



<u>Decision Ref:</u>	2022-0108
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Failure to provide notification /reason for closure
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant held an account with a bank (the “**Provider**”) since **2003**.

The Complainant’s Case

The Complainant became aware on **3 October 2019** that the Provider wished to terminate the Complainant’s bank account on two months’ notice. On **7 October 2019** the Complainant complained to the Provider. The Provider terminated the bank account on **3 December 2019** and returned the balance on the account of **€2,967.55** (two thousand nine hundred and sixty-seven euros and fifty-five cent) to the Complainant by bank draft dated **24 December 2019**.

The Complainant became aware of the Provider’s position by letter dated **3 October 2019**, addressed to the Complainant. In this letter the Provider said:

“Please take note that the [Provider], in exercise of its contractual rights, has decided it will close the above described account (“the account”) maintained with this branch of [Provider] with effect from the close of business on 03/12/2019 (“the closure date”). As and from this date the Banker/Customer relationship between you and the [Provider] will terminate. Accordingly, you should take steps to arrange alternative banking facilities.”

This letter also said:

“Details about you and your borrowings, including any arrears and the fact that your overdraft has been cancelled may be reported to credit reference agencies, which may include the Central Credit Register which is maintained and operated by the Central Bank of Ireland. This may impact your credit rating, which could make it more difficult to get credit in the future.”

On **7 October 2019**, the Complainant visited a Provider branch to complain in person.

In its final response letter, addressed to the Complainant and dated **10 October 2019**, the Provider said:

“I understand you are unhappy that we decided to close your account in line with our contractual rights. This decision will take effect from the close of business on 3 December 2019. We wrote to you on 3 October 2019 to inform you of our decision.”

The Complainant submits as follows:

“I was informed that [the Provider] would be closing my bank account on 03/12/2019. I complained, but they would not change their minds.”

The Complainant is dissatisfied with the Provider’s decision to close his bank account following two months’ notice and by way of remedy he wants to have his bank account restored and continued with the Provider.

The Provider’s Case

The Provider relies on its **Terms and Conditions** (issued in **September 2018** and valid for 2019) as the basis for its decision to close the Complainant’s bank account. The Provider also points to its *Know Your Client* obligations and to its adherence to the **Central Bank’s Consumer Protection Code 2012 (as amended)**.

The Provider wrote to the Complainant by letter dated **3 October 2019** outlining that the Complainant’s bank account would be closed on two months’ notice subject to its **Terms and Conditions**. The Provider in fact closed the account on **24 December 2019** and issued a bank draft in the amount left on the account.

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In relation to the in-person complaint made by the Complainant on **7 October 2019**, The Provider's File Note dated **29 May 2020** says:

"[the Complainant] visited the branch on the 07/10/2020 to discuss the proposed closure of his account This was prompted when "[the Complainant] received an Aftercare 13 letter (60 day termination letter) dated 03/10/2019 as a result of an ODD completed at the branch. He met with myself & my colleague [name] where we explained that he had until the 13/12/2019 to make alternative banking arrangements. We explained that he could arrange for a bank transfer to another account or we could provide him with a bank draft for the balance in the account. We explained that the [Provider], in exercise of its contractual rights had decided to close the account. He expressed his dissatisfaction with this decision and asked for a formal complaint to be made which we logged on the day."

By letter dated **18 June 2020**, the Provider submits:

"The [Provider] reviewed both the Complainant's account and records and decided to exercise its right to terminate the banking relationship. The [Provider] acted fairly and issued a letter on the 3rd October 2019 giving the Complainant two months' notice to arrange alternative banking facilities. This was also relayed to the Complainant in person when the Complainant visited the branch on 07 October 2019. As outlined in the [Provider's] terms and conditions, the [Provider] exercised its right to terminate the relationship advising him by letter and giving him two months to arrange alternative banking arrangements prior to the account being closed."

By letter dated **18 June 2020**, the Provider submits:

"The [Provider] is obliged to review and update its records, including customer information on an ongoing basis. In this matter, the [Provider] made a decision to exercise its right to terminate the relationship based on the information held. The Complainant was provided with the required two months' notice in order to arrange alternative banking facilities and at closure was given a bank draft for €2,967.55 being the credit balance on the account at date of closure."

The Provider submits that as a result of its operational due diligence ("**ODD**") it decided to rely on its **Terms and Conditions** to close the Complainant's account on two months' notice, and this was communicated to the Complainant by letter dated **3 October 2019** and in person on **7 October 2019**.

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The Complaint for Adjudication

The complaint is that the Provider has wrongfully closed the Complainant's account, and failed to provide an explanation for the decision.

Decision

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

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

A Preliminary Decision was issued to the parties on **24 February 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

The Provider relies on Section 11 and subsection 2.3 of its **Terms and Conditions**, issued in **September 2018** (and valid for 2019), which says that:

“Important: From time to time, we may need you to provide or update information about you or documents we hold to identify you or the person who opened your Account on your behalf or to enable us to comply with our tax reporting obligations. If we are not provided with the updated information this could lead to us not carrying out a transaction on your account or having to suspend or close your account. You must promptly advise us of any change to relevant details including where your tax residency changes.”

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“Section 11 - Closing or Suspending your Account” of the Provider’s **Terms and Conditions**, issued in **September 2018**, is quoted below. The Provider relies in particular on subsection 11.2 which says as follows:

“This section sets out how you or we can close or suspend your Account.

When you can close your Account

11.1 *You can ask us to close your Account at any time by writing to your branch or, depending on the type of Account you have, in any other way we allow. You can contact us using the details in the 'How we can contact each other' section for more information on these procedures. If you have a joint Account, please see the 'If you have a joint Account' section for information on closing your joint Account.*

When we can close or suspend your Account

11.2 *We can close your Account by giving you at least two months' notice. However, we can close or suspend your Account immediately, or with less notice, if:*

- a) you materially breach this Agreement or any other agreement with us;*
- b) you use (or allow someone else to use) your Account improperly, illegally or for criminal activity or if we suspect this to be the case;*
- c) you commit or attempt to commit fraud against us or some other person or entity;*
- d) we must do so to comply with any law, regulation or direction from a relevant authority or court;*
- e) you provide us with false or misleading information at any time;*
- f) in our reasonable opinion, you are not in a position to properly manage your financial affairs or are unlikely to be able to pay your debts; you face the threat of insolvency (for example in the case of a company, notice is received of a creditor's meeting or a resolution is passed for the winding up of the company) or an event of insolvency occurs (for example in the case of a company, liquidation or receivership, or in the case of a person, bankruptcy or personal insolvency);*
- g) any judgment is obtained or threatened against you;*
- h) you cease trading;*
- i) this Agreement becomes unenforceable or any circumstances arise that are outside our control and, in our reasonable opinion, negatively affect our ability to continue with this Agreement;*

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- j) the Account holder dies; or*
- k) you are not a Consumer or Microenterprise and we are allowed by law to exclude you from notice requirements set out in the EU Directive 2015/2366 relating to payment services. as transposed in Ireland, and as amended and replaced from time to time.*

11.3 We can also close your Account even if it is suspended at the time or we may suspend the Account immediately after telling you about its closure.

11.4 Where your Account has become inactive, we may close it by giving you at least two months' notice.

We will normally consider that an Account has become inactive if the balance is less than €100 and you have not used it for 12 months.

What happens when your Account is closed?

11.5 As part of our account closing process, you must:

- a) repay any amounts you owe us (including for payments not yet processed and any interest, fees and charges owed up to the date the Account is closed);*
- b) return any items we issued to you to use in connection with your Account, such as any cheque book or Card; and*
- c) cancel or redirect to another account any payments to or from your Account (for example, Standing Orders to your Account).*

11.6 If you decide you want to move your current account to another financial services provider we will adhere to the Code of Conduct on the Switching of Payment Accounts with Payment Service Providers, as that document may be updated from time to time, a copy of which is currently available from the Central Bank of Ireland.

Warning: You will remain responsible to us for any amount you owe us, even when your Account has been closed."

In the Provider's letter to the Complainant, dated **10 October 2019**, the Provider states that:

"We are satisfied that we have acted in line with our obligations to our customers and regulations."

The Provider also relies on the **Central Bank's Consumer Protection Code 2012 (as amended)**, chapter 2 and chapter 11. Chapter 2 "General Principles," subsection 2.1, is relied on by the Provider. It reads as follows:

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

2.1 acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market."

The Provider also relies on Chapter 11 "Records and Compliance" of the **Central Bank's Consumer Protection Code 2012 (as amended)**. Subsections 11.2, 11.5 and 11.6 are relied on by the Provider and read as follows:

"Records and Compliance

11.2 A regulated entity must ensure that any decision in the exercise of its discretion on behalf of a consumer with respect to a product is recorded.

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

- a) a copy of all documents required for consumer identification and profile;*
- b) the consumer's contact details;*
- c) all information and documents prepared in compliance with this Code;*
- d) details of products and services provided to the consumer;*
- e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;*
- f) all documents or applications completed or signed by the consumer;*
- g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and*
- h) all other relevant information and documentation concerning the consumer.*

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

By letter dated **18 June 2020**, the Provider submitted that:

"The [Provider] acted in line with our obligations to our customers in the way the [Provider] manages and reviews accounts. This is part of ongoing due diligence and highlights the importance of 'Knowing the Consumer.' The Bank is required to keep Customer information up to date and accurate. The Bank is also obliged to hold up to date and reliable information in order to meet its regulatory requirements. The Bank is required to meet its regulatory obligations under the Consumer Protection Code 2012."

The Provider also submits by letter dated **18 June 2020** that:

*"The [Provider] did not afford the Complainant an opportunity to take remedial action in relation to any breach of Terms and Conditions prior to the closure of account *****. The Bank exercised its right to close the account under Section 11 of the Banks terms and conditions as outlined."*

I note that the Provider makes reference to having completed an operational due diligence ("ODD") and it further references *Know Your Client* or *Know Your Consumer* practices ("KYC"). These practices impose certain obligations on financial service providers and such provider obligations may operate on a continuous basis or at the inception of account opening and are imposed as a counter fraud and anti money-laundering measure. I note that the Provider's records say for the **3 October 2019** that:

"customer came in to update demos and stated that he has no source of income and that the account will not have any anticipated income."

Having reviewed the Complainant's the bank statements for the period from 2004 to 2019, I note that his bank account was in use and many thousands of euro were transferred in and out of it. I am satisfied that the Provider has KYC and ODD obligations and must exercise due-diligence in this respect. It seems that the Provider was of the opinion that no adequate KYC information had been produced by the Complainant and it elected to exercise its contractual entitlement to close the Complainant's bank account by giving the Complainant two months' notice.

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I note that the Provider did not seek to rely on one of the reasons laid out in the terms and conditions to close the bank account with no notice. Rather, it gave the Complainant two months' notice of its intention to close the account, and I accept that it was entitled to do so.

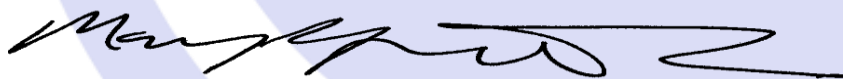
The Provider submits that on **24 December 2019**, it issued a bank draft to the Complainant at account closure, in the amount of €2,967.55.00 (two thousand nine hundred and sixty-seven euros and fifty five cent). I have reviewed this bank draft and I am satisfied from the evidence of the Complainant's bank account statement, dated **24 December 2019**, that the closing balance was indeed €2,967.55.00 (two thousand nine hundred and sixty seven euros and fifty five cent). I note that the bank draft is dated **24 December 2019** and therefore, I am satisfied that the Complainant's bank account was refunded fairly and that the Complainant was financially disadvantaged by the account closure.

In circumstances where the evidence discloses no wrongdoing by the Provider, I am satisfied that it is not appropriate to uphold the complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

23 March 2022

PUBLICATION

Complaints about the conduct of financial service providers

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—

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- (i) a complainant shall not be identified by name, address or otherwise,
- (ii) a provider shall not be identified by name or address,
- and
- (b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension providers in such a manner that—

- (a) ensures that—
 - (i) a complainant shall not be identified by name, address or otherwise,
 - (ii) a provider shall not be identified by name or address,
 - and
- (b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.