing certain services."

[Underlining added for emphasis]

In this respect, I note when the Complainants were applying to open Account 1 on **12 April 2017**, they were new customers of the Provider. I also note that the Complainants were required to provide certain identification documentation for verification purposes. It appears that Branch A was notified that the Complainants satisfied the relevant compliance requirements on **13 April 2017** and their cheque was lodged to the account the same day.

The term and conditions applicable to 'Savings and Investments Accounts' begin at page 40 of the Terms and Conditions. At section 2 ('Negotiable Instruments'), it states, as follows:

"(a) Bills of exchange, cheques or other negotiable instruments are accepted subject to examination and negotiation and are transmitted for collection at your risk. Items credited to an Account may not be drawn against until cleared [...]."

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[...]

- (c) *In the case of a lodgement made in a branch office of the Bank of a cheque or a draft on a bank within Ireland, the normal clearing period is 5 clearing business days from the date of the lodgement.”*

Section 5 ('Interest') states, at page 41, as follows:

“(b) Interest is calculated on a daily basis on the cleared balance. Allowance is not made for cheques lodged until the value has been received.”

The term 'Business Day' is defined at page 8 of the Terms and Conditions, as follows:

“a day (other than a Saturday, Sunday, public or bank holiday) on which the Bank is generally open for business in Ireland, provided that in relation to execution timeframes for payment to an account with another bank, it is also a day on which the Payee's payment service provider is open for business and a day on which the Target interbank payment system is operating. A 'Non-Business Day' shall be construed accordingly.”

On considering the Terms and Conditions, it appears that for cheques the normal clearing period is five business days and interest is calculated on the basis of the cleared balance. It appears that 'allowance' is made for cheques when 'value' has been received. However, it is not clear from the Terms and Conditions precisely what is meant by 'allowance' or 'value'.

As part of its Complaint Response, the Provider has provided an extract from its cheque handling procedure which states, in part, as follows:

“There are two implications in lodging a Cheque:

- *Value for Funds*
- *Fate of Cheque*

We do not receive funds for Euro Domestic Cheques until the following working day – Known as Value.

Similarly, we do not allow Value to our customer until we have been paid.

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Therefore the funds are not available for the calculation of customer interest until the following day.”

It can also be seen from the above-cite passage from the welcome letter that cheque lodgements begin earning interest from the next ‘working’ day.

While Account 1 and Account 2 had 365 day terms, I accept that the Complainants were not entitled to earn interest in respect of their cheque lodgements to Account 1 or Account 2 until the next business day following the lodgement of each of these cheques. Therefore, it would appear that in terms of cheque lodgements, the maximum number of days either of the Complainants’ accounts could have earned interest was 364 days (allowing the one business day for Value to be received).

In respect of Account 1, I accept that this account could not be opened or the cheque lodged until the relevant verification process was complete. This appears to have completed on **13 April 2017** with the cheque being lodged the same day. Therefore, I do not accept that there was any delay in carrying out the relevant verification process or lodging the cheque to Account 1.

The cheque was lodged to Account 1 on Thursday, **13 April 2017**. In this respect, I note that Friday, **14 April 2017** was Good Friday and that the Provider was closed on this day. I also note that Monday, **17 April 2017** was Easter Monday and that the Provider was also closed on this day. Having regard to the definition of the term business day as set out in the Terms and Conditions, I am of the view that the next business day following the lodgement of the cheque and the day on which the Complainants would begin to earn interest on Account 1 was Tuesday, **18 April 2017**.

I note that there are six days from **12 April 2017** to **17 April 2017**, meaning that (based on a 365 day term), Account 1 was eligible to earn interest for 359 days. In this respect, I note from the evidence that the interest in respect of Account 1 was calculated based on 359 days.

In respect of Account 2, this account was opened on **11 May 2017** and a cheque was lodged the same day. It appears that interest began to accrue from **12 May 2017** – being the next business day following the lodgement of the cheque. In this respect, I note from the evidence that the interest in respect of Account 2 was calculated based on 364 days.

Accordingly, I do not accept that there was any error on the part of the Provider in calculating the interest on Account 1 or Account 2. However, I do accept that there were shortcomings in explaining to the Complainants when interest would begin to accrue if a lodgement was made by way of cheque, both when they attended Branch A on **12 April 2017** and because a welcome letter containing this information was not issued in respect of Account 1.

It appears that during a telephone conversation on **28 April 2018** which was followed by an email the same day at 13:36, the First Complainant raised certain concerns regarding a phishing email he received that day having used the Provider's online banking service which apparently originated from the Provider. The Provider responded to the First Complainant's email minutes later at 13:40, advising the First Complainant that it was aware of this particular 'phishing scam', steps were being taken to shut down the site and a full investigation was being conducted. While a recording of the telephone conversation which took place on **28 April 2018** has not been provided, on considering the First Complainant's email, I am satisfied that the Provider responded to this email and the concerns raised in a reasonable manner.

Within minutes of the Provider's response, the First Complainant emailed the Provider at 13:44 stating that *"the sending email address and the coincidence I raise need to be examined."* On considering this email, I am of the view that the First Complainant was re-iterating or highlighting the need to investigate the matter. However, I am satisfied that the Provider's earlier email made clear that the matter was being investigated. Therefore, I do not consider that the Provider was necessarily required to reply to the First Complainant's second email nor do I consider, for the reasons set out below, that the Provider was required to conduct a specific investigation into the First Complainant's experience of having received phishing emails.

However, I note that in its Final Response Letter and its Complaint Response, the Provider says an automated response issued to the First Complainant at 13:45 which included the following text:

"we aim to reply to all queries within 2 working days"

While I accept that the First Complainant's email did not necessarily warrant a response, in circumstances where the Provider issues email correspondence advising that a reply would issue within a certain period, it is reasonable to expect such a reply to issue, regardless of the information or advice contained in the emails which were exchanged prior to this.

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In light of the Provider's email at 13:45, I accept that it was reasonable for the First Complainant to expect further communication from the Provider in respect of the phishing emails, however, as acknowledged by the Provider, this did not occur.

During the telephone call with the Provider's Deposit Maturity agent on **2 May 2018**, the First Complainant queried the difference between the interest earned on Account 1 and Account 2. The Provider's agent was unable to ascertain the reason for the difference and told the First Complainant that he would log a complaint which would allow the matter to be investigated.

While the First Complainant stated in a submission dated **30 September 2018** that he did not receive a return call from the Deposit Maturity team, on reviewing this conversation, it does not appear that the Provider's agent advised or gave the impression that further telephone contact would be made with the First Complainant in respect of this matter.

While a formal complaint was logged during this conversation, later the same day the First Complainant raised a similar query regarding the difference in interest with Branch A. Branch A reverted to the First Complainant on **3 May 2018** advising that the matter would be looked into. Having queried the matter with Deposit Services, Branch A emailed the First Complainant on **10 May 2018** advising that the difference in interest was because the lodgement in respect of Account 1 was by way of cheque and the lodgement in respect of Account 2 was by way of bank draft, thereby giving rise to different clearing periods.

On considering the evidence, it is clear that the explanation offered by Deposit Services and communicated to the First Complainant by Branch A was incorrect. The lodgements to Account 1 and Account 2 were both by way of cheque. Therefore, I accept that the query raised by the First Complainant with Branch A was not properly investigated. It is my opinion that if an appropriate level of consideration was given to the matter, it should have been quite clear that the lodgements to each account were by cheque. This would likely have given rise to the conclusion that the difference in interest was not attributable to the form of payment used to lodge funds to the accounts and would therefore have given rise to further investigation.

Further to this, on reviewing the Final Response Letter, the Provider does not appear to have identified or acknowledged that the information conveyed to the First Complainant by Branch A was incorrect. This is very disappointing as it calls into question the extent of the investigation carried out by the Customer Resolution Centre into the complaint.

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In particular, I note in an email to the Customer Resolution Centre on **17 May 2018**, the First Complainant refers to *“the grossly inaccurate response conveyed to me by the branch on May 10th.”* It appears to me that if the Customer Resolution Centre reviewed the communications which took place between Branch A, Deposit Services and the First Complainant during **May 2018**, it should have been apparent that incorrect information was given to the First Complainant.

By letter dated **9 May 2018**, the Customer Resolution Centre wrote to the First Complainant *“in respect of your recent communication with this office”*, advising that the author was investigating the matter.

Following further communication with Branch A, it appears that a formal complaint was logged regarding the interest earned on the Complainants’ account, which was acknowledged by Branch A by letter dated **11 May 2018**. The First Complainant wrote to ‘The Manager, IT Services’ at the Provider’s Head Office on **14 May 2018** and explained that he had not received a response to the queries raised in his emails of **28 April 2018** and also referred to a further phishing email he received. The First Complainant further indicated that the Provider could treat this letter as a complaint.

On **16 May 2018**, the First Complainant emailed Branch A in respect of the letters dated **9 May** and **11 May 2018**, indicating that both letters had been received at the same time. In respect of the letter dated **9 May 2018**, the First Complainant says this was received on **15 May 2018**. In his email, the First Complainant queried the subject matter of the letters and the point of contact going forward. In Branch A’s response, the First Complainant was advised that the Customer Resolution Centre would be the point of contact. The First Complainant was also advised that as the Customer Resolution Centre were looking into the same issue as that raised with the branch, the branch complaint would be closed.

It appears that there may have been some confusion on the part of the First Complainant as to the precise extent of the complaint being investigated by the Provider. This appears to have arisen from the timing of the letters dated **9 May** and **11 May 2018** and when these letters appear to have been received and also the timing of the First Complainant’s letter of **14 May 2018**. However, on considering Branch A’s email of **16 May 2018**, I am satisfied the branch communicated to the First Complainant that the complaint being investigated was the complaint raised in respect of the interest earned on the Complainants’ accounts.

In respect of the First Complainant's letter of **14 May 2018**, I note that this letter was not acknowledged or responded to by the Provider. Although it appears that this letter was acted upon by a Senior Manager within the Provider's IT Security and Governance department and passed to the Customer Resolution Centre for investigation, there was no communication with the First Complainant to acknowledge his letter or to explain that the matter was being investigated. It is my opinion that the Provider should have written to the First Complainant to acknowledge his letter and advise him that the matters raised were being investigated.

The First Complainant wrote to the Customer Resolution Centre on **17 May, 1 August, 16 August** and **31 August 2018**. However, it appears that none of these emails were responded to by the Customer Resolution Centre.

Although, I note from the First Complainant's email dated **16 August 2018** that these emails may have been acknowledged by the Provider by way of an automated email response:

"Apart from the online auto-acknowledgement, I have yet to receive any response to the email below."

However, neither party appear to have provided copies of these automated responses.

While the Provider issued a number of update letters during the course of its investigation into the complaint, there were generic, standard form letters issued for the purpose of complying with the requirements of provision 10.9 of the **Consumer Protection Code 2012**.

On considering the First Complainant's emails, it is my opinion that the Provider should have engaged with the First Complainant in respect of his emails and I do not accept that any automated responses or complaint update letters discharged the Provider's obligation to respond to the First Complainant. It is quite disappointing to see this number of emails went unanswered by the Provider and do not appear to have been specifically acknowledged until the Final Response Letter dated **7 November 2018**.

In its Complaint Response, the Provider says due to the high volume of queries received at the time of the First Complainant's complaint, it was not possible to acknowledge receipt of all emails received from the First Complainant while the investigation was ongoing. The Provider also says that during **2018**, it received a large number of queries in relation to tracker mortgage accounts which in turn affected its ability to respond to the First Complainant and other customers in the timeframe that it would have hoped.

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However, the Provider proceeds with its Complainant Response with what, in my view, is quite a contradictory statement by saying that “[a]ny customer that contacted Customer Resolution Centre for updates while awaiting a final response letter was advised that we would prioritise their complaint.”

In this complaint, the First Complainant’s emails were not responded to, there is no evidence of the First Complainant being advised that his complaint would be prioritised nor is there any evidence to suggest that his complaint received any form of priority.

If it were the case that the Provider was not able to respond to the First Complainant’s emails because of the volume of queries it was receiving at the time, I consider it prudent for the Provider to have attempted to inform the First Complainant (and customers) of this; whether through a message on its website, a letter, an automated email response specifically addressing this issue, or through the insertion of a new paragraph in its complaint holding/update letters. In respect the previously mentioned automated email response, while the evidence suggests that the First Complainant received automated responses from the Customer Resolution Centre, it is not clear whether any delays being experienced by the Provider was communicated to the First Complainant in these emails.

On considering the matter, while some form of automated response appears to have been received by the First Complainant, it does not appear that his emails were responded to or that any explanation was offered in respect of the delay encountered by the Provider, nor does it appear that the First Complainant’s complaint was afforded any kind of priority.

The Provider issued a Final Response Letter dated **7 November 2018** in respect of a complaint raised on **2 May 2018**. As such, it took six months for the Provider to issue the Final Response Letter. In this respect, I note that provision 2.8 of the **Consumer Protection Code 2012** (“the Code”) states the Provider must ensure that it handles complaints speedily, efficiently and fairly. Further to this, provision 10.9(d) states that the Provider must attempt to investigate and resolve a complaint within 40 business days of having received the complaint. During the course of the Provider’s investigation into the complaint, I note that regular update letters were issued and contact details for this Office were contained in a letter dated **28 June 2018**.

In the Final Response Letter, the Provider apologised for the delay in issuing this letter. However, I note that the Provider did not seek to explain the reason for the delay in the Final Response Letter or in any correspondence issued during the course of its investigation.

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While the Provider may have been experiencing a high volume of queries during **2018**, in light of the poor level of communication with the First Complainant and in the absence of any steps taken to prevent or mitigate any adverse impact on the First Complainant arising from the increase in queries, it is my opinion that there was an unreasonable delay on the part of the Provider in issuing the Final Response Letter to the First Complainant.

In the letter of **30 September 2018**, the First Complainant provided a table in respect of a number of letters issued by the Provider, noting the dates of these letters and the dates they were received.

While not included in this table, it appears from this letter that the letters dated **9 May** and **11 May 2018** were not received until around **15 May 2018**. In an email dated **25 October 2018**, the Complainants attached a letter from the Provider dated **19 October 2018**, which they say was received on **24 October 2018**.

On considering the dates of each of these letters and the dates the First Complainant/the Complainants say they were received, I note that it took no longer than four business days for any of these letters to reach the First Complainant, which I do not consider to be an unreasonable period of time.

In respect of letters dated **21 September 2018** and **19 October 2018**, the Complainants say these letters were post marked **26 September 2018** and **23 October 2018**. Having reviewed copies of these letters, as provided by the Complainants, I note the Complainants have written the dates these letters were post marked and the date they were received. In respect of the post marking of these letters, I am not satisfied that a handwritten note recording the post mark is sufficient to prove that this was in fact the post mark date. However, I am of the view that the Provider should ensure, so far as is possible, that correspondence is dispatched to customers as close as possible to the date of the particular correspondence.

Leading on from this, I note the Provider implemented a new system for collecting and posting external correspondence during **2018** and it was during this time that the Provider was issuing correspondence to the First Complainant regarding his complaint. The Provider states that in certain instances, this new system caused a delay in post leaving the Provider. Therefore, having regard to the Complainants' evidence as to the postmarking of some of the letters received from the Provider, it is possible that the shortcomings which arose from the Provider's new system caused a delay in correspondence being dispatched to the First Complainant regarding his complaint. However, as discussed above, on considering the number of business days it took each letter to reach the First Complainant, I do not believe that the First Complainant was adversely impacted by the shortcomings associated with the Provider's new posting system.

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Further to this, the Provider has advised that on becoming aware of certain issues, it ceased operating the newly introduced system.

In terms of the matters raised by the First Complainant regarding phishing emails on **28 April** and **14 May 2018**, I have dealt with the Provider's response (and absence of a response) to these emails above.

On **28 April 2018**, the Provider advised the First Complainant that it was aware of the phishing emails, that the emails did not originate from the Provider, the Provider was unaware of how the First Complainant's email address was obtained, steps were being taken to shut down the fraudulent site, and matter was being investigated.

In the Final Response Letter, the Provider advised the First Complainant that his second email on **28 April 2018** was followed up on and addressed by its 'IT & Fraud' department. The Provider also suggested that if the First Complainant was receiving phishing emails each time he logged on to the Provider's online service, then the issue was most likely device or browser related.

In its Complaint Response, the Provider says it cannot prevent a customer from receiving phishing emails, which are generated automatically and to an undefined list of customers. The Provider also says it is difficult to determine where a customer's emails are compromised given the large scale data breaches which occur and that phishing emails are sent to a large number of email addresses in the hope that some recipients are customers of the intended financial institution. The Provider further set out the steps taken, through the services of a third party, to detect online customer threats. The Provider also refers to certain engagement with An Garda Síochána and the 'BPFI (FraudSmart)', which I understand is part of a fraud awareness initiative developed by the Banking & Payments Federation Ireland in conjunction with its member (of which the Provider is a member).

While the First Complainant raised concern regarding the receipt of phishing emails (which hold themselves out as originating from the Provider, with what appears to be a Provider domain name) coincidental with his accessing of the Provider's online platform, I do not believe this is sufficient to demonstrate that the Provider is the source of the problem. The First Complainant, in the course of his submissions, has also provided information regarding the security of his devices and the security protocols he has in place. However, I do not propose to comment on the standard of security or the protocols the First Complainant has in place.

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In my Preliminary Decision, I stated that having considered the substance of the Provider's response to the First Complainant, I am satisfied that a reasonable response was provided to his phishing email concerns. However, I do not accept that the Provider is required to identify the precise reason why the First Complainant received the phishing emails nor do I accept that because the precise reason for the First Complainant receiving these emails has not been conclusively identified that the any fault lies with the Provider.

The First Complainant has, as part of his post Preliminary Decision submission, reiterated his ongoing concerns regarding the phishing emails received after he states he accessed the Provider's online services. The First Complainant has provided details of further dates on which he received phishing emails which he states collates with him accessing the Provider's online services.

The First Complainant details that the *"domain addresses used are much more than similar, as indicated in the Preliminary Decision, whether that was a [Provider] description or not. They are **identical** and more than justifies my original and ongoing concerns that the issue is far more serious if [the Provider] cannot protect its own domain name from fraudulent use"*.

The First Complainant's post Preliminary Decision submission continues, and he states *"[w]ith respect, the FPSO appears to have taken the [Provider's] account of the IT issue at face value and has not dealt with the very serious deficits therein. We have been describing and proving these consistently since the complaint was lodged. The foregoing exposes these definitively, if they were not already documented repeatedly and clearly enough from the outset"*.

As detailed above, I have considered fully the submissions made by both parties, including the submission of the Provider which further set out the steps taken, through the services of a third party, to detect online customer threats. The Provider also refers to certain engagement with An Garda Síochána and the 'BPFI (FraudSmart)', which I understand is part of a fraud awareness initiative developed by the Banking and Payments Federation Ireland.

It remains my view that while the Complainants submit the receipt of the phishing emails (which hold themselves out as originating from the Provider, with what appears to be a Provider domain name) coincides with his accessing of the Provider's online platform, I do not believe this is sufficient to demonstrate that the Provider is the source of the problem.

This in no way seeks to lay blame or fault on the Complainants, the existence of such phishing scams and other malicious scams is a continuing challenge for both customers and financial service providers and requires both parties to be vigilant and for providers to continually seek to counter such scams in a proactive manner.

Goodwill Gesture

In its Complaint Response, the Provider says it can fully appreciate that there has been service failings and outlines these as follows:

- Incorrect information given to the First Complainant in **May 2018** regarding the difference in interest received on the two accounts;
- No acknowledgement by the Provider to the First Complainant's letter of **14 May 2018** for the attention of the Manager, IT Services; and
- Delay in issuing a Final Response Letter.

In this respect, the Provider says that:

"The Bank sincerely regrets any inconvenience caused as a result of these findings, and that the Complainant felt it necessary to contact the Financial Services and Pensions Ombudsman. The Bank would like to sincerely apologise for the service received and would like to offer €2,000.00 to the Complainant as a gesture of goodwill in this case. The Bank would like to advise that the offer of €2,000.00 will remain open to the Complainant should he wish to accept same at a later date."

The Provider has acknowledged certain customer services failings in respect of the level of service provided to the First Complainant. However, on considering the nature and extent of the issues arising in relation to this complaint, I do not deem the Provider's response to be sufficient.

I accept the offer of €2,000 to be reasonable compensation in the circumstances. I would not generally uphold a complaint or make a direction where I believe the Provider has made a reasonable effort to resolve the complaint. However, in respect of this complaint, while I accept the amount of compensation offered to be reasonable, I believe compensation alone is not sufficient to resolve the issues that have arisen. I am disappointed that the Provider has not indicated that it has taken or proposes to take any action to address the failings that were evident in relation to the opening of the accounts.

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In my Preliminary Decision I indicated my intention to substantially uphold the complaint and direct that the Provider pay compensation in the amount of €2,000 to the Complainants.

The Complainants, in a post preliminary Decision submission, indicated their dissatisfaction with the amount of compensation proposed. They state:

“The compensation level is not the issue but the only way of ensuring that such matters are escalated to higher management in an organisation is to make the amount higher than the signing authority of those involved and/or the office dealing with the complaint. Otherwise, the remedial plan and the associated learning and re-training & documentation updates are less likely to be completed. Our only concern at this point is that at least two heads of function within the [Provider] organisation are supporting the content of the final responses issued, incomplete and without addressing important matters, as they are!

We did not enter into this process seeking compensation and undertake that whatever results will augment our charity fund to anonymously support local initiatives/causes and will not be used in any way for self-benefit.”

For the reason set out in this Decision, I substantially uphold the complaint and make the following directions:

That the Provider review its process for issuing account opening (‘welcome letter’) correspondence in respect of term deposit accounts of the type the subject of this complaint for the purpose of determining whether its current approach is sufficient.

That the Provider pay compensation in the amount of €2,000 to the Complainants.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, on the grounds prescribed in **(b) and (f)** as the conduct complained of was unreasonable in its application to the Complainants and an explanation for the conduct was not provided when it should have been.

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I direct pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Respondent Provider review its process for issuing account opening ('welcome letter') correspondence in respect of term deposit accounts of the type the subject of this complaint for the purpose of determining whether its current approach is sufficient.

I also direct that the Provider pay compensation in the amount of €2,000 to the Complainants, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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

11 January 2022

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,

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**(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.

