



<u>Decision Ref:</u>	2018-0016
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Hire Purchase
<u>Conduct(s) complained of:</u>	Arrears handling Level of contact or communications re. arrears Incorrect information sent to credit reference agency
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Complainant's hire purchase agreement entered into with the Provider.

The complaint is that the Provider incorrectly allocated additional payments made by the Complainant in respect of arrears which resulted in missed payments not being cleared from the her Irish Credit Bureau (ICB).

The Complainant's Case

The Complainant submits that in late 2014 and up to 2015 her financial circumstances changed, and as a result she missed some repayments on her hire purchase agreement with the Provider. The Complainant submits that she contacted the Provider on 21 August 2015 and an agreement was reached whereby she would pay an additional €40 each month together with her monthly instalment of €305.23 to gradually clear the arrears over the course of the agreement.

The Complainant submits that during long email communication with the Provider's representative she raised the issue that she failed to understand the reason why a missed payment on 30 September 2014 was only allocated funds on 7 March 2016 and not sooner with the money she had paid to the Provider in 2015. The Complainant also submits that the missed payments on 30 October 2014 and 30 December 2014 are still unallocated funds.

The Complainant submits that she made 12 additional payments of €40 to her monthly payments of €305.23 since September 2015 (€345.23 per month). The Complainant states that *“The nature of my complaint arose when I received my Statement by post and email on 15.09.16 from [the Provider]. I realised that the monthly payments of 40e (totalling 480e now to date) were not assigned to the month/s where the arrears were recorded but was included on my account balance. From 21.08.15, I assumed the reason for paying the 40e extra per month was to correct the missed monthly payments on my account while my account was updated appropriately”*. The Complainant submits that this is a major issue as her credit rating with the ICB continued to remain the same.

The Complainant submits that she was seeking for the Provider to confirm that the extra payments made to her account were assigned to the missed payments on the account, and reflected the cleared payments on her annual statement. The Complainant states that *“Instead I found that my request was badly managed by [the Provider]”* and that the Provider *“made my life very difficult over the course of [its] email communications; it became very stressing, as I felt I was hitting a brick wall”*.

The Complainant submits that her issue could have been resolved sooner, if the Provider was willing to supply a response outlining how the €480.00 was credited against missed/outstanding payments, rather than providing information in its replies that she never requested. The Complainant submits that the Provider regularly referred to the fact that payments she made were allocated on receipt to her account *“therefore my query remains... this wasn't the case in 2014 as according to my annual Statement, July, August, October and December missed repayments in 2014 are still unallocated funds”*.

The Complainant submits that she received a letter from the Provider dated 20 October 2016 to her home address, requesting that she contact it to pay the arrears of €1,046.15 in full. The Complainant submits that she found this to be very distressing and inappropriate as she was dealing with the Provider's representative that issued the letter, who was aware that she was on a repayment plan, that is, to pay an extra €40 per month until the end of her agreement to bring her account up to date. The Complainant submits that she contacted the Provider's representative the following day *“outlining my unhappiness”*.

The Complainant also states that *“I wouldn't be confident that my Irish Credit Bureau (ICB) report was updated accordingly i.e. [the Provider] contacting ICB to relay that a payment/s of 2014(July/Aug/Oct/Dec) was paid”*.

The Complainant states that she is seeking for the Provider to *“recognise/acknowledge my issues and alter my account as per my continuous requests. My credit rating is suffering as a result, as it shows that I have made no attempt to correct my account relating to as early back as 2014, which is not the case”*.

The Provider's Case

The Provider submits that the Complainant took out hire purchase finance with it in March 2014. The Provider submits that the term of the agreement is 60 months with the monthly

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payments being €305.23. The Provider submits that the Complainant first fell into arrears in July 2014 and subsequently missed payments in August 2014, September 2014, October 2014 and November 2014. The Provider states that *“The manner in which the Company reports customer arrears to the ICB is in accordance with the rules of the ICB and those rules are in place to prevent against reckless lending which ultimately leads to customer detriment”*.

The Provider submits that the Complainant advised in January 2015 that she would, from that point on, be in a position to meet her monthly repayments of €305.23 and would pay extra amounts to compensate the arrears. The Provider submits that in August 2015 it advised that it is its normal procedure to have any arrears cleared within 3 months. The Provider states that *“At this point and with arrears totalling €1220.92, the Complainant committed to paying an extra €40 per month on top of her monthly rental of €305.23, that is, €345.23 over 23 months in order to clear her arrears in a timeframe that was financially viable to her. The Provider states that “23 months is considerably longer than the 3 months which we normally allow but we felt keen to reach a viable long-term solution with the Complainant”*. The Provider submits that the Complainant missed a payment in November 2015 which once again put the payment plan and the agreement in jeopardy.

The Provider submits that the initial arrears balance as at 21 August 2015 was €915.69. The Provider submits that, at that point, it was agreed that the Complainant would make monthly payments of €345.23, €40.00 of this would be in respect of the arrears on the account. The Provider submits that since then it has received 12 payments of €345.23 which resulted in €480 towards the payment plan. The Provider submits that since this payment plan 14 instalments have fallen due, and therefore an additional two instalments are now overdue.

The Provider states, in its final response email dated 27 October 2016, that *“If you had kept up to date with the payments as per the agreed payment plan the arrears would currently be €355.69 instead of the current arrears amount of €1,046.15”*.

The Provider submits that, as per page 3 of the Credit Agreement signed by the Complainant on 1 April 2014, it will report missed payments which are outstanding on the account, and these will reflect on the Complainant’s credit profile which is submitted to the Irish Credit Bureau (ICB) at the end of every month. The Provider states that *“They reflect a snapshot of your account at that position in time and cannot be retrospectively amended when outstanding amounts are subsequently brought up to date”*.

The Provider submits that as per the Credit Agreement, by 30 September 2016 it was due to receive the following:

<i>“30 instalments @ €305.23 + €75.00 documentation fee =</i>	<i>€9,231.90</i>
<i>Total Receipts:</i>	<i>€7,840.52</i>
<i>Arrears</i>	<i>€1,391.38”</i>

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The Provider states that *“The Complainant feels that her credit rating has suffered as a result of our behaviour, however the Complainant has breached the terms of her agreement with us and also the subsequent agreed payment plan”*.

Decision

During the investigation of this complaint by the Financial Services Ombudsman’s Bureau, 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.

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 was 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 was also satisfied that the submissions and evidence furnished were sufficient to enable a determination to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Finding was issued to the parties on 21 November 2017 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 Finding would be issued to the parties, on the same terms as the Preliminary Finding, in order to conclude the matter.

Following the commencement of the ***Financial Services and Pensions Ombudsman Act 2017***, on 1 January 2018, the final determination of this office is now issued to the parties, by way of this Legally Binding Decision of the Financial Services and Pensions Ombudsman.

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

The issue to be determined is whether the Provider incorrectly allocated additional payments made by the Complainant’s in respect of arrears, which resulted in missed payments not being cleared from her Irish Credit Bureau (ICB).

The Complainant questions why the payment, due on 30 September 2014, but was missed by her *“was only allocated funds on 07.03.16 and not sooner in 2015. Also I will need clarification why the dates 30.10.14 and 30.12.14 have not been managed similarly and assigned payments to date”*.

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The Complainant submits, in her email to the Provider dated 15 September 2016, that since September 2015 she paid €345.23 per month as opposed to the original agreement amount of €305.23, an additional sum of €480.00. The Complainant states that *“Taking the additional funds paid of 440e which you advise 305.25e of this amount ‘technically’ covers 1 missed payment ie 30.10.14 why isn’t this displayed on my statement of account for reference”*. The Complainant also states that *“I have paid the equivalent of 1 month arrears with 135.77e over therefore its more beneficial to see a month cleared off my record than just reducing the total arrears amount. Otherwise my record is not reflecting a clear picture of payments in my opinion as the whole idea of paying extra is to cancel off a missed payment”*.

The Complainant states that she was advised by the Provider’s representative on 20 September 2016 *“that ‘technically, the extra amount of €440 paid so far has cleared the October 2014 payment and half of the November 2014 payment”*. The Complainant submits that she continuously requested that this information be officially recorded on her account, as there was no point in receiving this information only in an email format.

The Complainant submits that she raised the same query with the Provider by email on numerous occasions from 15 September 2016 to 29 October 2016, and this query was never addressed. The Complainant states that *“this became very tiresome not to mention frustrating to have to continuously refer to the same query and receive no direct explanation to my sole query, but instead be issued with unrequested information”*.

The Provider submits that it cannot move any payments, and its accounts department in the UK allocate the funds as they come in. The Provider submits that Section 2, part (b) *“Payments and Fees”* of the terms and conditions applying to the agreement state:

“You must pay all the Repayments as defined under “Your Repayments” in full when they are due in accordance with the timings set out under “Your Repayments”. This is of fundamental importance: if you fail to make payment when due, we may charge you late payment interest on the overdue amount... and we may also be entitled to terminate this agreement (see Clause 6).”

The Provider submits that, as per the ICB Handbook of Rules, when a payment is missed, it will report this to the ICB thirty days later, and this will remain on the ICB record even if the missed payment is subsequently made up. The Provider submits that the credit report is sent on a monthly basis to the ICB and reflects how the agreement is paid each month based on the arrears amount at that time. The Provider submits that the Complainant’s credit rating is not affected negatively by how it allocates payments, it is affected when the payments are not made on the date each payment is due. The Provider submits that all payments made by the Complainant have been allocated to the agreement when received and have reduced the arrears balance accordingly at the time of allocation.

The Provider submits that the Complainant remains in arrears of €766.15 as at 27 April 2017. The Provider submits that the extra payments which the Complainant made towards her arrears have been applied retrospectively to the oldest arrears on her account. The Provider states that *“It has also been explained to the Complainant that her ICB record is correct as*

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an individual's ICB represents a snapshot of their account at a particular moment in time... and it is not possible to amend her ICB retrospectively. This is the way in which the ICB operates and it does so for the purpose of providing financial institutions with as clear a view as possible of an individual's payment history so that lenders may make responsible decisions on credit applications".

The Complainant submits that she made two payments to her account in October 2014. The Complainant states that *"I believe that one of the payment's should be recorded for that month rather than showing it as a missed payment as that was not the case"*.

The Provider submits that all payments the Complainant has made have been allocated to the agreement as and when received. The Provider states that *"Technically, you missed the payment on the 30.10.14 as we did not receive a payment that month. The payment received on the 1st December was allocated to the most recent payment due at the time, the November payment due on the 30.11.14"*. The Provider states that the *"ICB markings for October 2014 is showing a '1', 1 payment in arrears even though the agreement was 2 payments in arrears at the end of October 2014"*.

I note that the Provider, in its email to the Complainant dated 15 September 2016, states that *"The 2 SO payments made in October covered the July & August 2014 payments as the direct debits were rejected for these 2 months plus September, October and November"*.

I note that the Complainant signed a Hire Purchase Agreement on 1 April 2014. I note that page 3 of this Agreement states, among other things, the following:

"Missing Payments

Missing payments could have serious consequences: we will report missed payments to credit reference agencies, which may make obtaining credit from us and other creditors more difficult. The amount you have to pay us may increase. We may become entitled to terminate the agreement and recover possession of the Vehicle (we will need the court's permission to recover the Vehicle if you have paid at least one third of the Hire-Purchase Price under this agreement). We may issue legal proceedings against you to enforce the debt, you may have to pay our legal costs and other expenses, and we may obtain a charging order on your home".

Clause 7 of the Agreement signed by the Complainant on 1 April 2014 provides, among other things, the following:

"7. Events of Default

The Events of default referred to in Clause 6(c) are:

- (a) You fail to pay any Advance Payment or Repayment within 30 days of its due date or, in the case of the Final Repayment, within 14 days of its due date; or*
- (b) ..."*

I note that Clause 10 of the Agreement provides, among other things, the following:

"10. General Terms

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(a) If you break this agreement and we decide not to enforce any our rights against you, this will not prevent us from doing so later."

Having carefully considered all of the evidence before me, I can find no wrongdoing on the part of the Provider. I must point out that the Provider is obliged to provide an honest and truthful report of customers' repayment patterns to the ICB, and is not obliged to change or remove details from a report unless these details are inaccurate. I note that the Complainant's ICB record reflects the dates at which payments were missed.

The Complainant has a contractual obligation to repay the hire purchase agreement in full and in the terms originally agreed with the Provider. While I note that the Provider agreed with the Complainant that she could make an extra monthly payment of €40 from August 2015 in respect of the arrears on the account, I must accept the Provider's submission that this sum was to clear the arrears balance, and the Complainant's ICB record cannot be retrospectively amended when outstanding amounts are subsequently brought up to date.

I note that the Complainant submits that her issue could have been resolved sooner, if the Provider was willing to supply a response outlining how the €480.00 was credited against missed/outstanding payments, rather than providing information in its replies that she never requested. The Complainant states that *"During my email communication with [the Provider] in 2016, I continuously looked for reassurance that earlier missed repayments were being addressed accordingly. In my opinion, I failed to get a clear response. Therefore I feel [the Provider was] not honest throughout our communications, as suggested"*.

Having reviewed the email correspondence between the Complainant and the Provider's representative, I consider that the Provider did supply the correct information to the Complainant. I note that the Provider's representative, in an email to the Complainant dated 19 September 2016, stated that *"Any funds received have reduced the balance/arrears accordingly"*. In response to the Complainant's query in her email of 19 September 2016 regarding the additional payments made totalling €440, the Provider's representative states in her email of 20 September 2016, among other things, that:

"Technically, the extra amount of €440 paid so far has cleared the October 2014 payment and half of the November 2014 payment. The arrears now relate to half of November 2014, December 2014, June & August 2016. The breakdown of payment I sent to you yesterday was to show what amounts were received and when.

Your credit profile is currently showing as 2 payments in arrears even though the agreement is 3.5 payments in arrears. We appear to give a months' grace on arrears & do not record half payments. I have checked the profile again today & all markings for each month are correct and reflect the true arrears balance at the time of notification to the Irish Credit Bureau."

I also note that the Provider's representative, in her email to the Complainant dated 21 September 2016, stated, among other things, the following:

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“The ICB recordings are based on the arrears amount on the agreement at the beginning of each month. We are not obliged to bundle the extra amounts of €40 paid each month into 1 payment. The extra amount paid reduces the arrears and it is the arrears amount which is recorded with the Irish Credit Bureau in terms of missed payments.

For example, if a customer missed the first 2 payments on a 24 month agreement but paid all remaining payments on time for the remaining 24 months and cleared the arrears in the final month, their profile would show as follows C111111111111111111111110, that is 2 payments in arrears for the term of the agreement.

*C = Completed
1 – 2 payments in arrears
0 – account up to date”*

The Provider, in its email of 11 October 2016 to the Complainant, states, among other things, the following:

“As per page 3 of your Agreement signed by yourself on the 1st April 2014 we will report missed payments which are outstanding on you account and these will reflect on your credit profile which is submitted to the Irish Credit Bureau at the end of every month. They reflect a snapshot of your account at that position in time and cannot be retrospectively amended when outstanding amounts are subsequently brought up to date.”

The Complainant also submits that she received a letter from the Provider dated 20 October 2016 to her home address, requesting that she contact it to pay the arrears of €1,046.15 in full. The Complainant submits that she found this to be very distressing and inappropriate as she was dealing with the Provider’s representative that issued the letter at the time, who was aware that she was on a payment plan, that is, to pay an extra €40 per month until the end of her agreement to bring her account up to date. The Complainant submits that she contacted the Provider’s representative the following day *“outlining my unhappiness”*.

I note that the Complainant’s email to the Provider dated 24 October 2017 states, among other things, the following:

“as per your letter of correspondence dated 20.10.16, advising of my arrears to date and requesting I contact the office and if my arrears amount has been paid at time of letter, please disregard the notice. This demand for full arrears amount is unacceptable at this time, especially as I have undertaken a payment plan since 21.08.15. I do not wish to receive such correspondence to my home address in the near future, as it is very stressful and unnecessary as I have communicated to you by email that I will continue to pay 40e extra per month to clear the arrears on my account”.

The Provider submits that the Complainant advised in January 2015 that she would, from that point on, be in a position to meet her monthly repayments of €305.23 and would pay extra amounts to compensate the arrears. The Provider submits that in August 2015 it advised that it is its normal procedure to have any arrears cleared within 3 months. The Provider states that *“At this point and with arrears totalling €1220.92, the Complainant committed to paying an extra €40 per month on top of her monthly rental of €305.23, that is, €345.23 over 23 months in order to clear her arrears in a timeframe that was financially viable to her. The Provider states that “23 months is considerably longer than the 3 months which we normally allow but we felt keen to reach a viable long-term solution with the Complainant”.* The Provider submits that the Complainant missed a payment in November 2015 which once again put the payment plan and the agreement in jeopardy.

The Provider states that *“the payment plan was broken in December 2015 as we did not receive the extra payment for November 2015. If these amounts had been paid, as agreed, the arrears balance would have been reduced to €755.69 by the end of December 2015. The customer paid two amounts of €345.23 in March 2016 which covered the November 2015 & February 2016 payments. We did not receive any payment in July 2016 (for the June 2016 payments). We did not receive a payment in September 2016 re (the August 2016 payment)”.* The Provider submits that as the payment plan was broken on a number of occasions and no arrangement could be agreed upon to rectify this issue, it was obliged to issue a letter as part of its Collections procedure. The Provider submits that the purpose of the letter was to advise the Complainant that the arrears amount of €1,046.15 remained outstanding and to request that contact be made by the customer to resolve the issue in a timely manner.

I note that the Provider emailed the Complainant on 30 September 2016 stating, among other things, the following:

“The last recorded date we received a payment from yourself [was] the 4th August 2016 which is just under two months ago. If you have made a payment since this date please forward me on the details.

I have requested our customer services department to send you out a statement to your home address which outlines all receipts and instalments to date.

On the 21st August 2015 [the Provider] agreed to accept an extra amount of €40 per month alongside your normal monthly payment to clear the arrears on the Agreement over a period of 23 months. At this point (21st August 2015) the arrears on your Agreement amounted to €915.69. Today (30th September 2016) the arrears stand at €1,391.38 which represents a deterioration and no progress in clearing amounts outstanding in over a year. I refer to Agreement documents and would like to make you aware that a Default Notice in accordance with section 54(2) of the Consumer Credit Act 1995 may have to be considered at some stage in the near future if regular payments are not made and a payment plan is not kept to”.

I note that the Provider’s letter to the Complainant dated 20 October 2017 states, among other things, the following:

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"We have recently conducted a review of your Agreement and have noted that an amount of €1,046.15 remains outstanding.

Please contact this office as soon as possible in order to resolve this issue in a timely manner.

If the arrears amount has been paid since date of this letter please disregard this notice.

We may be contacted on..."

The Complainant, in her submission to this Office dated 24 November 2017, states, among other things, the following:

"I dispute the payment history submitted by the Provider re my account. My supporting documentation enclosed confirms that payments were paid and received by the Provider on the following dates:

Nov 15 = 06.11.15

June 16 = 10.06.16

July 16 = 03.08.16

No August Payment correct

Sept 16 = 05.10.16

Oct 16 = 28.10.16

Feb 16 = 03.02.17

The Chart from the Provider displays my arrears as €766.15 as of 30.04.17 yet this should not have included highlighted dates i.e. 30.06.16 nor 28.02.17 as above these months were paid accordingly. These discrepancies really concerned and unsettled me.

... an arrears amount of €1,391.38 was referred to i.e. Sept 16, which was inclusive of September's payment made on 05.10.16. This would obviously make the arrears appear worse on my Account history."

In response, the Provider in its submission dated 8 December 2017 states:

"The Company remains confident that all information including charts and statements supplied to [the] Financial Services Ombudsman's office and [the Complainant] are both accurate and reflect correctly the account transactions on the... Agreement to date.

The highlighted date 30th June 2016 is correct, as no payment was received in June 2016 for the June instalment. Funds received on the 10th June 2016 were allocated to May's 2016 instalment Payment was not yet due for June 2016.

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The highlighted dated 28th February 2017 is correct, as no payment was received in February 2017 for the February's instalment. Funds received on the 6th February 2017 were allocated to January's 2017 instalment. Payment was not yet due for February 2017.

The arrears stated at 30th April 2017 were €766.15."

The Provider, in its submission dated 8 December 2017, also states that:

"We also remain confident that the arrears are reflected correctly as at the 30th September [2016] they were stated at €1,391.38. The funds received on the 5th October were allocated to the agreement on the 6th October reducing the arrears to €1,046.15."

Having carefully examined both the Complainant's bank account printout showing payments made to the Provider from the period 13 May 2016 to 24 April 2017 and the Provider's Chart, I can see no error on the part of the Provider in respect of the payments. I note that the monthly repayment date for the hire purchase agreement was the 30th of each month. Beside the payment date of 13 May 2016 on the Complainant's bank statement, the Complainant has handwritten "MAY". I note, however, that the Provider would have received this payment prior to the May payment falling due, that is, prior to 30 May 2016. It would also appear from the Provider's Chart that the payment made from the Complainant's bank account on 24 April 2017 was applied to the Complainant's April payment date of 30 April 2017.

The Complainant's statement shows 11 payments made from 13 May 2016 to 24 April 2017, however, these were to cover 13 months of payments. Therefore, I accept from the evidence before me, that the Provider received no payments from the Complainant to cover the June 2016 and February 2017 repayments.

While I note that the Provider agreed to provide the Complainant with an alternative repayment arrangement to clear the arrears on her account, I accept the Provider's submission that the payment plan was broken by the Complainant when she subsequently missed a number of repayments and it was therefore entitled to issue its letter dated 20 October 2016 regarding the outstanding arrears.

Consequently, it is my Decision that this complaint is not upheld.

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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

16 January 2018

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) in accordance with the Data Protection Acts 1988 and 2003.