



<u>Decision Ref:</u>	2022-0060
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Opening / Closing Accounts
<u>Conduct(s) complained of:</u>	Failure to provide notification /reason for closure Dissatisfaction with customer service
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint arises from credit card merchant services supplied by the Provider to the Complainant Company and, in particular, the placing of a block on the Complainant Company's account with the Provider.

The Complainant's Case

The Complainant Company operates in the travel industry and is referred to below as the Complainant. It states that it raised the complaint when it became aware of the Provider "*freezing its account*" which resulted in the Complainant being "*effectively unable to trade*". The Complainant states that its business has been using the Provider's credit card merchant services for more than thirty years without any issues up to this point. The Complainant has also been critical of the customer service provided to it.

The Complainant states that its business was temporarily closed, due to Government applied COVID-19 restrictions, when on **3 April 2020**, the Complainant received an email from the Provider requesting detailed confidential information about the business. The Complainant considered it a "*demand for a forensic trawl of the most sensitive, confidential and private information. It was inconsistent with their position in our lives, and their being just one of a large number of our suppliers. None of whom would dare to seek such data. It bore no relation to the potential risks here*".

The Complainant was surprised at the Provider's request for such depth of financial information and customer booking data. The Complainant's managing director was working remotely and assembled what documents he could, in order to comply with the Provider's request. The Complainant states that it furnished the Provider with detailed bank statements and *"the most recent management accounts, both showing us as a financially strong business"*.

The Provider contacted the Complainant again on **5 May 2020** requesting additional documentation. The Complainant states that it was in this exchange that it *"picked up on the throw away remark about the block remaining on the account"*. The Complainant sought clarification and submits that the Provider took a week to confirm that the account was indeed frozen. The Provider had failed to advise the Complainant of this and the Complainant states that it was not clarified how long the block had been in place on the business's credit card services. The Complainant was anxious to have the business credit card facility re-instated as it was hopeful the business would be opening the following month.

The Complainant states that the Provider is trying to *"extort more information, than they have a right to"* and has disrupted the Complainant's ability to trade while placing a block on the Complainant's account. The Complainant contends that the Provider suspended its account *"without reference to us, nor even advising us that it had been done"*.

The Complainant made further submissions to this Office dated **17 February 2021**. The Complainant states that when it requested the Provider to confirm that confidential information provided to it in **2020** had been destroyed, it never received a response. In these further submissions, the Complainant asserts that *"excessive demands are being made on SMEs by a financial institution that has the power to destroy those businesses"*. It reiterates that the information demanded by the Provider was asked for at a time when the Provider *"knew or ought to have known that [the Complainant was] not in a position to provide it"* due to the closure of its Office arising from COVID-19.

The Complainant states that its bank balance showed at €200,000 and a history of zero chargebacks in over 30 years. Therefore, it states that any competent risk manager would know that there was little risk to the Provider presented, by the Complainant, and certainly no risk which required an *"immediate shutdown of services"*. The Complainant states that it has only had one chargeback, since the pandemic started and that was by a client who did not bother to call to request a refund. The Complainant stresses that it has *"at all times...been happy to comply with reasonable requests for information"* and it constantly provides detailed information to several regulators which oversee its business.

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The Complainant states that the Provider's assertion that a funding block does not stop a business from trading is "*bordering on the laughable*" as this would mean that a business would be trading without the Provider releasing its own money to it. The Complainant rejects the offer of €399 made by the Provider.

Ultimately, the Complainant wants the Provider to restore the credit card merchant services and to cease from requesting "*sensitive, confidential and private information*" which the Complainant says the Provider is not entitled to request.

The Provider's Case

In its Final Response Letter dated **8 May 2020**, the Provider set out its position that it is within its rights, under contract to request financial information and "*if the information cannot be supplied we have no option but to look to terminate services*". In its Final Response Letter, the Provider stated that the following information was outstanding:

- *Current outstanding order book for all prepayments deps paid by the customer*
- *Amounts paid to suppliers for these payments*
- *Breakdown on pending order book on a monthly basis, payments taken and which month these are due to be completed*
- *For holidays that were due to be completed for April/May which have likely been cancelled what is the company's intention? What level of refunds will you be looking to process."*

In further submissions to this Office on **16 February 2021**, the Provider states that in **July 2018** it first contacted the Complainant to request that it complete the Provider's travel questionnaire. The Provider states that notwithstanding the Complainant's unwillingness to provide this information, because of the strong financial position of its business at the time, this information was not followed up and subsequently not received.

The Provider says that on **3 April 2020**, it then followed up and sought the completion of the travel questionnaire and the further information outlined above. The Provider states that this information was requested after a review of its credit risk exposure, and in light of the COVID-19 global pandemic.

The Provider states that similar information is often requested from other merchants as part of a risk review of their account. The Provider states that the Complainant responded on **20 April 2020** with some of the information but not all required information and, as a result, a decision was made to add a funding block to the Complainant's merchant account. The Provider states it is entitled to implement a funding block on a merchant's account pursuant to sections 10(a) and 20(a) of its terms and conditions if, upon review, an account is deemed a risk.

The Provider admits that a timeframe was not provided to the Complainant in respect of the request for information. It states that from the time the information was initially requested to the time the block was added to the account, there was a period of 14 calendar days. The Provider states that a funding block does not prevent a merchant from trading or processing transactions; instead, it blocks the funding of the transactions to the merchant's account, so rather than the funds being settled to the merchant's account they are held in a reserve account to cover the refund and chargeback risk that the Provider may be exposed to.

The Provider states that it added the block to the Complainant's account on **17 April 2020** and removed it on **12 June 2020**, when it became apparent that the Complainant was not trading. On **30 June 2020**, a request was received from the Complainant to the Provider to close its account and the Complainant's account was closed on **2 July 2020**.

The Provider states that it has complied with provision 2.5 of the Consumer Protection Code 2012 (as amended) ('the CPC'). In respect of provision 4.2 of the CPC, the Provider states that it demonstrated "*a degree of compliance to this provision*" but it does appreciate that "*the customer experience could have been better. This is feedback that has already been provided to relevant teams within the business*".

The Provider states that "*as a gesture of good will*" it is offering a credit of €399.62 to the Complainant which equates to the merchant service charges the Complainant paid to the Provider for the months of **March, April, May and June 2020**. The Provider states that the Complainant was not financially impacted by the funding block.

The Provider made further submissions to this Office on **1 April 2021** stating that as had been requested by the Complainant, it would delete the Complainant's documentation from its system. The Provider then contacted this Office again on **21 April 2021** to state that it would not in fact be deleting the data, as it had a legal obligation to retain the data in question and all data associated with the account, for a period of 6 years.

The Complaint for Adjudication

The complaint is that the Provider wrongly and unfairly placed a block on the Complainant's credit card merchant services account in **April 2020** without prior notice to the Complainant, and sought confidential business information from the Complainant that it did not have a contractual right to seek.

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 Company 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 **13 January 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 substantive submissions from the parties, in the period permitted, the final determination of this office is set out below.

I note that the Provider first made a request for the information sought in **July 2018**. The Provider states that it did not follow this up, due to the "*strong financial position*" of the Complainant's business. I note that it ultimately followed up this request for information nearly two years later on **3 April 2020**, due to its review of risk of exposure as a result of COVID-19.

The Provider's email dated **3 April 2020** is notable in that it does not provide a timeline for the information requested and does not reference anywhere, that a block will be applied to the merchant account should the information not be provided.

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Furthermore, I note that the Complainant's managing director replied to the Provider within two and a half hours of receiving the email, explaining that the business was closed due to COVID-19 but that the Complainant would oblige the Provider and provide what information it could, in the circumstances. The Complainant also stated in this reply that it had a balance of €200,000 held in its account and was owed a further €100,000 from suppliers.

I also note that notwithstanding this prompt response and without any warning to the Complainant, the Provider placed a funding block on its merchant account on **17 April 2020**. The Provider did not inform the Complainant that this block was in place.

The Complainant, unaware the block was in place, replied to approximately half of the Provider's request for information on **20 April 2020**. In respect of the other requests, the Complainant noted that it would be unable to accurately establish the information sought, until it had access to its Offices (at that time predicted to be on **5 May 2020**). I note that the Provider lifted the block on **12 June 2020** and on **2 July 2020** the Complainant cancelled its account with the Provider, largely it would appear, because of the issue giving rise to the complaint, and it did not provide the remaining information sought.

The Provider relies on condition 20(a) of its Terms and Conditions of Merchant Services, to justify the implementation of the funding block. Condition 20(a) is headed "**Reserve Account/Security**" and states as follows:

"

(a) Establishment.

We may establish a Reserve Account in relation to you to provide guarantees or other security, and/or to apply special terms and conditions in relation to your acceptance of Transactions at any time, for the purpose of providing a source of funds to pay us for any and all, actual and reasonably anticipated amounts and liabilities owed by you to [the Provider] and the Bank to include actual and/or contingent liabilities under the Agreement. The amount of the Reserve Account shall be set and increased by us, in our sole discretion as we may determine from time to time."

There is no mention of a funding block in this section of the terms and conditions. Furthermore, there is no evidence put forward by the Provider, other than the risk of COVID-19, to suggest that the Complainant would struggle to pay any reasonably anticipated liabilities owed to the Provider.

The Provider states in its Final Response Letter, that pursuant to condition 20(a) it was within its right to implement a funding block "*if upon review an account is deemed a risk*".

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No evidence however, has been presented by the Provider regarding that account review and as to how it arose that the Complainant's account was deemed a risk; in fact, the evidence presented by the Complainant, in the absence of any further evidence, would tend to suggest that it was not.

The Provider implemented a block on the Complainant's merchant account, without any warning or indication that a block was imminent, notwithstanding the Complainant's Managing Director's response within hours of receiving the Provider's request for information, by email of 3 April 2020. In those circumstances, I take the view that this action was unwarranted, and in my opinion, it was unreasonable and unjust within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**. This action was compounded by the remarkable fact that the Provider did not inform the Complainant that the block had been put in place.

The Provider seems to have effectively ignored the fact that the Complainant had a healthy bank balance, had made best efforts to respond to the Provider's request as promptly and completely as possible, and had only received one chargeback in its approximately 30 years of trading. Whilst I appreciate that COVID-19 created an unprecedented environment for the operation of businesses, such as the Complainant's, nevertheless it does not appear from the evidence that the Provider gave any real consideration to the Complainant's individual circumstances.

The Provider's response explains the effect of the funding block, which was put in place, which it says does not prevent a merchant from trading or processing transactions. Although this may be technically correct, I note the Complainant's submission that, in reality, by denying the Complainant access to any funds received from transactions, the Provider was potentially starving the Complainant of the necessary resources needed, to carry out its day-to-day business.

In respect of the complaint that the Provider was not entitled to request the information sought from the Complainant, I note condition 10(a) of the Terms and Conditions which states under the heading "*Providing Financial and other Information*" that:

"Upon request you will provide [the Provider] with copies of interim and/or annual audited financial statements (including management accounts), and other required documentation or information concerning your Business as we reasonably request to assist with our continuing evaluation of your financial and credit status".

On the basis of this condition, I accept that the Provider was entitled to seek information such as was sought, in its email dated **3 April 2020**. I note that even though the Complainant Company disputes this, it did in fact supply much of the information sought by the Provider, though it was not able to supply the remainder, due to COVID-19 restrictions.

I note that in the course of the investigation of this complaint, the Provider at one point recognised the Complainant's request to have the financial information it supplied to the Provider, deleted from the Provider's records, and it indicated a willingness to do so. Thereafter however, it clarified further to the Complainant that it was unable to meet that request, owing to its obligations for records retention for a period of 6 years. Whilst the Complainant is a corporate entity, nevertheless if it believes that there has been an infringement of any data protection rights, a complaint regarding this aspect of the matter, can be pursued to the Data Protection Commission, which is the appropriate statutory body for a complaint of that nature.

In terms of the Central Bank of Ireland's Consumer Protection Code ("CPB 2012") I accept that the information sought by the Complainant was relevant to the merchant services the Provider was providing and therefore I accept that the Provider was in compliance with provision 2.5 which states that the Provider can only seek *"from its customers information relevant to the product or service requested"*. However, I am cognisant of the Provider's imposition of the funding block without warning the Complainant Company, or without telling it when the block had been imposed, which I consider to have been contrary to:

- provision 2.1 of the CPC which requires the Provider to act *"honestly, fairly and professionally in the best interests of its customers and the integrity of the market"*;
- provision 4.2 of the CPC which requires a Provider to supply information to a consumer on a *"timely basis"*.

Based on the foregoing, while I do not accept that the Provider was seeking access to confidential business information that it was not entitled to ask for, I accept that the Provider wrongly, unjustly and unreasonably placed a block on the Complainant's credit card merchant services in **April 2020** without prior notice to the Complainant of this fact, and that this constituted a breach of the provisions of CPC 2012, and that it constituted conduct coming within **section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**, as amended.

I note that, from a practical point of view, the issue concerning the additional financial information which the Provider had sought from the Complainant has been resolved, since **2 July 2020**, because the Complainant at that point, cancelled its account with the Provider.

For the reasons outlined above, I consider it appropriate to substantially uphold this complaint, and to direct the Provider to make a compensatory payment of €2,500.00 (two thousand five hundred Euro) to the Complainant Company. This payment of €2,500 includes the figure of €399.62 previously offered by the Provider, understood to represent the amount of the charges levied for the period March – June 2020.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld on the grounds prescribed in **Section 60(2)(b)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant Company in the sum of **€2,500** (two thousand five hundred Euro), to an account of the Complainant Company's choosing, within a period of 35 days of the nomination of account details by the Complainant Company to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

15 February 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,
 - (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.