



<u>Decision Ref:</u>	2018-0027
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Personal Loan
<u>Conduct(s) complained of:</u>	Maladministration Arrears handling Incorrect information sent to credit reference agency
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant entered into a Loan Agreement with the Bank, in **July 2015**, in the sum of €2,000.00, repayable by way of 51 consecutive payments of €41.22, over the period 03rd July 2015 to 17th June 2016. The monies were drawn down from loan account xxxxx011. The Complainant submits that she began making repayments on **03rd July 2015**. The Complainant's complaint is that the Bank wrongfully set up a new bank account in her name, without her consent. She submits that the Bank was attempting to take repayments from the "wrong" account, which the Complainant says caused her loan account to go into arrears and culminated in her loan being transferred to a debt collection agency.

The Complainant's Case

The Complainant submits that she took out a student loan with the Bank, in **July 2015**, in the sum of €2,000.00. The Complainant says that the total amount due for repayment on this loan was €2,101.00, inclusive of interest, with repayments to be made by way of weekly direct debit payments, of €41.22. The Complainant submits that she began to make repayments to the loan account on **03rd July 2015**, from her Student Plus Account (ending 092).

The Complainant submits that she received an arrears letter from the Bank, on **22nd July 2015**, and has explained that one weekly repayment had been missed as a result of insufficient funds in her account, due to the fact that she was paid by way of cheque from

her employer, rather than being paid directly into her account. The Complainant submits that she subsequently lodged money into her account and cleared the arrears.

The Complainant submits that she received a letter from the Bank on the **14th September 2015**, which stated that her account (ending 092) was due to change from a Student Account to a Graduate Account, as she had been a student for the past four years. The Complainant submits that upon receipt of this letter, she rang the Bank to advise that she would be in college for a further four years and that she would like her account to remain as a student account. She says it was confirmed to her that it would remain as a student account.

The Complainant submits that between **September 2015** and **January 2016**, she did not receive any contact from the Bank by phone, email or letter. She says that on **19th January 2016**, she received a letter advising that the balance owed on the loan was €925.59, and the letter stated that her account had been in arrears since the **22nd July 2015**.

The Complainant submits that in January 2016 she changed jobs and was paid monthly instead of weekly. She says that she called to her Bank Branch, in person, on **26th January 2016**, to notify it of the situation and to arrange to change the loan repayments from €41.22 a week to approximately €80.00 per month. This, the Complainant says, was agreed with the Bank whilst she was there and she submits that when she was in the Branch she completed a "*pink coloured booklet form*", confirming her details and the change of amount of repayments. The Complainant says that the Bank Agent also photocopied her student ID at this time.

The Complainant submits that, unbeknownst to her, her loan repayments were coming out of a non-existent, "*Graduate Account*", which the Bank had opened under her name, without having provided any notification to her. She submits that, as a result, the direct debit continued to "bounce" as her salary was not being paid into that account. The Complainant submits that her Student Account remained open, which, as far as she was aware, was the only account which she held with the Bank.

The Complainant submits that on the **18th July 2016** she received a letter stating that her account was in arrears and that the number of missed repayments were 22, since the **22nd of July 2015**. The Complainant submits that she was very upset and confused when she received this statement and immediately contacted the bank and arranged an appointment with the Manager. The Complainant submits that when she arrived at the Bank, on **25th July 2016**, with her Aunt also in attendance, the Manager was not available and so she met and spoke with another Bank Official.

The Complainant submits that, at this meeting, she asked the Bank Official a) why she had 22 missed payments on her account b) why her account read "Graduate Account, and c) she explained to the Bank Official that she was very concerned over the interest which was accumulating on these missed repayments. The Complainant submits that she was informed that the Bank had continued to go to her account for €41.22 per week instead of €80 per month, and that "interest" had been incurred each time the Direct Debit was missed.

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The Complainant submits that she asked the Bank Official that, as this was an error on the part of the Bank, whether the Bank would be prepared to forego the interest which had accrued as a result. The Complainant says that this was flatly refused by the Bank Official.

The Complainant submits that, at this meeting, she was told by the Bank Official that the Loan would now need to be repaid in full, that the excess interest would not be dropped and that she would need to set up a Direct Debit again, "to the right account".

The Complainant submits that on **12th August 2016** she went to her local Bank Branch and set up a new Standing Order of €41.22, fortnightly, with a starting date of the **26th August 2016**. The Complainant submits that "this came out of the right account, ie: my student account, on this date..."

The Complainant says that once a week, since her meeting with the Bank Official, on **25th July 2016** she has received statements indicating the amount of interest that has been added onto her loan, but that between **January 2016** and **July 2016** she did not receive any letters in relation to her Student Loan.

The Complainant submits that on the **23rd August 2016**, 11 days after she had set up a new standing order, €41.22 was taken from her account by the Bank. She says that the next contact she had from the Bank was on the **26th August 2016** when she received a letter stating that they were placing the matter in the hands of a debt collection agency. The Complainant says that she was extremely shocked and upset by this.

The Complainant says that she had applied for a [REDACTED] credit card on the **02nd September 2016** and received a letter, dated the **05th September** in response, declining her application. The letter stated as follows:

"On this occasion we can't approve your application. This is because you have failed our internal application score which is based on information that you have provided to us and data supplied to us following a consultation of the Irish Credit Bureau Limited's database of credit histories."

The Complainant submits that it appears to her from that letter that the Bank had registered her loan with the ICB, thus affecting her credit rating for the next five years.

The Complainant submits that she has found her experience with the Bank very upsetting and extremely frustrating and that it has caused her undue stress during her college studies.

The Provider's Case

The Bank notes that in July 2015 the Complainant took out a personal loan for €2,000.00 and that the repayment schedule was for €41.22 to be paid weekly, by Direct Debit, from the Complainant's Student Plus Account. It says that a payment was missed on **22nd July 2015** and an arrears letter issued as a result.

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Regarding the conversion of the Complainant's account from a "*Student Plus Account*" to a "*Graduate Account*", the Bank submits that, in **September 2015**, correspondence issued to the Complainant from the Bank, to advise that her account would be automatically converted to a Graduate Account, from a Student Plus Account. It says that, subsequently, the Complainant contacted the Bank to advise that she was still in full time education and that she wanted her account to remain as a *Student Plus Account*. The Bank acknowledges that, due to an error, this request was not actioned by the Bank at the time, and that the Complainant's account was converted automatically to a Graduate Account, on **20th November 2015**, in error.

The Bank submits that on **26th January 2016**, the Complainant visited the Branch to apply for a restructure of her student loan. The Bank notes that the Complainant's position is that it was agreed during this meeting at the Branch that her repayments would be changed from **€41.22 per week** to **€80.00 per month** and that this would be effected without her having to sign any documentation. It disagrees, however, that this would have occurred and submits that the relevant documentation would have had to be completed by the Complainant.

The Bank submits that on **04th February 2016**, in order to resolve the above issue of the conversion of her *Student Plus Account*, to a *Graduate Account*, the Branch opened a new Student Plus Account for the Complainant. It submits that it did this, as it could not convert the Account back to a Student Plus Account.

The Bank says that following the meeting which took place with the Complainant, on the **26th January 2016**, it issued the required loan documentation, in the form of a "loan pack" to the Complainant, to complete, on **04th February 2016**. It says that this was necessary in order to implement the new repayment structure which was discussed in the meeting. The Bank submits that these forms were not, however, returned by the Complainant to the Bank.

Regarding the Arrears situation, the Bank submits that the Complainant's Student Plus/Graduate Account was already in arrears prior to the setup of the new Student Plus Account, in February 2016. It submits, therefore, that the Bank's position regarding the conversion of the Student Plus Account to a Graduate Account, in November 2015, which was confirmed to the Complainant in **September 2016**, is that this cannot be linked to the arrears on the account, as arrears were already present on the account from **July 2015**.

The Bank submits that as soon as arrears arose on the Complainant's loan account, the Bank issued correspondence to her, advising her of the balance outstanding and that action was required by her to bring the account up to date.

In relation to the Complainant's cancellation of the Direct Debit, the Bank submits that the Complainant cancelled her Direct Debit of her own accord, via the Bank's Mobile Application at 23.34 on the **28th January 2016**. The Bank says that it cannot account for this and contends that there was never any advice given to the Complainant to cancel her Direct Debit.

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The Bank submits that the Complainant was sent a Direct Debit Mandate form, on **04th February 2016**, in relation to the proposed restructure of her loan but that this was never completed or returned by the Complainant.

The Bank says that the correspondence that issued to the Complainant regarding arrears and referral to a Debt Collection Agency, was issued in line with Consumer Protection Code 2012 and the Bank's Terms and Conditions for a Personal Loan. The Bank submits that the Complainant's loan account was accruing arrears, which were not being addressed.

It says that the arrears situation worsened from early 2016, on the back of the Complainant cancelling the Direct Debit and not returning the loan documentation, necessary for a restructure.

The Bank submits that the Complainant has a contractual obligation to meet her repayments and this has not been adhered to since inception of the loan.

The Bank says that the letters which were sent to the Complainant make it clear that the account may be reported to the Irish Credit Bureau and it contends that the Complainant was aware of this potential occurrence.

The Bank says that it did not, however, report the loan to the ICB and says that any adverse report in this regard must have come from a different entity. It submits that the Bank cannot therefore be held accountable for the fact the Complainant could not avail of a ██████ Credit Card due to having a bad ICB record, as it did not report the loan.

However, it asserts that while the Bank has not reported this account to the ICB, if it had, it would be willing to rectify this as a gesture of goodwill. It has offered, as a gesture of goodwill, a payment in the sum of €2,500 to the Complainant.

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.

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A Preliminary Decision was issued to the parties on 26th March 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.

Following the consideration of correspondence received from each of the parties dated 16th April 2018, the final determination of this office is set out below.

Background

I would note at the outset, that there are three bank accounts relevant to this dispute, namely, the Complainant's:

- Student Plus/Graduate Account (xxxxx092), incepted originally as a "Junior Saver Account" in 2002;
- Loan Account (xxxxx011), incepted in July 2015;
- "New" Student Plus Account (xxxxx032), incepted in February 2016.

The Complainant's "Student Plus Account", ending 092, was converted into a "Graduate Account", (retaining the same account number). Following this, a "new" Student Plus Account was subsequently opened by the Bank on the Complainant's behalf, but without her knowledge.

Conversion of the Complainant's Account

In **September 2016** correspondence issued from the Bank, to the Complainant, advising that her account, which at that time was a "Student Plus" account, would be converted automatically to a Graduate Account, on 20th November 2015. The Complainant subsequently contacted the Bank and requested that the account remain a Student Plus Account, as she was still in full time education.

The Bank acknowledges that the Complainant did inform the Bank that she was still in full time education, and accepts that it did not action this to prevent the account from being automatically converted to a graduate account, which occurred on **20th November 2015**.

The Bank has submitted that once it was converted to a Graduate Account it was not possible to reverse the change in status of the Complainant's account from "Graduate" back to "Student", so, in order to resolve this issue, the Bank Branch decided to open a new "Student Plus" Account for the Complainant. It submits that it did this on the **04th February 2016**.

The Bank has submitted that *"the rationale in opening this account centred around two reasons:*

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- *To reflect, based on information provided by the Complainant, her student status.*
- *To be seamless and efficient in having the account already set up, to facilitate new loan repayment schedule (while at the same time leaving the graduate account open), to give the Complainant the option to decide which account she wanted to utilise for loan repayments.”*

This was entirely unrequested by the Complainant. The Complainant says that she was not made aware by the Bank that it had set up a new account in her name and, indeed, there is no evidence before me which suggests that the Complainant was so notified at the time that this was done.

This is quite extraordinary conduct by the Bank and, whatever the perceived benefit of the rationale outlined above, it was entirely inappropriate of it to have taken such action, without consulting with the Complainant first to agree to this course of action. It is also unclear how the Complainant could have selected an “option” regarding which account to use, given that she was never made aware at that time of the existence of this new account in her name.

The Complainant has submitted, within her complaint form to this Office, that unbeknownst to her, a Direct Debit was set up by the Bank to take loan repayments from this new account.

She submits that:

“when [the Bank] contacted me looking to change my account from a student to a graduate account I declined that offer as I was still a student in college and would be for the next few years. As far as I was aware, [the Bank] were continuing to go into my student account for repayments. I went into the Bank in person in January 2016 to reduce my loan repayments from weekly to monthly. I discovered at this time without my consent that [the Bank] had actually opened up the graduate account in my name and had set up a direct debit going into that account for my loan. I was continuing to put my salary from my part time job into my student account unaware of the existence of the graduate account. Unbeknown to me the direct debit was bouncing and interest was building up. [The Bank] did not make me aware of this.”

However, I believe that there may be a degree of misunderstanding on the Complainant’s part, in relation to this - the Bank did not open a Graduate Account on the Complainant’s behalf. Rather this “Graduate Account” was the new name for the converted status of what was previously her “Student Plus” Account, namely Account Number xxxxx092. The Bank did, however, open up a new Student Plus Account, in her name, without her consent, though it appears that no transactions ever occurred on this account.

From an examination of all the documentation furnished as part of the within complaint, there is no evidence that the Bank set up a Direct Debit arrangement for payments to be taken from this “new” account, in order to make repayments toward the Loan.

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Arrears did accrue on the Complainant's Loan Account (ending 011) however, and I will proceed to examine this issue and the factors which resulted in the Complainant's Account falling into arrears.

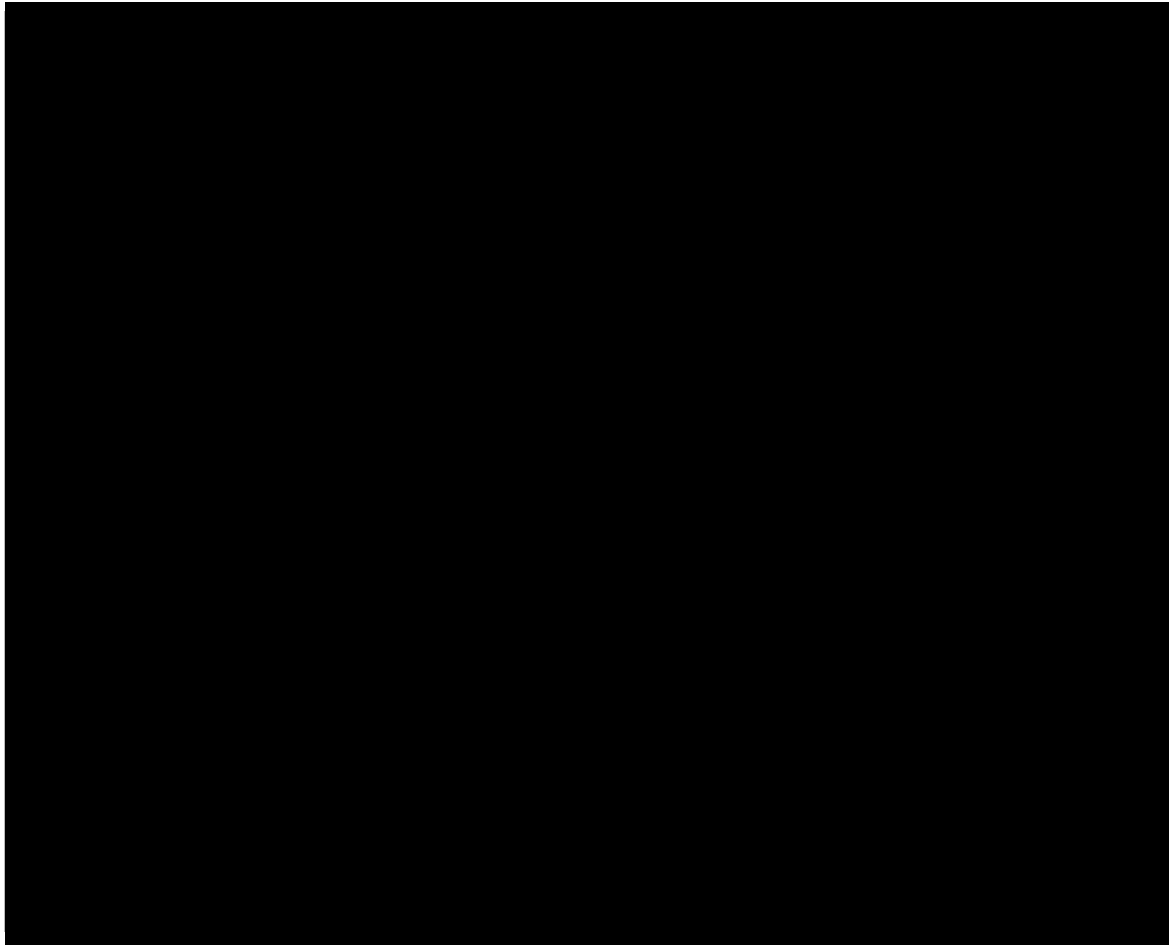
Arrears on Loan Account xxxxx011

The Complainant began making weekly repayments of €41.22 per week, by direct debit, commencing on the **03rd July 2015**, from her Student Plus Account (ending 092) to Loan Account xxxxx011.

One repayment was returned unpaid on the **22nd July 2015**. This resulted in the loan account going into arrears and an arrears letter was issued to the Complainant on the **23rd July 2015**, advising of the arrears.

From an examination of the "Ledger Memorandum", in respect of Loan Account, ending 011, furnished by the Provider, in conjunction with the Statement of Account, in respect of Account ending 092, for the relevant period, it can be seen that the Direct Debit payment, due to be paid into the Complainant's Loan Account, on the **17th July 2015** was returned unpaid due to there being insufficient funds in the Account 092 to meet the payment, on the **22nd July 2015**.

I have set out the Ledger, in respect of Loan Account, ending 011, for the relevant period, overleaf:



The Complainant submits that she subsequently lodged money into her account ending 092 and cleared the arrears.

From an examination of the Statement of Account, ending 092, for the relevant period, it can be seen that €223.34 was indeed lodged to the Complainant's account on the 20th July 2015, resulting in a balance on this date of €223.34. It can also be seen that the next Direct Debit payment was successfully made, when it fell due for payment, on the 24th July 2015. However, no second attempt was made by the Bank to take the missed payment, for 17th July, and neither did the Complainant make any repayment directly into the Loan Account. As a result the one repayment in arrears, remained in arrears.

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The following letter issued dated 23rd July 2015 which advised the Complainant that her account had fallen into arrears, as follows:

23 July 2015

NOTIFICATION ISSUED PURSUANT TO CONSUMER PROTECTION CODE

Account Name: [REDACTED]
Account Number: [REDACTED]
Balance: €1,917.56
Limit: €1,876.34

Our accounting system shows that your account is in arrears because the balance is in excess of the limit on the account. When this happens we are required to provide you with the information set out in this notice.

- | | |
|--|------------|
| 1. Account in Arrears Since: | 22/07/2015 |
| 2. Arrears (Excess of Balance over Limit): | 41.22 |
| 3. * Equivalent Number of Repayments: | 1 |
| 4. ** Surcharge Interest Accrued: | €0.00 |

[REDACTED] surcharge interest, at present 12% per annum (variable), on arrears, in addition to the interest rate applicable to the borrowing. You can avoid further surcharges by clearing any arrears and by making all future repayments when due.

If you have any queries in relation to this notification please contact your Branch.

- * Equivalent number of repayments based on current repayment amount
** Surcharge interest accrued since last interest posting

The Bank submits that the missed payment on the **22nd July 2015** continued to be the subject of arrears letters. However, the Complainant submits that she received no correspondence from the Bank between **September 2015** and **January 2016**.

The Complainant's Loan Account subsequently went into further arrears, in 2016, which arrears eventually culminated in the Bank transferring the Complainant's Loan to its Customer Recoveries Department and ultimately to a Debt Collection Agency.

In respect of the arrears situation which arose in 2016, the Complainant submits that the arrears occurred as a result of the Bank having opened a new Account in her name and having attempted to go to this "new" account for loan repayments.

The Bank submits that this is not the case. It attributes the arrears to the fact that the Complainant, following her request to restructure her loan, in January 2016, cancelled her original Direct Debit mandate which was servicing the loan, and then did not return the

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forms necessary to set up a new repayment arrangement. I will return to this issue and examine it in greater detail, below.

Loan restructure

Prior to the Complainant's Loan Account going into arrears, the Complainant had contacted the Bank with a view to changing her loan repayments, from a weekly payment of €41.22, to monthly repayments, of approximately €80.00.

The Complainant submits that she had made a call to the "Bank Centre", in order to change her repayments over the phone and that she was advised that a payment restructure could not be done over the phone. She submits that she was advised that a "brochure" would be issued to her address, which the Complainant should complete and send back to the branch, in order for the Bank to have confirmation of her request in writing. The Complainant submits that the form which she received in the post was an Application Form for a new Loan Account, which she was confused by, so she called to her branch personally to fill in and submit the form.

The Complainant has submitted that she did so, *i.e.*, she attended at her Bank Branch on the **26th January 2016** and filled in the form with the assistance of a Bank Official.

The Complainant submits that, at this time, the Official explained that the purpose of the form was so that the Bank could have confirmation of the agreement to change repayments from €41.22 per week to €80.00 per month. The Complainant submits that the Official also took a photocopy of her student ID card at this time. The Complainant submits that she was informed that these repayments would begin to be deducted from her account on the 01st March 2016. She submits that she was told on that date, by the Bank Agent, that no further steps were required to be taken by her.

By letter dated 09th May 2017 to this Office, the Complainant says that the:

"[Bank Official] had told me on the day of 26th January 2016 that my amendments would commence on the 01st March 2016 and never mentioned that an amended loan pack would be sent to me as I had filled out the pink brochure form on that day and copy of my [College] student card was also provided to [the Bank] on the 26th January 2016."

The Bank says that it is unable to locate the "*pink coloured form*" which the Complainant advises she filled out but says that it believes that this was a Student Plus Account Loan Application Form.

The Bank has furnished a blank copy of a Student Plus Loan Application Form, from the relevant period, for reference purposes, which I have set out, overleaf:

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This form has been redacted for anonymity reasons.

I note from an examination of this Form, that the section entitled, “*The Process*” states as follows:

When this application form is completed, forward it to your Branch or hand it in to any [Bank] branch and they will forward it on for you...

How long will it take?

The process can take between 2-5 days. We will contact you by phone or by letter with our decision.

If I get the loan what is the next step?

If the loan is sanctioned, an agreement will be drawn up by us detailing all the terms. This agreement, called a Credit Agreement, will have to be signed by the Borrower and the Guarantor (if applicable).

In relation to the meeting which occurred on **26th January 2016**, the Bank has furnished the following statement from the Bank Official, with whom the Complainant met:

“I have no recollection of the meeting, however, it would appear from my notes, that she requested an amendment to her repayment schedule on her loan.

She requested that her loan repayments be amended to approximately €80.00 per month starting on the 01st March 2016, which would be a lesser repayment schedule than she was currently on.

Typically in cases like this, I would explain that I would refer this request to a colleague, who would have to process a new application and issue new loan papers for the customer to complete.”

The Complainant says that, as far as she is concerned, the Official’s recollection of this meeting is incorrect and the Complainant’s recollection of that meeting is that she was informed that: *“the reduced loan repayments of 80 euro monthly will begin on the 01st March 2016.”*

Requests were made by this Office of the Bank to furnish a copy of the notes of this meeting or of any instructions which were given by the Complainant. The Bank furnished a printout of the Complainant’s Account List, in which, it says, the Bank Official made some notes in pen of the repayment figures which were discussed during the meeting.

A copy of these notes (partially redacted) appears overleaf:

Open for €900
Cost €58
Over 12
€79.90

the 2 - week
Change to Monthly
lesser repayments

Amend to approx €80 pm

1st Monthly
Starting 1/3/16

would be
processed
less than now

10/10

10/33

The Bank advises that there are three notes, as follows:

- Open for €900 cost €58 over 12 months €79.90
- €42.00 weekly- change to monthly lesser payment
- Amend to approx. €80 per month 1st month starting 01/03/2016

Unfortunately, these notes do not record, with any degree of clarity, what was advised to the Complainant at this meeting so the notes are of limited assistance. But I note the confirmation in hand writing of the amendment to “approx. €80 per month” and that the date for that repayment amount is confirmed as the date the Complainant recollects.

Further, I would note in this regard, that the Consumer Protection Code, 2012 provides as follows:

11.5 A **regulated entity** must maintain up-to-date **records** containing at least the following:

- e) all correspondence with the **consumer** and details of any other information provided to the **consumer** in relation to the product or service;
[emphasis added]
- f) all documents or applications completed or signed by the **consumer**;
- g) copies of all original documents submitted by the **consumer** in support of an application for the provision of a service or product; and
- h) all other relevant information and documentation concerning the **consumer**.

This Office also requested a copy of the completed Form, which the Complainant says that she submitted on this date. The Bank has submitted that it does not have a record of this, and has submitted, in this respect, that:

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“Typically when the Bank would receive documentation from a customer such as a Student Plus Loan Application Form, it would be processed and logged accordingly and the information would remain on the Bank’s systems. From a regulatory perspective, the Bank are obliged to comply with provision 3.3 of the Consumer Protection Code which requires ‘A regulated entity to ensure that all instructions from or on behalf of a consumer are processed properly and promptly.’ As we have no record on our systems of this form ever being processed, this would indicate that it was never received in the branch.”

This appears to me, to be a somewhat circular argument - it is not at all clear that the Bank to me is entitled to conclude that, because it is obliged to comply with the Code, it means that it did. Further, if, as the Bank asserts, it did not receive a copy of this completed form, it is not clear to me then, on what basis it proceeded to issue the loan documentation of the 04th February 2016, to the Complainant, which it contends that it did.

Section 11.1 of the Code provides, in this regard, that:

*A **regulated entity** must ensure that all instructions from or on behalf of a **consumer**, including the date of both the receipt and transmission of the instruction, are recorded.*

It appears to me that the Bank has failed in its obligations in this regard. Had adequate records been kept of what occurred on this day, it seems possible, indeed, likely, that the ensuing dispute which occurred with the Complainant may have been resolved at a far earlier stage.

I will turn now to examine the issue of the cancellation of the Complainant’s Direct Debit facility, which had been operating to make payment, from Account ending 092, in the amount of €41.22 per week, toward the Loan Account ending 011.

Cancellation of the Complainant’s Direct Debit

On the **28th January 2016** the Complainant cancelled the Direct Debit from account xxxxx092, which was servicing weekly repayments to Loan Account xxxxx011.

The Complainant submits that she was advised by the Bank Official, on the **26th January 2016**, to cancel her direct debit, via the Bank’s mobile app, in order for the Bank to set up a new direct debit of €80, and she says that:

“As my new repayments of 80euro would start to come out of my current account on the 01st March 2016 and in fear of them overlapping I was advised to cancel my original direct debit with [the Bank] as a direct debit can only be set up by the company and a customer cannot set up a direct debit themselves, they can only cancel a direct debit. It was August 2016 that I set up a standing order as it is different to a direct debit.”

The Bank has submitted that it *“did not advise the Complainant to cancel her Direct Debit from this Account.”*

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The Bank says that the cancellation of the Complainant's existing direct debit on 28th January 2016 was of her own accord, and that this cancellation, together with the non-completion of the new loan documentation, caused the arrears to build up as there was no active Direct Debit set up to collect repayments due on her loan account.

The Complainant submits that she was advised to cancel her direct debit, in order for the Bank to set up a new direct debit of €80. It is not clear to me what advice the Complainant was given as regards the cancellation of the Direct Debit, however, I am satisfied that in order for the Bank to set up a new Direct Debit, a Mandate would have to have been signed and returned by the Complainant, to this end.

New Credit Agreement

The Bank submits that, on **04th February 2016**, paperwork was sent to the Complainant in relation to the request to amend the loan repayments, which she was required to complete and return. The Bank has submitted that it is normal procedure, for a new repayment restructure to be approved on a loan, that new documents including a new Credit Agreement are issued, completed and returned to the Bank for assessment.

The Bank submits that it issued these forms to the Complainant on the **04th February 2016**, with a cover letter setting out a "Your to do List" at the bottom of the page but that these items were never returned by the Complainant and that, resultantly, the new repayment structure was never approved or put in place.

By letter dated 13th February 2018, this Office requested clarification from the Bank as to what it had intended the effect of this Credit Agreement, dated 04th February 2016, to be on existing Loan Account xxxxx011.

The Bank responded that it:

"intended to set up the new loan account to facilitate the Complainant's request to change her repayment schedule from weekly to monthly. The proposed new repayment schedule, by its nature, brought the term of the loan beyond the original loan period of agreement (originally to 17 June 2016 now to 1st Feb 2017). Please note that no new funds were ever drawdown so this was purely a restructure of the outstanding loan amount.

Accordingly the intended effect in facilitating the Complainant was to have the original loan restructured in the manner sought which would have entailed clearance and closure of the original loan account xxxxx011 to a new loan agreement as set out in the Credit Agreement sent to the Complainant on 04th February 2016."

The Complainant submits that the Bank never issued correspondence to her in relation to a new repayment structure/new loan documentation and that she did not receive any correspondence dated **04th February 2016**, as contended by the Bank.

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I have had regard to the copy Loan Pack furnished by the Bank to this Office and note that it was sent (by the Complainant's Branch), to the address at which she had received previous correspondence from the Bank.

Also, I have noted the Complainant's submission, to the effect that she was advised by the Bank that the Form which she filled in was sufficient to enable the new repayment regime to begin, from the 01st March 2016 and that the effect of this Form which she submitted was to confirm the change in the amount of repayments.

However, I am conscious of the fact that the Complainant has also previously submitted that upon receipt of this Form, she was confused by the fact that it was an "Application" for a Loan. I am satisfied that the content of the Form itself made it clear that it was subject to approval. Indeed, among the key features common to any kind of application, is that it is submitted for consideration and that it is subject to approval.

As no new Loan Agreement was ever put in place, the original Loan Agreement of June 2015, remained governing the relationship between the parties.

As *per* the terms and conditions of this Agreement, repayments were due on a weekly basis, in the following terms:

"You will have to pay the following: 51 consecutive weekly repayments of €41.22 starting on 3rd July 2015."

Over the course of a number of months, following the cancellation of the Direct Debit, on the 28th January 2016, no repayments however were made towards the balance outstanding on the Loan Account.

Payment History

From an examination of the Complainant's Account ending 092, it can be seen that payments were coming out on a weekly basis, in the amount of €41.22, from the **03rd July 2015**. The last payment made from this account, to the Complainant's Loan Account, appears on the Complainant's Account Statement 092 as having been made on the **29th January 2016**.

The Complainant submits that the missed repayments were not of her making as the Bank had opened accounts in her name without informing her and that *"it is visible that from this date onwards [i.e., 1st March 2016] the loan repayments began to come out of the new student account ending -062 which I never opened instead of coming out of the current account ending -032)"*.

Having had regard to the copy Statement of Account, dated **03rd February 2017**, in respect of the "new" Student Plus Account, ending 032, opened by the Bank in the Complainant's name, a year earlier in February 2016, I note that it does not show any transactions as having occurred on the account and I accept the Bank's submission that the account has never transacted and that there has been no activity on this account since inception.

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Arrears accrued on Loan Account 011 after the Direct Debit was cancelled on the 28th January 2016.

The Bank submits that it issued a number of demand letters, in respect of the Arrears, on the following dates:

18th April 2016 – Arrears letter issued centrally re 12 missed payments on loan account since 22nd July 2015.

21st April 2016 – Demand letter issued by the Branch re excess amount of loan account of €495.02dr.

18th July 2016 – Arrears letter issued centrally re excess balance of €907.76dr.

25th July 2016 - Demand letter issued by the Branch re outstanding balance of €907.76dr.

09th August 2016 – Demand letter issued, notifying the Complainant that the matter may be referred to a debt collection agency.

The Complainant submits (within her of letter 09th May 2016, to this Office) that she never received letters from the Bank dated **18th April 2016, 21st April and 25th July 2016** in relation to missed payments. The Bank submits that its records show that this correspondence issued to the Complainant and that no undelivered mail was returned to the Bank. I note that there is no apparent reason as to why these letters would not have been delivered successfully to the Complainant's address.

The Complainant submits that on the **18th July 2016**, she received a letter stating that her account was in arrears and that the number of missed repayments were 22, since the **22nd of July 2015**. The Complainant submits that she was very upset and confused when she received this statement and immediately contacted the bank and arranged an appointment with the Manager. The Complainant submits that when she arrived at the Bank, with her Aunt also in attendance, the Manager was not available and so she met and spoke with another Bank Official.

I note the Complainant's submission that, at this meeting, she asked the Bank Official why there were 22 missed payments on her account. She says she also queried why her account read "Graduate Account, and says that she explained to the Bank Official that she was very concerned over the "interest" which was accumulating on these missed repayments.

The Complainant submits that she was informed by the Bank Official that *"the Bank had continued to go to her account for €41.22 per week instead of €80 per month and that interest had been incurred each time the Direct Debit was missed"*.

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The Complainant submits that, at this meeting, she was told by the Bank Official that the Loan would now need to be repaid in full, that the excess interest would not be dropped and that she would need to set up a Direct Debit again, *“to the right account”*.

Subsequently, on **12th August 2016** the Complainant visited her Branch and set up a Standing Order to make fortnightly repayments of €41.22, from Account ending -092, commencing **26th August 2016**. The Complainant submits that *“this came out of the right account, ie: my student account, on this date..”*

The Bank submits that these repayments were successfully made on a fortnightly basis, apart from two missed payments, on 28th February 2017 and 14th March 2017.

Debt Collection

A letter issued to the Complainant on **23rd August 2016** advising that the debt had been handed over to a Debt Collection Service Agency and that the total amount due at that point was €925.10 dr inclusive of interest. The Complainant has submitted that she was upset that her account was referred to a Debt Collection Agency, at a time when she had just, 10 days earlier set up a new Standing Order in respect of loan repayments.

The Bank submits that this letter was issued by Customer Recoveries as they had received no response from the Complainant and that although *“the timing of this letter is unfortunate”*, that the letter was issued in line with the General Terms and Conditions for Personal Loans, section 5.2 – Reference of Debts on Default. The Bank submits that the Complainant’s account now sits with the Debt Collection Agency and any correspondence as regards arrears would since have been issued to the Complainant, by that third party.

I have had regard to the Credit Agreement dated June 2015, between the parties.

Part B, of this Agreement, entitled *“General Terms and Conditions for Personal Loans”*, states at Part 4:

4 Repaying your loan

Your repayments

4.1 You agree to repay us the full amount that you owe us under this Credit Agreement in the manner set out in this Credit Agreement (unless otherwise agreed by us in writing). It is your responsibility to ensure that arrangements are in place to make these repayments on time. You may be required to complete a direct debit and/or standing order instruction for this purpose. Any repayments made will permanently reduce your balance, which means that you cannot redraw such amounts, unless we allow otherwise.

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Section 5, goes on to say:

5 Default

Events of default

5.1 *We have the right to demand that the full amount that you owe us under this Credit Agreement is repaid immediately if any of the following events of default happen:*

- a) *You fail to pay any amount that you owe us on the date that it is due (we will first send you a default notice where we are required by law to do so);*

...

Reference of debts on default

5.2 *If you breach any of the terms of this Credit Agreement, we reserve the right to refer any amount that you owe us to another organisation or debt-collection agency for the purpose of collection of payment and to give such organisation or agency any information it deems necessary relating to you or your loan.*

Having considered all of the evidence before me, I do not consider that the Bank can be held responsible for the arrears which accrued and am of the view that, it would have, or should have, been clear to the Complainant, from even a cursory look at the Statements of Account, ending 092, for the relevant period, that there were no monies whatsoever leaving the account in the form of any repayments toward her loan.

Having had regard to the Terms of the Loan, set out above, as well as the letters of arrears, all of which were transmitted to the same address, and taking into account all of the circumstances which led up to the debt being referred to a debt collection agency, I am satisfied that the Bank did not act wrongfully or unreasonably in referring the Complainant's Loan to the debt collection agency, due to the arrears which had accrued and which had not been addressed by the Complainant, notwithstanding the various letters issued to her.

Overall, in terms of my findings, having had regard to the detailed submissions and documentary evidence received from both parties, I am of the view that it was wholly inappropriate of the Bank to have attempted to remedy the error which it made (whereby the Complainant's Student Plus Account 092 was converted to a Graduate Account, despite her request to the contrary), by opening a new Student Plus Account in her name. I appreciate that this has caused no small degree of confusion in terms of its effect, once the Complainant became aware of its existence. I note that the Complainant's position is that this is what gave rise to the arrears which accrued on her Loan Account, however, I do not find that the opening of this account gave rise in any way to the accrual of arears on the Complainant's Loan Account.

In fact, no transactions have ever occurred on this account. Rather the majority of the arrears situation (not including the one payment which was missed in July 2015, which gave rise to arrears letters, initially) arose as a result of an attempted restructure of her

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loan repayments by the Complainant. I am aware of the fact that there is some disagreement between the parties as to whether the Complainant received this Credit Agreement documentation from the Bank. I accept however, in this regard, that, as a matter of course, further steps were necessary in restructuring the Complainant's loan, including setting up a new system of payment to service the loan account.

Although the Complainant says she was advised that the "new" repayments would begin in March, without her having to take any further action, the signed Form which she submitted to the Bank on the 26th January was an Application Form, which was subject to approval and to the implementation of further steps, upon approval. I also accept that the new repayment regime could only have been implemented by completing and submitting a new Direct Debit Mandate, or by setting up a Standing Order.

I am of the view that, in any event, taking into account the fact that the Complainant had cancelled her old repayment method and had received no confirmation from the Bank that her "Application" had been successful, it could reasonably have been expected that the Complainant would monitor the situation to ensure that the changes to the amount and frequency of the repayments which she had requested had, in fact, been effected.

Whatever misunderstandings arose from the parties' discussions in January 2016 (and the absence of adequate records in that regard is singularly unhelpful), when the first repayment for the new arrangement, as the Complainant understood it, did not leave her account in March as she was expecting, or in the weeks and months which followed, I am of the view that the Complainant was on notice of the fact that something was amiss and bore some level of responsibility to follow up on this with the Bank.

I will turn now to address the final aspect to the Complainant's complaint, which is that the actions of the Bank caused her to have a bad credit rating with the Irish Credit Bureau.

ICB Credit Rating

The Complainant has also submitted that she applied for a [REDACTED] credit card on the 02nd September 2016 which application, she submits was rejected due to her bad credit rating. She submits that it appears that the Bank has negatively recorded her loan with the ICB, thus affecting her credit rating, unfairly.

The Bank has responded that it did not report the Complainant's Account to the ICB and so any adverse facility related report must have come from a different entity and it contends that, therefore the Bank cannot be held accountable for the fact that the Complainant could not avail of a [REDACTED] Credit Card due to having a bad ICB record as a result of the Bank reporting this.

I have had regard to the ICB Report furnished by cover letter dated 03rd January 2017, to the Complainant. Whilst it shows that [REDACTED] accessed the Complainant's Credit History on the 03rd September 2016, the Report does not contain details of the Complainant's Loan Account with the Bank.

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As the Bank was a member of the ICB, it is surprising to note that it failed to register details of the Complainant's Loan with the ICB. However, I accept that the Complainant has not been prejudiced by the Bank's failure in this regard. On the basis that the Bank did not submit the Complainant's Account to the ICB, I do not find that it can be held accountable for any negative Credit Rating linked to the Complainant.

Overall, having examined in detail all of the evidence and submissions received from both parties, I am satisfied that the Bank's act of setting up a new account without the consent of the Complainant and without any notification to her about it, constitutes entirely unacceptable behaviour by the Bank. However, on the basis of the foregoing considerations, I also accept that this act, however unsatisfactory, did not cause the arrears which accrued on the Complainant's loan.

The Bank has previously acknowledged its error with regard to the conversion of the Complainant's Student Plus Account, to a Graduate Account and has made a goodwill gesture of €2,500 to the Complainant, in recognition of the fact that it erred in converting her Student Plus Account to a Graduate Account, when it did, on the 20th November 2015. However, I am also satisfied that it fell into grave error and acted contrary to acceptable practice when it made a unilateral decision to open a new Account in the Complainant's name without her consent and without providing any notification to her in this regard. It has also, in the course of its dealings with the Complainant, failed to comply with certain obligations pursuant to the Consumer Protection Code, 2012, as set out above, with particular regard to record keeping.

I am not, however, satisfied that the Complainant has substantiated her complaint that the Bank was attempting to take repayments from the "wrong" account, for a period of time, which the Complainant has submitted caused her loan account to go into arrears and eventually caused her loan to be transferred to a debt collection agency. I do not find any evidence to this effect.

In all of the circumstances, therefore, I consider it appropriate to partially uphold the Complainant's complaint.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct that the Respondent Provider make payment in the amount of €3,750.00 to an account of the Complainant's choosing within a period of 35 days of the Complainant's notification of account details to the Provider.

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- Pursuant to **Section 60(6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I 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**, where the amount is not paid within a period of 35 days of the Complainant's notification of account details to the Provider.
- Pursuant to **Section 60(8)** of the **Financial Services and Pensions Ombudsman Act 2017**, the Respondent Provider is now required, not later than 14 days after the period specified above for the implementation of the direction pursuant to Section 60(4), to notify this office in writing of the action taken or proposed to be taken in consequence of the said direction outlined above.

I also believe that in circumstances where the Bank opened a new Account in the Complainant's name, without her consent and without providing any notification to her, it will be appropriate for this Office to refer this matter to the Central Bank, for its consideration.

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
DIRECTOR OF ADJUDICATION AND LEGAL SERVICES**

19 April 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.