



<u>Decision Ref:</u>	2022-0156
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Overdrafts
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants hold an account with a bank (the “**Provider**”).

The Complainants’ Case

The Complainants opened a bank account with the Provider in **2013**. The Complainants submit that the Provider incorrectly applied a direct debit to their account in **July 2020**, resulting in an overdrawn balance. The Complainants contend they do not have an overdraft and that they did not give permission for their account to be overdrawn.

The Complainants state that the Provider deducts its monthly fee on different dates each month, resulting in “*no money for some direct debit.*” The Complainants also submit that they were dissatisfied with the Provider’s customer service.

The First Complainant submits that:

“[the Provider] still continues with OVERDRAFT options in my family account, despite that, that we never had an overdraft.”

The Complainants assert that:

“ 1) I do not have OVERDRAFT! (and never had). And, if I do not have the overdraft facility - bank should not allow to make minuses into my bank account, to making an extra profit from the customer! Because, other banks do not take from customer account money, if there are not funds. Then customer receive a letter with info, that money was not able to take.

2) Letter from bank to my complaint said – I will receive answer until 31/07/20. But, I have received it only on 4/08/20.

3) I still haven't received an answer to that - how ethical the bank's threats are - that a bank can close my account individually?"

On **27 August 2020**, the First Complainant asserts that:

"Yesterday was made a on line payment for 35 euro from [Provider] to some account outside ireland. Transaction was 100% completed. But this morning. I see, that transaction is gone...instead that. [Provider] fees is taken:) So, it mean, that [Provider] can to decide, which customer transactions their will do, and which not??? Because, more important is their 4,44 euro for minuses in account! For minuses. which [Provider] created - because customer do not have a overdraft? I think, this is not ok! It is a cheating!!"

The Complainants submit further that:

"I want a receive moral compensation from [Provider] about threats (account closure), about attitude (does not respect the terms for the answers to customer letters) and about using my account, as a account with overdraft facilities (when it is useful/ for [Provider] only)."

The Complainants say they want to receive moral compensation and a recognition of the poor customer service which they say they have received.

The Provider's Case

The Provider submits that the Complainants' *"Current Account has never had an authorised, pre-approved overdraft facility attached to it."* The Provider also says that *"the Complainants currently have active Direct Debits on their Current Account."*

In its **Final Response letter**, dated **31 July 2020**, the Provider says:

"I am unable to see any bank error, as payment to [Utility Company B] was made on a Direct Debit that you had agreed with [Utility Company B]. [Provider] is only the facilitator of Direct Debits and the agreement for payment is effectively a contract that the customer and the company that are receiving the Direct Debit, have made."

The Provider submits that its **Terms and Conditions** allow it to exercise its discretion to overdraw an account.

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The Provider submits that:

“Terms and Conditions were relied upon in the best interests of the Complainants. The alternative would have been to return the Direct Debit unpaid to [Utility Company B], thus causing inconvenience to the Complainants as they would have had to make an alternative payment arrangement with [Utility Company B] if the Direct Debit was not honored. It is possible that this may also have resulted in fees or charges being applied by the Originator. By legitimately allowing the Direct Debit to be paid, albeit causing the Complainants' account to become overdrawn by a small balance of €12.47, the Bank is satisfied that this prevented any such inconvenience to the Complainants and demonstrates good customer service to the Complainants.”

The Provider also submits that:

*“In relation to the overdrawn account balance of €12.47 referred to above, the Bank can confirm that no charges were applied to the Complainants' account. This is because the Bank took the decision to waive Irregular Account Charges, as well as *surcharge interest and unpaid outward charges relating to unauthorised borrowings for a three-month period from 17 April 2020 to 17 July 2020. This decision was made to support our customers who were adversely impacted by the Coronavirus Pandemic (COVID-19).”*

The Provider submits that when the account became overdrawn again in similar circumstances on **25 August 2020** by €2.97 (two euros and ninety seven cents) due to a payment to Utility Company C, the Provider again *“allowed this Direct Debit to be paid in the best interests of the Complainants and in recognition of the very small overdrawn balance which would occur following payment of same”* the *“Irregular Account Charge of €4.44 was correctly applied to the account on 26 August 2020.”* The Provider says that this fee was charged because *“the three-month period regarding waiving of fees and charges on unauthorised borrowings (as discussed above) had expired on 17 July 2020, and thus all applicable fees became payable once again... the alternative would have been to return the Direct Debit to [Utility Company C] unpaid, and this would have incurred a charge of €12.70 on the Complainants' account.”*

In relation to a point of sale transaction which was authorised by the Complainants' debit card which put the account into an overdrawn position of €10.97 (ten euros and ninety seven cents) (and incurred the Bank's Irregular Account Charge of €4.44 (four euros and forty four cents)), the Provider refers to Section 2.3 of its **Terms and Conditions** and Section 8.4. of the general Account Terms and Conditions and submits that:

“Regarding the payment of transactions which have been authorised by the Complainants, we also wish to highlight other key sections of the Terms and Conditions of account operation which the Complainants are bound by. In particular, please note Condition 3.7 which states that the Bank is in fact obliged pay funds to a retailer/supplier via a Card payment as the authorised Card transaction has the effect of guaranteeing payment to the retailer/supplier.”

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The Provider states that *“it is the Complainants' responsibility to manage their account in an appropriate manner and to ensure there are sufficient cleared funds available in advance of transactions being presented for payment on the account.”* The Provider also contends that it

“is fully satisfied that no error was made on our part and no lapse in customer service was experienced by the Complainants” and notes that *“no financial offer of compensation is warranted in this case.”*

Finally, the Provider asserts that *“we maintain our position that any fees, charges or debit interest which are legitimately applied to their account are payable by the Complainants.”*

The Complaint for Adjudication

The complaint is that the Provider:

1. Maladministered the Complainants' account in **July 2020**, by permitting it to have a ' negative ' balance, despite the Complainants not having an overdraft facility in place;
2. Gave poor customer service to the Complainants in or around the same period.

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 **15 December 2021**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. Following the

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consideration of additional submissions from the parties, the final determination of this office is set out below.

Since the preliminary Decision of this Office was issued in December 2021, there have been several further submissions from the parties. Insofar as any such submissions reference new matters, which did not originally form part of this complaint investigation, any such newer issues are not addressed in this Decision.

Insofar as this complaint identified at page 4 above, is concerned, I note that the Provider relies on Section 2 of its **Personal Banking Terms and Conditions** brochure where, at page 16, it says as follows:

“2 Operations on the Account

2.1 You must always ensure that there are sufficient cleared funds in your Account (plus, where applicable, any unused overdraft facility) to complete a transaction, for example:

- when a cheque is presented for payment on your account;*
- if a standing order or SEPA Direct Debit is due to be paid;*
- if you withdraw cash from an ATM;*
- if you carry out a debit card transaction;*
- If you request us to make a payment by any electronic means or by telephone; or*
- if any other transaction on the Account is due to take place, including the application of interest and charges.*

2.2 If a sufficient cleared balance (plus, where applicable, any unused overdraft facility) to cover payment is not available on your Account on the Business Day on which any such transactions are due to take place, We cannot guarantee that the payment will be made.

2.3 However, if at any time such transactions would result, without prior arrangement, in the Account being overdrawn or the overdraft limit being exceeded, We may exercise our sole discretion and without contacting You, allow an overdraft to be created or allow the borrowing limit to be exceeded. In these circumstances, the new or excess overdraft is an unauthorised overdraft. We may also at our discretion refuse to pay a cheque, or allow any other payment or withdrawal, which would create an unauthorised overdraft or exceed any overdraft limit on the Account.”

[My underlining for emphasis]

The Provider also relies on Section 5 of the Current Account section of its **Personal Banking Terms and Conditions** brochure where, at page 17, it says as follows:

“5 Overdrafts

...

5.11 If your Account becomes overdrawn without our agreement or You exceed any overdraft limit, even if due to a referral item (irregular account charge) or surcharge or debit interest, then fees will be payable as detailed in our booklet. ‘A Guide to Personal Accounts Fees and Interest’, which is available from our branches and

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may be varied from time to time in accordance with Condition 7 in Section A overleaf."

The Provider relies on the Section entitled "**A Guide to Personal Accounts Fees and Interest**" of its **A Guide to Personal Accounts Fees and Interest; Current Accounts Savings and Deposit Accounts** brochure where, at page 13, it says as follows:

"Interest and Charges on Borrowing...

b. Unauthorised overdraft- interest and charges you will pay

Your debit balance should not exceed your overdraft limit. If your account overruns without formally agreeing an overdraft or you exceed your overdraft limit, this is called an Unauthorised overdraft. When this happens you will incur Unauthorised overdraft charges. You will also pay Unauthorised overdraft Interest.

...".

The following table also appears, on the same page of the Provider's **A Guide to Personal Accounts Fees and Interest; Current Accounts Savings and Deposit Accounts** brochure:

Charges

You may also have to pay the following charges.

	Why is it charged	When is it charged	Charge
Referral item (Irregular Account charge)	This is a charge we make whenever your account goes into an Unauthorised overdraft or we have to extend an overdraft due to transactions you have carried out where you do not have enough available in your account.	It is charged each time you make a transaction and we add it the following business day.	€4.44
Unpaid item (Unpaid Outwards Charge)	This is charged when we return an item such as a cheque, direct debit, standing order or future-dated payment because you do not have enough available in your account.	This is charged for each item and taken from your account as and when a payment is returned.	€12.70

The Provider also relies on the **Terms and Conditions of Personal Banking** where, at page 6, it says as follows:

"A. General Account Terms and Conditions - Operations on the Account

...

8.4 If your Account becomes overdrawn without our prior consent You will be responsible for any debt, including any referral item (irregular account charge), any surcharge interest and any debit interest."

The Provider relies similarly on its **Terms and Conditions of Personal Banking** where, at page 28-31, it says as follows:

E. Debit Card - Conditions of Use / Using the card / Transactions

...

3.7 If a retailer or supplier of services accepts payment by your card, the use of your card will have the effect of guaranteeing the payment and We will be obliged to pay the sum due to the retailer or supplier.

...

5 Charges

Charges will be payable for certain uses of the card as detailed in our separate charges tariff which is available from our branches and forms part of these Conditions of Use. These charges may be revised from time to time in accordance with the Terms and Condition for your Account. You will be informed of any changes at least sixty days before they come into effect."

The Provider says that the Complainant contacted it on **19 June 2020** to cancel its direct debit with Utility Company A and that

"Customer Care recommended that the best way for the Complainant to ensure that a Direct Debit is not paid would be for the Complainant to contact [Utility Company A] directly with his request."

It transpired that the payments made to Utility Company A were made using a credit card and so the Complainant was advised to *"request this from the Bank's Chargebacks Team on a telephone number which the agent provided to the Complainant."*

The Provider submits in relation to Company C that this phone call was never made, and it says:

"a request for chargeback must come directly from the customer. A copy of the Bank's system which records notes from customer communications show that no Chargeback request was requested in respect of the transaction dated 26 May 2020. ... A review of the account statements ... shows that no further Direct Debits were paid to [Company B] under this specific reference number from the Complainants' account during 2020."

The Provider notes that *"a recurring Card Payment to [Company A] remains on the Complainants' account."*

On **10 July 2020**, the Provider said that the following occurred:

"A Direct Debit to Originator [Utility Company B] was presented and paid to Complainants' Current Account for €40.83 causing account balance to become overdrawn by €12.47. Please note that monthly bank account charges in line with the terms and conditions of the account were also applied on 10 July 2020 for €5.40, which reduced the credit balance from €33.76 to €28.36 before the Direct Debit was applied to the account. "

The Provider relies on its **Terms and Conditions** which say at 2. that *"if at any time such transactions would result, without prior arrangement, in the Account being overdrawn or the overdraft limit being exceeded, We may exercise our sole discretion and without*

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contacting You, allow an overdraft to be created or allow the borrowing limit to be exceeded. In these circumstances, the new or excess overdraft is an unauthorised overdraft."

The Provider relies on the Section entitled "A Guide to Personal Accounts Fees and Interest" of its **Personal Banking Terms and Conditions** brochure, where a timeline is supplied of the dates on which charges will be deducted from the personal account, and where it says that:

"Pre-Notification of Charges: to help you manage your transaction fees we'll send you a pre-notification of charges at least 10 business days before we debit your account.

The Provider submits that:

"The Complainants' Current Account is subject to debit interest, account fees and charges as outlined in the Bank's brochure A Guide to Personal Accounts Fees and Interest, Appendix B, which was provided to them on account opening and which is also readily available in the Bank's branches and on the Bank's website."

The Provider submits that the Complainants were aware of the **Terms and Conditions** of the account and states that:

"The Account Opening Form - Current account, Appendix F, which the Complainants signed upon account opening, states:

Please read and keep the following literature we've provided you with

- *Current Accounts & Everyday Banking*
- *A Guide to our Personal Accounts*
- *A Guide to Personal Accounts Fees and Interest*
- *Personal Banking - Terms and Conditions*
- *Terms of Business*

These documents contain all the information you need to be aware of before opening your account."

The **Current Account Opening Form**, completed in handwriting with the Complainants in branch in **January 2013** also stated:

"Before signing the application form, please ensure you have read and understood the Terms and Conditions and all other relevant brochures contained in your Account Opening Pack."

In the Declaration section of the **Account Opening Form**, the Complainants signed to confirm the following:

"I/We have read and accept and hold a copy of the Personal Banking Terms and Conditions and declare that the information given above and any other information provided by me/us during the application process is true and accurate."

The Provider has confirmed that the Complainants' overdrawn account has *"not resulted in any reporting to the Irish Credit Bureau or the Central Credit Register as they do not fall within eligibility criteria for credit reporting to these bodies."*

Having considered the matter in detail, I am satisfied that the **Terms and Conditions** of the account were brought to the Complainants' attention and they agreed that they had read and considered them when they signed the **Account Opening Form**. I am also satisfied that such information was brought to their attention.

I note that the charges are detailed on a table at page 13, of the **"A Guide to Personal Accounts Fees and Interest; Current Accounts Savings and Deposit Accounts"** brochure and at *"a Guide to Personal Accounts Fees and Interest"* of its **Personal Banking Terms and Conditions** brochure where a schedule of dates when charges will be deducted from the personal account is supplied, and where it says *"Pre-Notification of Charges: to help you manage your transaction fees we'll send you a pre-notification of charges at least 10 business days before we debit your account."*

In particular, I note that the Provider relies on Section 5 of its **Personal Banking Terms and Conditions** brochure –

"if your Account becomes overdrawn without our agreement or you exceed any overdraft limit, even if due to a referral item (irregular account charge) or surcharge or debit interest, then fees will be payable as detailed in our booklet." I am further satisfied that any fees, charges or debit interest were legitimately applied to the Complainants' account, in accordance with a pre-determined schedule which had been made available to them and which they were on notice of."

The Provider also submits that it:

"disputes the Complainants' allegations about 'threats' (account closure), and as of date of writing this report, no correspondence regarding account closure has been issued to the Complainants. We note that the Complainants have not provided any evidence of such a matter to your Office in respect of this dispute."

I note that no evidence of any threats to the Complainants has been submitted to this Office.

In relation to whether the Provider acted *honestly, fairly and professionally in the best interests of its customers and the integrity of the market and with due skill, care and diligence* it submits that:

"it always acted honestly, fairly and professionally in the best interests of the Complainants by honouring payments on their account when sufficient cleared

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funds were not available at time of presentation of the transactions. This was in accordance with the Terms and Conditions of account operations which the Complainants accepted when they opened their Current Account in 2013,"

In accordance with the Terms and Conditions agreed between the parties, I note that it is entirely a matter within the Provider's discretion as to whether to pay a debit to a customer's account, which will put the balance into overdraft.

I am conscious that many customers appreciate a minor overdraft when compared to the inconvenience of a transaction being returned unpaid, in addition to the greater financial impact when a direct debit is unpaid by an account.

In any event I am satisfied that the issue was one for the Provider's discretion and it was entitled to render the account overdrawn in line with its **Terms and Conditions** and so I accept that it acted *fairly and honestly* and that the Provider was not in breach of its obligations pursuant to Provisions 2.1 and 2.2 of the Central Bank of Ireland's Consumer Protection Code, 2012 ("CPC") to act honestly, fairly and professionally in the best interests of its customers and the integrity of the market, and to act with due skill, care and diligence in the best interests of its customers.

In relation to whether the Provider *made a full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer*, it submits that:

"The Bank has provided all key account information to the Complainants throughout its banking relationship with them in a clear and honest manner to enable them to make informed decisions about their financial management and account operation. Such information is also freely available in our branch network and on the Bank's website."

The Provider submits that *"these charging dates are the exact dates on which transaction charges were applied to the Complainants' account during 2020."*

The Provider further submits that *"the Complainants are also pre-notified of the charges which will apply to their account at a minimum of ten business days before they are debited from the account (subject to criteria outlined in brochure, extract as per above) ... Our Fees and Interest brochure is available online on the Bank's website for review and download."*

The Provider submits that:

"due to the above comprehensive information provided to the Complainants, the Bank refutes the Complainants' allegation, as mentioned in the Summary of Complaint, that because the charges were applied on different dates this had the result of 'no money for direct debit' on their account we have been fully transparent with the Complainants about information on the Bank's charging

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structure and timeframes. This information was provided to the Complainants from the outset of their relationship with the Bank, is provided to them regularly via Pre-Notification of Charges and is also readily available online and throughout the Bank's branch network."

On review of the evidence regarding charges which was made available to customers online and the information housed within the **Terms and Conditions** of the Provider, I am satisfied that the relevant information about charges was made available to the Complainants and that the Provider was not in breach of its obligations pursuant to Provision 2.6 of CPC, to make full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer.

In relation to whether the Provider *corrects errors and handles complaints speedily, efficiently and fairly*, the Provider submits that:

"No errors have been identified during the investigation of the subject matter under dispute. In relation to the complaint raised, the complaint was logged promptly on the business day following receipt, a complaint acknowledgment letter issued within regulatory timeframe which quoted a unique complaint reference number and provided the Second Complainant with the name and contact details for the Complaint Handler assigned to the investigation of the complaint. A Final Response Letter was issued to the Second Complainant within three weeks of receipt of the complaint, which explained why the complaint was not upheld...the Customer Care Team issued a detailed Final Response Letter to the Second Complainant on Friday 31 July 2020. The Bank's records show that this is the date on which the Final Response Letter was dispatched to the Complainant. We regret if the Complainants feel that they did not receive this letter from the postal service in a timelier manner [noting the subsequent FSPO Complaint Form which states the Final Response Letter was received on 4 August 2020]. However, we note that Monday 3 August 2020 was a Bank Holiday and therefore it is not unusual that post would not be delivered until the next business day following Friday 31 July 2020 - being Tuesday 4 August 2020."

I am satisfied that there was no undue delay or bad faith in the Provider's handling of the complaint and that the Provider was not in breach of its obligations pursuant to Provision 2.8 of the CPC, to handle the complaint speedily, efficiently and fairly.

In summary, I am satisfied that when the Provider met the debits to the Complainants' account, it acted in accordance with the Terms and Conditions, whilst respecting its obligations pursuant to the CPC. In allowing the Complainants' account to become overdrawn in small amounts to satisfy utility bills, I do not accept that the Provider acted wrongfully, and I do not consider there to be any reasonable basis upon which this complaint should be upheld.

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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)

6 May 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—

- (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.

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