



<u>Decision Ref:</u>	2018-0022
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Personal Loan
<u>Conduct(s) complained of:</u>	Incorrect information sent to credit reference agency Arrears handling Complaint handling (Consumer Protection Code) Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint concerns the Complainant's record with the Irish Credit Bureau ("ICB").

The Complainant's Case

The Complainant submits that he entered into a settlement agreement with the Provider in August 2012 in respect of a loan he had taken out to conduct research. He states that he was assured by the Provider that the agreement would not affect his credit record. He states that he subsequently applied for mortgage approval with a number of financial institutions and while he initially obtained approval in principle his applications then were subsequently turned down and he was unable to proceed with the purchase of a number of different houses.

The Complainant states that the Provider informed him in June 2015 that "*there may be an issue with my ICB record and (the Provider) may have misfiled some information*". He states that in August 2015 the Provider agreed to "*remove the file on my credit agreement verbally*" but then the staff member concerned failed to perform the procedure. The Complainant states that the Provider delayed when furnishing him with a copy of his personal data and attempted to delete information on his account.

The Complainant submits that he entered into the agreement on the basis that *“this was a confidential agreement which would not impact my record or credit score in the future”*. He states that *“I would have continued with my payments and paid the full loan off if I knew my ICB record and credit history was going to be destroyed”*.

The complaint is that the Provider wrongfully managed the Complainant’s loan account. The Complainant is looking for his ICB record to reflect the agreement with the Provider, an apology, compensation for the loss of a family home *“average quantified loss figures... EURO 137,795.00. Plus 20% of total value of an average house at the sites listed”* as well as for the Provider to review its procedures.

The Provider’s Case

The Provider states that a customer’s payment profile history is reported over a 24 month repayment period to the ICB *“the most recent 24 months’ repayments”* and that *“information is held for 5 years after a credit agreement is closed”*. The Provider states that it did not offer the Complainant any assurances that his ICB record would not be impacted by the compromise settlement arrangement that was entered into in August 2012. It states that when *“settlement was received...on 16 August 2012... an amount of €33,291.85 had then to be written off by the Bank... The write off occurred on the 27 September 2012 and your account was closed on 3 October 2012. This is the reason your ICB record reflects a date of October 2012 as this is the month your account was closed”*. The Provider states that in 2014 it recognised that *“applying the ‘Z’ profile indicator on accounts did not give full information on the Complainant’s repayment history to other ICB members”* and *“in February 2015 an amendment was applied to the Complainant’s ICB record to report a true reflection of the full repayment history of the account”*. The Provider states that from December 2011 until February 2015 *“it did not report the Complainant’s repayment performance and arrears in the usual manner... we should have continued to report the arrears and repayments made on the account”*. It states that *“whilst the Complainant’s account was more than 9 payments in arrears from December 2011 once the full debt was called in the maximum number of missed repayments reported to the ICB is 9. A ‘9’ represents 9 or more payments in arrears”*.

The Provider states that both *“L”* and *“Z”* indicators can be considered as a negative profile to any members of the ICB as they indicate a *“loan has not performed in line with the terms of the credit agreement”*. The Provider states that under the rules of ICB reporting that an *“L”* profile indicator must be applied to the ICB record when a settlement is made. It states that the correspondence from its debt collection agent *“related to the details of the compromise settlement i.e. the amount of debt write-off the Complainant received. There is no reference in this letter to the Complainant’s ICB record”*. It states that in October 2012 following closure of the account it ought to have updated the Complainant’s ICB record with *“L-Settled for Less”*. It states that this was not done until February 2015.

The Provider states that the Complainant had a poor ICB record prior to the August 2012 settlement agreement and that the missed payments would have been visible on his ICB records even if he had paid the total balance outstanding in August 2012. The Provider states that from the 4 October 2017 the details from *“this compromise*

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settlement arrangement and any arrears will no longer be noted on the Complainant's ICB record", as information is held for 5 years after a credit agreement is closed.

The Provider acknowledges that its communication of the compromise settlement arrangement being recorded as "*Settled*" on the ICB record could be "*open to misinterpretation*" by the Complainant and the "*impact of this compromise settlement agreement on (the Complainant's) ICB record may not have been fully understood*". It states that "*in recognition of this and the ICB reporting issues that followed*" it has offered a payment of €5,000.00 to the Complainant "*as a gesture of goodwill*".

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 26 February 2018, 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.

A submission dated 10 March 2018 from the Complainant was received by the Financial Services Ombudsman after the issue of a Preliminary Finding to the parties. This submission was exchanged with the Provider and an opportunity was made available to it for any additional observations arising from the said additional submission. The content of the Complainant's submission dated 10 March 2018 however has not persuaded me to alter my previous preliminary determination and, consequently, the final determination of this office is set out below.

- The Complainant borrowed from the Provider on a number of occasions between 2001 and 2010. His credit agreement which issued on the 12 March 2007 included the following:-

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" ...

- | | |
|------------------------------|----------------------------|
| 1. Amount of credit advanced | EUR55,000.000 |
| 2. Period of agreement | Until 15 February 2009 ... |

...

Your credit facility is repayable on 15 February 2009 by a single payment of EUR55,304.02 including interest accrued Subject to consecutive monthly payments of EUR304.02 commencing on 15 April 2007 towards interest payments ...

...

Data Protection Notice

... Where you borrow or enter into a financial obligation may give details of your agreement(s)/account(s) and how you conduct your agreement(s)/account(s) to licensed credit reference agencies on a regular basis..." [my emphasis]

- A further credit agreement issued on the 30 July 2010 as follows:-

" ...

- | | |
|------------------------------|--------------|
| 1. Amount of credit advanced | EUR45,341.00 |
|------------------------------|--------------|

...

Repayment ...

WARNING If you miss a repayment your account will go into arrears and you will be in breach of this agreement... This may affect your credit rating...

Special conditions...

... THIS LOAN IS THE LAST RESTRUCTUREIF CAPITAL AND INTEREST CAN NOT COMMENCE BY FEBRUARY 2011 THEN THE LOAN WILL BE PASSED TO OUR CREDIT RISK SECTION FOR RECOVERY...

...

Data Protection Notice

...

We use credit reference agencies to check your credit history...we give them information about the products and services you hold with us and we keep them updated about how well you repay credit..." [my emphasis]

- On the 12 April 2011 the Provider wrote to the Complainant as follows:-

"... this loan was originally taken out in 2003. It has been topped up and extended a number of times ... has now been extended to the maximum term period for personal loans...your comment about your loan being passed to the insolvency unit... will be progressed in due course if the loan is not regularised ... Your credit rating has not yet therefore been affected..."

- On the 26 June 2012 the Provider appointed a debt collection agent to collect the balance due on the Complainant's loan account in the sum of €45,818.83. The agent's log includes the following on the 13 July 2012:-

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*“ ... I informed the F&F 10K has been approved. Client seemed shocked but thanked me. .. **CI asked situation with ICB – I advised it would ... appear on there as settled.** Client seemed happy enough with that...”*. [my emphasis]

- On the 7 August 2012 the debt collection agent wrote to the Complainant as follows:-

“We acknowledge your offer of €10,000 F & F Settlement in respect of the above account....we are willing to accept this offer under the following terms:-

1. *That payment is received no later than 07-09-12.*
2. *Confidentiality on the part of all parties is to this compromise arrangement is a condition of settlement. Please do **not divulge details** of the compromise settlement to any outside parties...”*. [my emphasis]

- On the 9 August 2012 the debt collection agent wrote as follows to the Complainant:-

“... Balance: €0.00

*... Please note that the above account is now **Cleared in Full and Final Settlement...**”*.

[my emphasis]

- On the 16 August 2012 the Provider received the settlement monies from its debt collection agent.

- On the 19 September 2012 the Complainant emailed the debt collection agent as follows:-

*“...today I received an accounts summary from (the Provider). This summary showed missed payments for this month, interest accruing on the outstanding balance.. and **I assume this has been filed against my credit record as (the Provider) did with previous payments...**”*. [my emphasis]

- The Provider’s internal log for the 19 September 2012 includes the following:-

*“I contacted the Customer on his mobile. I explained that under the new consumer protection Code all... customers must be issued with an annual statement. I advised that... unfortunately the account was not due to be closed until the end of the month and therefore the statement was issued. I assured him that we were not pursuing his (sic) for remaining balance. He queried whether his credit rating has been affected by the interest that has accrued since the settlement date but **I informed that his ICB record has been updated to ‘L’ for settled**”*. [my emphasis]

- The Provider wrote to the Complainant on the 19 September 2012 as follows:-

*“...under the Consumer Protection Code all consumers must receive a statement on their loan account at least once a year. (The Provider) was aware that you had settled your account on the 16 August 2012 and the account was due to be closed at the end of September however a statement issued during this time... **I can confirm that you have settled your liability with (the Provider) and your ICB record has updated been (sic) to reflect same**”*. [my emphasis]

- On the 3 October 2012 the Provider closed the Complainant’s account.

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- On the 24 June 2013 the Provider and the Complainant spoke on the telephone. He informed the Provider that he had agreed in August 2012 to settle his debt with the Provider on the basis that his credit record "*remain as was on that date*". The Complainant stated that he had recently discovered that the Provider had incorrectly noted 9 mis-payments on his ICB record after he had paid them the agreed settlement sum. The Provider confirmed that it would update his record and that the "*mis-payments*" that it filed with the ICB after the 16 August 2012 would be removed.

- On the 25 June 2013 the Provider wrote to the Complainant stating that "*I can confirm that you settled your liability with (the Provider) on the 16 August 2012 your ICB record ... updated to reflect that date...*".

- On the 26 June 2013 the Provider's internal log stated:-

"Spoke to DTR yesterday. He advised that his ICB was not updated on the date that he lodged the settlement funds to his account so it is showing up that there were 9 missed payments after the settlement funds had been lodged. I advised DTR that I can amend the date on the 16/08/12 which is the date he lodged the settlement funds...satisfied with this..."

- On the 16 June 2015 the Provider wrote to the Complainant as follows:-

"We are writing to tell you that we made a mistake in reporting the repayment record on your above account to the Irish Credit Bureau (ICB).

Due to our error we stopped reporting your repayment record early on the above account which may mean that repayments made were not reflected on your record. We ... confirm that we have rectified it fully by correcting your repayment record with the ICB.

We know a search for your credit history with ICB was carried out during the last five years.... A lender may have made a decision about your ability to repay based on incorrect information. If you think this may have affected their decision we would encourage you to contact them to see if this was the case...". [my emphasis]

- I have been furnished with an undated email to the Complainant from a separate financial services provider which states that "*your application was with our credit team and they have responded today. Unfortunately they have said that we are not in the position to progress this application based on the issues around the ICB*".

- On the 24 August 2015 the Complainant emailed the Provider stating that "*I've had another credit check conducted on the 20 August... by another financial institution and they have confirmed that my credit file is now showing 9 MISSED PAYMENTS??PLUS a SHORT SETTLEMENT...*".

- On the same date the 24 August 2015 the Provider wrote to the Complainant as follows:-

*"Thank you for your recent application for a Mortgage Loan... we are not in a position to approve your application at this time due to:
Inadequate regular savings record*

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Credit Bureau History

As a non resident applicant, 60% is the maximum finance...".

- On the 2 September 2015 the Provider's Mr. M emailed the Complainant as follows:-

"Further to our conversation last week I have investigated the issue. I have spoken directly with members of staff who would have dealt with your case. There is no record or recollection that they entered into any agreement with you to amend your ... related ICB reports...".

- On the 4 September 2015 the Provider's Mr M wrote to the Complainant as follows:-

"...In relation to our telephone conversation on Friday the 28th August where you advised that you settled your account in August 2012 but (the Provider) continued to report your details to the ICB until October 2012. I confirm that a €10,000 settlement was received ... and lodged to your account on 16 August 2012. An amount of €33291.85 had then to be written off by the Bank. This process can take a number of weeks. The write off occurred on 27 September 2012 and your account was closed on 3 October 2012...

I now wish to deal with points raised in your email to me dated 2 September 2015... during that conversation in respect to your telling me that you had entered into a full and final settlement with the bank in 2012 which included amending your ICB record, I undertook to contact the case manager involved at the time and find out what his understanding of the agreement with you was. I did not enter into a new agreement with you as I would not have been in a position to do so in the circumstances...".

- I have been furnished with a copy of a letter from a separate financial provider to the Complainant dated 8 January 2016 which states

"... while considering your mortgage application a credit reference search was carried out on which a query has appeared. This has prevented us from approving your mortgage application at this time...".

- The Provider has furnished an "Extract from ICB Members' Technical Manual July 2009" which includes the following:-

"... Rules for Alphabetic Profile Indicators

The table below details what profile indicators... can succeed payment profile indicator codes. Failure to adhere to this table will result in an error code ...

<i>Code</i>	<i>Code Description</i>	<i>...</i>
<i>...</i>		
<i>L</i>	<i>Account settled for less than full amount Account was settled for less than the full loan amount incurring a loss of at least 4% of opening balance for the lender...</i>	
<i>...</i>		
<i>Z</i>	<i>No further data updates available Account is being pursued by the member and is no longer controlled by the member's accounting system. Account frozen".</i>	

- The Complainant submits that his solicitor informed him that his ICB record was “completely clear” in September 2012.
- The Provider has submitted details of the Complainant’s ICB record as it was in September 2012 as follows:-

“

2011	2011	2011	2011	2011	2011	2011	2011	2011	2011	2011
Dec	Nov	Oct	Sep	Aug	Jul	Jun	May	Apr	Mar	Feb
Z	4	4	3	3	2	1	1	0	0	0”

- The Provider updated the Complainant’s ICB record in February 2015 as follows:

“

Year	2012	2012	2012	2012	2012	2012	2012	2012	2012	2012	2011
Month	Oct	Sep	Aug	Jul	Jun	May	Apr	Mar	Feb	Jan	Dec
Profile	L	0	9	9	9	9	9	9	9	9	9

Year	2011	2011	2011	2011	2011	2011	2011	2011	2011	2011	2011
Month	Nov	Oct	Sep	Aug	Jul	Jun	May	Apr	Mar	Feb	Jan
Profile	4	4	3	2	2	1	1	0	0	0	0”

The Complainant was informed on the 23 November 2015 that this office “would have no function in relation to Data related complaints and the complaint that “a member of the Bank’s staff attempted to have (the Provider’s debt collection agent) delete the account and all details relating to the account”. I note that the Complainant confirmed that he has made a complaint to the Data Protection Commissioner in respect of the data protection aspects of his complaint. Accordingly, these aspects of his complaint will not be adjudicated on by this office and are not dealt with in this Legally Binding Decision.

The Complainant has stated that the essence of this dispute is whether the parties entered into a legally binding agreement “which was confidential. This should be the start and the end of this dispute, everything else is secondary”. The Provider states that it is obliged to give a true reflection of the repayment history of the account to the ICB and that it is satisfied that the Complainant’s ICB record outlines an accurate reflection of the performance of the account.

I note there is a reference to confidentiality in the debt collection agent’s letter to the Complainant of the 7 August 2012. The Provider states that it did not divulge any details of the compromise settlement to any other parties. The Complainant submits that the agreement was confidential and ought not to have been reported to the ICB. I note that the Complainant did not make any loan repayments between April and July 2012 and in August 2012 paid the sum of €10,000.00 to settle his outstanding loan of €43,291.85. There is no compelling evidence that he was told at this time that this settlement would leave him with

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an unblemished ICB record. The debt collection agent's contemporaneous log states that the Complainant was informed on the telephone that the settlement would be recorded on the ICB as "*settled*". The agent's letter to the Complainant at the time of the settlement did not refer to the ICB and merely informed him that his account had been cleared in "*full and final settlement*"; the use of this term does not mean that a record will not be filed with the ICB. Later on, on the 19 September 2012, the Complainant was informed by the Provider that he had settled his liability with the Provider and that his ICB record had been updated as "*settled*". The correspondence did not confirm that his credit rating was undamaged. I also note that the Complainant was put on notice when he initially took out the loan that the Provider would give information regarding the loan to credit reference agencies. I am of the view that if the Provider is filing reports with the ICB that it is obliged to ensure that the reports show accurate details of the repayments made on a loan account. I accept that it did not disclose the specific details of the settlement to the ICB. While the Complainant may not have appreciated the meaning of the terms "*settled*" or "*full and final settlement*", I accept that he was on notice that the settlement would be reported to the ICB and referred to as "*settled*". On balance, from the evidence before me, I accept that at no point was the Complainant informed that the settlement agreement would not be recorded in his ICB record. Accordingly this aspect of the complaint is not upheld.

The Complainant has queried on a number of occasions why he would have agreed to pay the Provider €10,000.00 "*and have my credit record destroyed*". The evidence provided indicates that the Complainant was suffering from financial difficulties and was unable to pay the money he owed the Provider. The Provider came to an agreement with the Complainant and agreed to waive the sum of €33,000 that it had lent to him. Accordingly, the Provider did not pursue him for the remainder of the debt.

The Complainant submits that during a phone conversation with the Provider's Mr. M in August 2015 that the Provider agreed to delete his unfavourable ICB record. Mr. M has denied that he offered to delete or remove the Complainant's ICB record. He submits in a statement dated 1 June 2017 that he informed that Complainant during a phone conversation in August 2015 that he would "*would discuss the option of amending the ICB with ... colleagues if evidence of an agreement was found*". The Complainant has furnished a statement dated 10 July 2017 from a person who was in the Complainant's presence when he spoke to Mr. M. She states that she recalls the Complainant stating on the phone that "*just so I am clear on Monday the ICB record will either be repaired or delated is that correct?*" It is unfortunate that the phone call in question was not recorded but I accept that there is no regulatory requirement for the Provider to record calls. It is clear that the Complainant's ICB record was discussed during the conversation, however, in the absence of clear evidence that the Provider clearly misinformed the Complainant I am not in a position to make a Decision that it agreed to expunge his ICB record during that call. Consequently, I am not in a position to uphold this aspect of the complaint.

I am of the view, however, that there were shortcomings in the letter from the debt collection agency to the Complainant of the 7 August 2012. The letter did not make any reference to the ICB. While, as stated above I accept that the Complainant was on notice that the settlement agreement would be notified to the ICB, I am of the view that it would have been good practice for the settlement agreement letter to have clearly set out the

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details as to how the agreement would be described in the Complainant's ICB record as well as its effect on his ability to borrow in the future. I also note that the Complainant's account was not closed until October 2012 which meant that his ICB record remained in place until October 2017. I note that the Complainant had paid the agreed settlement by the 9 August 2012 and while I accept that the Provider needed time to process the payment, I am of the view that the account should have been closed by the end of August; this would have meant that his loan record would have been removed from the ICB at an earlier date. I also note that the Provider incorrectly recorded missed payments on the Complainant's ICB account after he had paid the agreed settlement amount. While the Provider did update the account in June 2013 after the Complainant informed it of the issue, this error was disappointing.

I also note that when the Provider closed the Complainant's account in October 2012 it failed to update his ICB record to include an "L" profile indicator as opposed to a "Z" profile indicator. The Complainant was incorrectly informed by the Provider during a phone conversation in October 2012 that his ICB profile had been updated to "L". I note that both of these profiles indicate that a loan has not performed as originally agreed and I am of the view that neither profile would have assisted the Complainant when he was applying for mortgages, but I accept that the "L" profile provides a more accurate account of the performance of the account. I note that in 2015 the Provider admitted it erred in this respect and wrote to the Complainant to inform him of its mistake.

While I accept that there were shortcomings in the Provider's conduct, I note that it has offered the Complainant the sum of €5,000.00 *"as a gesture of goodwill"* in light of its communication of the settlement arrangement and the *"ICB reporting issues that followed"*. On balance, I am satisfied that its offer is reasonable in all the circumstances and I would suggest that the Complainant gives consideration to that offer and contact the Provider if he wishes to accept it.

As stated above, I am satisfied that there were shortcomings in the Provider's conduct. On the basis, however, that the redress offered by the Provider remains open to the Complainant for acceptance, my Legally Binding Decision is 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**

23 March 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.