



<u>Decision Ref:</u>	2022-0312
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication Complaint handling (Consumer Protection Code)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint is that the Provider closed the Complainant's bank account with no instruction from him, and with no explanation of its reasons for doing so.

The Complainant's Case

The Complainant states that on Tuesday **10 September 2019** the Provider sent a letter to him informing him that his account which he had "*maintained with [the Provider] for 14 years is going to be closed*".

The Complainant states that the Provider made a reference to its General Terms and Conditions in this letter and stated that the closure would take place two months from the date of the letter.

The Complainant states that he contacted the Provider upon receipt of this letter, involving a telephone call which lasted more than nine minutes. The Complainant states that a bank manager of the Provider stated that he would receive a call back.

The Complainant says that during this subsequent telephone call he was informed by the bank manager that he would need to submit a complaint in writing, and he states that the Provider would later inform him that this call was not recorded. The Complainant states that he formally lodged his complaint with the Provider on **11 September 2019**.

The Complainant states that the Provider's bank manager contacted him by telephone on Monday **16 September 2019** to inform him that he would be the Complainant's point of contact and that he would be investigating the complaint. The Complainant states that he received the final response letter from the Provider addressing his complaint on **17 September 2019**. The Complainant states that he is outraged by the treatment he received from the Provider, as he had done "*nothing wrong*" such as "*Bounce Checks or Direct Debits as I have neither attached to this account*".

The Complainant asserts that he used the account only for lodging social welfare payments, and that he pays maintenance and transfers small amounts to a prepaid credit card. The complainant states that, due to his credit rating, it would be impossible for him to open an account with another Provider and "*in an era where we are heading towards a cashless society for [the Provider] to have this much power is insanity*".

The Complainant also says in a submission to this Office dated **3 March 2021**, that the reasons for the closure of the account were never fully explained to him. The Complainant also raises an issue regarding the Provider not recording the telephone call with the bank manager. He states that this is "*unbelievable*" because a telephone call a customer makes to the Provider is "*redirected and if you do not accept that the call is going to be recorded, you will not be allowed to proceed with the call*".

The Complainant also states that he should be given a choice as to whether his calls are recorded for "*training purposes*" as this is his personal data. He further states that he only received his bank statements up until **22 October 2019** and he did not receive any bank statements from this date to the closing date which was **11 November 2019**.

The Complainant asserts in relation to alternative products that the Provider:

"never informed me, instead ... [the] Bank Manager who knew from my complaints that I was extremely upset to say the least, did not inform me of any alternative products."

The Complainant wants the Provider to reinstate his account with the Provider so that he can continue his "*daily financial commitments*".

The Provider's Case

The Provider issued its Final Response Letter on **17 September 2019** addressing the complaint. It states that it is entitled to instruct the closure of an account, at any time, by providing two months' notice in writing to the account holder "*without having to provide a reason*" and can make such decisions "*at its absolute discretion, in accordance with the terms and conditions of the account.*"

The Provider refers to page 21 of its General Terms and Conditions, under the heading "**Refusal**", which states:

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“We reserve the right to refuse to open an Account and/or make available specific Account services or Channels for an Account without stating a reason.”

The Provider also relies on page 22 under the heading “**Closure**”, which states:

- “(a) We can close your Account immediately in any of the following circumstances:*
- (i) if you become bankrupt or go into liquidation or if you enter into a voluntary arrangement with your creditors;*
 - (ii) if you cease trading;*
 - (iii) if you are no longer, in our opinion, able to manage your financial affairs;*
 - (iv) if you die;*
 - (v) if any representation, warranty or statement made by you to us is or becomes untrue in any material respect;*
 - (vi) if you commit any serious, or repeated, breach of these conditions;*
 - (vii) if you are in breach of any other agreement with us;*
 - (viii) if we must do so in order to comply with any law;*
 - (ix) if you use your Account for any unlawful or other inappropriate purposes;*
 - (x) if for any reason this Agreement becomes unenforceable or void.*

If we take such action, we will, immediately give you notice in writing that we have done so.

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

The Provider submits that the term “*any other reason*” does not require the Provider to communicate such a reason to the consumer as part of the notice requirement. The Provider also states that it believes that by communicating a reason to the Complainant, there is a risk that the Provider may have compromised its anti-money laundering obligations under the ***Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010*** (2010 Act).

The Provider relies on Regulation 16 of the European Union (Payment Accounts) Regulation 2012 (as amended) in stating that whilst the Complainant's letter to the Provider dated **11 September 2019** requested clarification regarding the decision to close his account, it did not however request or query alternative products offered by the Provider.

The Provider has submitted to this Office that the reason for closing the account was “*made centrally*” by the Provider and was “*commercial in nature*”.

The Provider further states that the it has at all times acted in accordance with the General Terms and Conditions and has provided adequate notice by way of letter dated **10 September 2019**. It states that the account would cease to be active from close of business on **10 November 2019**.

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The Provider asserts that regulation 16 states that if the Complainant does not already hold an account with another financial institution within the state, its closure letter enables the Complainant to apply to another financial institution to open a basic payment account, should he so wish. The Provider states that it did not offer a basic payment current account to the Complainant, nor did he apply for one. It states that the Complainant requested clarification regarding the closure of his account, but he did not request, or query, alternative products offered by the Provider.

The Provider further submits that it is not required to inform a customer that a telephone call is not being recorded. It states that telephone calls are recorded in certain departments of the Provider, but telephone calls to and from the branch network are not recorded.

The Complaints for Adjudication

The complaint is that in late 2019, the Provider closed the Complainant's bank account with no instruction by him to do so, and no explanation for the reason.

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 **16 August 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.

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I note that on **11 September 2019**, the Complainant telephoned the Provider outlining that he had received a letter on **10 September 2019** from the Provider stating that his account would be closed in two months' time. The Provider's agent stated that he would send an email to the branch manager of the Provider who had overseen his account, to request that he contact the Complainant by telephone.

On **11 September 2019**, the branch manager of the Provider emailed the Complainant stating that his complaint was logged and *"the Bank will investigate and revert to you in writing"*.

On **16 September 2019**, the Complainant telephoned the Provider seeking information regarding the Provider's opening hours. I note that on the same day, the Provider's branch manager sent a letter stating that he would be the point of contact in respect of the complaint. On **17 September 2019**, the Final Response Letter was issued, addressing the complaint.

I am therefore satisfied that the Provider complied with Provisions 10.7-10.12 of the Consumer Protection Code 2012 (CPC 2012) which set out the requirements to address and respond to complaints.

On **24 September 2019**, the Complainant telephoned the Provider seeking clarification if his account debit card was blocked due the forthcoming closure of his account. The Provider's agent stated that the card was not blocked.

On **25 September 2019**, the Complainant telephoned the Provider stating that the Provider had sent out an account statement to his address after he requested this.

I note that Section 79 of S.I. No. 6/2018 - European Union (Payment Services) Regulations 2018 (the Payments Services Regulation) states that:

"(5) If agreed in a framework contract, a payment service provider may terminate a framework contract concluded for an indefinite period by giving not less than 2 months' notice in the same manner as information is to be provided in accordance with Regulation 75(1) and (2)

(6) Where a framework contract is terminated, charges for payment services levied on a regular basis shall be—

(a) payable by the payment service user only proportionally up to the termination of the contract, and

(b) where such charges are paid in advance, reimbursed proportionally."

[My underlining for emphasis]

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I am also mindful of the High Court decision in *Blue Diamond Sports Ltd t/a Dundalk Bureau De Change and Blue Diamond Sports No.2 Ltd v The Governor and Company of The Bank of Ireland* [2018] IEHC 655. In this case, Allen J considered a bank's various obligations under the 2010 Act and whether there was a requirement on the bank to provide a rationale to the customer where there was a closure of an account. He held that:

"The Defendant [the bank] ... cannot go into an explanation of what information it has. That appears to me to be so. The disclosure by a bank to its customer of the basis of a suspicion of money laundering might very well prejudice not only an investigation into the bank's customer's business but an investigation into the customer's business with its customers."

Accordingly, the High Court held that there is no obligation under the 2010 Act to give reasons, as this would undermine the very investigation required under the statutory provisions. It should be noted however, that there is no evidence whatsoever before me that the Provider's consideration of and decision to close the Complainant's account, was linked in any manner to the provisions of the 2010 Act.

I note that Allen J also considered Section 79 of the Payments Services Regulation, and held that that:

"I find it impossible to contemplate how Regulation 79(5) or an agreed framework contract might be supplemented or varied by a requirement, before any such notice is given, of a warning; followed by an objective, non-discriminatory and proportionate enquiry; followed by either duly motivated reasons or, perhaps, objective, non-discriminatory, and proportionate reasons."

Whilst the customer is entitled to close the account at any time, the Provider's equivalent entitlement to close the account *"for any other reason"*, requires two months' notice to the customer (except in the event of certain specified reasons outlined at Condition 20(b), which do not arise in this instance). In the Complainant's case, the Provider asserts that it furnished the Complainant with two months' notice of the pending closure, to give the Complainant a reasonable opportunity to make alternative banking arrangements.

I am satisfied that the Provider was entitled to end the relationship with the customer without providing reasons, and indeed the relevant General Terms and Conditions, pursuant to section 79(5) of the Payments Services Regulations, do not specifically require the Provider to explain its decision in this regard. As a result, I am satisfied that the Provider was entitled to close the account without having to give a rationale or reasons to the Complainant.

The CPC at Provision 2.11 requires that a financial service provider:

"2.11 without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services"

I note that the Provider submits that the Complainant “*did not request or query alternative products offered by the Bank*”. Conversely, the Complainant states that the Provider did not inform him of any alternative products. In particular, he refers to his telephone conversation with the bank manager of the Provider during his telephone call dated **17 September 2019**.

In this regard, I note the **European Union (Payment Accounts) Regulations 2016**. Generally, this regulation requires that consumers be able to access a payment account with basic features free of charge or for a reasonable fee. In particular, Regulation 16 deals with a provider’s obligations where it receives an application to open an account, and its right to refuse the application. In this instance, I note that the Complainant did not submit an application to the Provider, after the closure of his account.

If the Complainant were to formally apply to open another type of account with the Provider, the Provider would be required to consider such a request and to ensure that it meets its regulatory obligations, in doing so.

I note that the Complainant made a data access request on **20 September 2019**. However, the Complainant has submitted to this Office that he did not receive four telephone call recordings as part of this data access request which he only learned of when they were submitted to this Office on **29 October 2020**. In this regard, I note the Provider’s response to his initial data access request, which it sent on **23 September 2019**, stating:

“As part of your Access request, if you are looking for copies of call recordings or CCTV images that we may hold of you please contact us at the address above providing us with details to allow us locate these recordings on our systems, including dates, times, phone number (call recording) an location (CCTV).”

The Complainant replied by letter dated **29 September 2019** stating that he wished to have access to two separate telephone calls from **11 September 2019** and **17 September 2019**. The Provider responded on **30 September 2019** stating that its branch network does not record conversations and it was unable to provide him with copies of the calls requested.

Therefore, it seems from the evidence that the Complainant may not have sought the specific telephone call recordings that were ultimately submitted to this Office as part of this investigation, but if he has any concerns regarding the Provider’s response to his Data Access Request, he may of course raise a complaint with the Data Protection Commission, which is responsible for complaints of that nature. This Office has no role to play regarding any breaches of data protection legislation.

I note the following Provision 3.44 of the CPC 2012 which states:

“When making a personal visit or telephone contact in accordance with this Code, the representative of a regulated entity must immediately and in the following order:
a) identify himself or herself by name, and the name of the regulated entity on whose behalf he or she is being contacted and the commercial purpose of the contact;

b) inform the consumer that the telephone contact is being recorded, if this is the case;"

Accordingly, I am satisfied that there is a regulatory requirement on a Provider's agent to indicate that a telephone recording is being recorded "if this is the case". This does not however mean there is a requirement to record each and every telephone call with a customer or to advise when such calls are not being recorded. I am of the view that it was not unreasonable for the branch manager of the Provider in this matter, not to record his telephone calls with the Complainant.

I note that the Complainant has asserted that he was bullied, intimidated and threatened into accepting the General Terms and Conditions. I note that on his personal current account application form dated **12 March 2010**, which the Complainant signed, it states:

"I/we have also received the Bank's current booklet 'Terms and Conditions'. I/we have read and have had an opportunity of becoming acquainted with, have understood and agreed to be bound by the above brochure Terms and Conditions in relation to the facilities applied for above, which may be amended from time to time."


Any complaint about the Provider's interactions with the Complainant regarding a current account, in **2010**, almost a decade before this complaint was made to this Office, does not meet the statutory time limits for complaints to be made to the FSPO and for that reason, such a grievance does not form part of this investigation. Accordingly, there is no reason as to why this Office should not accept that the Complainant is bound by the General Terms and Conditions, which he accepted, by signing the document.

For the reasons set out above, I do not consider the Provider's actions to be wrongful. The Provider has at all times engaged with the Complainant in relation to this matter and I am satisfied that it acted lawfully in the closure of his account. There is no evidence before me of any element of wrongdoing in relation to the closure of the account and I take the view therefore that it would not be appropriate to uphold this complaint.

Conclusion

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

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



**MARYROSE MCGOVERN
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN (ACTING)**

7 September 2022

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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.