



<b><u>Decision Ref:</u></b>	2018-0045
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Variable Mortgage
<b><u>Conduct(s) complained of:</u></b>	Incorrect information sent to credit reference agency
<b><u>Outcome:</u></b>	Rejected

#### **LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

##### **Background**

This complaint concerns the Complainant's mortgage loan account previously held with the Provider.

The complaint is that the Provider incorrectly reported to the Irish Credit Bureau (ICB) in respect of the Complainant's mortgage loan account.

##### **The Complainant's Case**

The Complainant submits that he had a mortgage loan with the Provider over his principal private residence. The Complainant submits that he voluntarily sold his house in 2012, and after the sale proceeds were applied to the mortgage loan account, the outstanding loan balance was €49,404. The Complainant submits that he continued to pay the capital and interest on the outstanding balance for 35 months after he sold his house.

The Complainant submits that in 2014 he lost his job and *"Notwithstanding this I paid the monthly repayment while unemployed & my sole income being €188 p/w. Upon default I approached [the Provider] to settle the account. I had no job, no income, no assets but my now late father agreed to lend me €5,000 to offer to settle the a/c"*. The Complainant submits that the Provider agreed to settle the account and issued a settlement letter.

The Complainant submits that approximately a week prior to signing the settlement agreement letter he spoke with a representative of the Provider in its legal/settlements

Department *"in which I said that were I to agree with the settlement "I would have to have hope" and that meant a chance to start over. I specifically mentioned the ICB report and that [the Provider] would report a benign status on my ICB report – for this I understood a "T" rather than an "L". I advised that without this rating I had no incentive to pay the €5,000 as otherwise [the Provider] could simply bankrupt me and get nothing. [The Provider's representative] said that though the letter was standard (agreement letter) and could not be altered he would see to this".* The Complainant submits that the Provider reported an "L" on his ICB record and now he cannot get a loan.

The Complainant submits that he is seeking for the Provider to amend his ICB report *"for payment #13 to a "T" rather than an "L" as correctly exists as per the commitment from [its] representative. I would not have agreed to this settlement had I known this was what [the Provider] would do which was contrary to [its] commitment".*

### **The Provider's Case**

The Provider submits that the Complainant came to an agreement under which it agreed to write off a sum of €37,669.09 from the balance of his home loan mortgage account on payment of a lump sum of €5,000. The Provider submits that the payment of €5,000 was received from the Complainant on 14 August 2015 and the loan subsequently closed.

The Provider submits that the letter of agreement signed by the Complainant on 12 August 2015 states, among other things, that:

*"Any arrangements or modifications to your existing Mortgage Loan Account(s) will be reported to the Irish Credit Bureau and will appear on your credit report. The impact of this may affect your ability to borrow future funds."*

The Provider states that *"it has reported an accurate profile of your account to the ICB. The Bank cannot legislate as to how another lender might interpret the data it has reported to the ICB or what action they may or may not take as a result. However, our experience is that lenders use the ICB information along with other pertinent information such as a customer's financial circumstances, customers' explanation for their ICB profile and any supporting documentation the customer can provide to help explain the circumstances surrounding the ICB report".*

The Provider submits that it stands over the nature of its report to the ICB in relation to the Complainant's loan account number ending in '0195' as it represents a true and accurate reflection of the performance of his mortgage repayments over the period concerned.

### **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 28 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.

In the absence of additional submissions from the parties, the final determination of this office is set out below.

The issue to be determined is whether the Provider incorrectly reported to the ICB in respect of the Complainant's mortgage loan account.

The Provider submits that the Complainant engaged with its Arrears Support Unit (ASU) in May 2015 seeking to come to an agreed resolution to his arrears position. The Provider submits that following an assessment by its ASU, it was agreed that it would write off the outstanding balance on the Complainant's mortgage loan account upon receipt of a lump sum from the Complainant in the amount of €5,000. The Provider submits that this was communicated to the Complainant by way of letter dated 27 July 2015. The Provider submits that the Complainant lodged €5,000 to his mortgage loan account on 14 August 2015 and signed acceptance of its offer was received on 17 August 2015.

The Provider submits that on 1 February 2016 it completed the write off of the outstanding debt in the amount of €38,606.47. The Provider submits that a letter of confirmation was issued to the Complainant on 1 February 2016 confirming that the write off had been completed. The Provider submits that upon completion of the write off, the Complainant's ICB record was updated with an "L" which signifies "*Account settled for less than the full amount*". The Provider submits that this is reflective of the agreement reached with it.

The Complainant states that "*This "L" status is of "account settled for less than the full amount". The other option that [the Provider] had in reporting the settlement was to assign profile "T" reflects "terms revised"*".

In response, the Provider states that it *“contends that an “L” indicator on the Complainant’s ICB is the most reflective report for the agreement as reached with the Bank. The Complainant believes that this reporting to the ICB should be a “T” signifying “terms revised” rather than an “L”. Having reviewed the Complainant’s complaint and account in detail, the Bank is satisfied that the “L” is the most accurate reporting”*.

I note that the *“LETTER OF AGREEMENT”* dated 27 July 2015 states, among other things, the following:

*“Any arrangements or modifications to your existing Mortgage Loan Account(s) will be reported to the Irish Credit Bureau and will appear on your credit report. The impact of this may affect your ability to borrow future funds. Please note that non payment of your loan can have a negative impact on your credit rating both within the Lender and with other financial institutions. On a monthly basis information may be passed to the Irish Credit Bureau, including your payment profile information and the number of missed payments. If you do not make your monthly payments, it may take longer than originally scheduled to pay off the loan. How much longer will depend on the amount owed and the length of time it has been unpaid.”*

I also note that the *“LETTER OF AGREEMENT”* dated 27 July 2015 sets out the following underneath the heading *“USE OF INFORMATION”*:

*“The Lender will use the information you have provided to us to carry out searches (including verifying your identity and/or a credit search) and to disclose information to credit reference agencies for the purpose of assisting applications for credit and credit related services and for ongoing credit review.*

*We may give details of your agreements/accounts and how you conduct your agreements/accounts, including any arrangements or modifications to your existing Loan Account(s) as a result of agreeing a Voluntary Sale for Loss Scheme, to licensed credit reference agencies on a regular basis which may impact on your ability to borrow future funds. Licensed credit reference agencies will record details of each type of search the Lender makes. By accepting this Letter of Agreement, you consent to the use by the Lender of your personal data as outlined above.”*

I note that underneath the heading *“BORROWER ACCEPTANCE”* in the *“LETTER OF AGREEMENT”* dated 27 July 2015 it sets out the following:

*This is a legal document and you should obtain legal advice before signing it.*

*By signing this Letter, I/we agree with the terms and conditions of this Letter of Agreement, I/we undertake to carry out all obligations set out in this Letter of Agreement.”*

I note that the Complainant signed the "LETTER OF AGREEMENT" on 12 August 2015. The Provider has submitted a copy of a letter dated 11 August 2015 signed by the Complainant which states that:

*"Pursuant to the agreement letter... I wish to confirm my acceptance of the letter based upon the conversation I had with your colleague... who confirmed that the agreement is in full and final settlement of the loan and that condition 2 of the letter does not apply to me as I will have discharged in full my obligation with the €5000 payment. I discussed on our call today that I would sign and witness the letter tomorrow and arrange payment later in the week.*

*I thank you and your organisation for this resolution which will allow my family and I to move on from a distressing period in our lives"*

Condition 2 of the letter of agreement dated 27 July 2015, which does not apply to the Complainant, provides the following:

*"2. You will not (without the prior written consent of the Lender) enter into any new agreements for credit facilities, or agree to borrow or be liable for any amount which would constitute material borrowings, nor will you create or agree to create or permit any mortgage, charge or other encumbrance of any nature over any of your assets. For the avoidance of doubt, any one or more credit facilities, borrowings, or liabilities which cumulatively exceed €15,000 (either in your sole name, in joint names, or as a guarantor) are deemed "material borrowings".*

I note that the "LETTER OF CONFIRMATION" dated 1 February 2016 states, among other things, the following:

*"We, (the 'Lender'), refer to your signed Letter of Agreement dated 27/07/2015 in relation to your Mortgage Loan(s). The Sale Proceeds were not sufficient to discharge all amounts due by you in respect of your Mortgage Loan Account(s). Therefore, as agreed in your Letter of Agreement, the Lender has reduced the remaining balance(s) by way of compromise (the "Compromise Settlement"). We confirm that the lodgement of the Sale Proceeds, the Lump Sum (if applicable) together with the application of Compromise Settlement, have been accepted in full and final settlement of your obligations under the Mortgage Loan(s) resulting in a Residual Debt of €0.00 and the account(s) has been closed*

*By way of information, we have set out the following details:*

<i>Received Lump Sum</i>	<i>€5,000.00</i>
<i>Compromise Settlement</i>	<i>€38,606.47</i>
<i>Residual Debt</i>	<i>€0.00</i>

*Where it was agreed with the Lender that you would pay a Lump Sum against the outstanding balance of the Mortgage Loan and the Lump Sum was received, the amount of that payment is outlined above.*

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*Any arrangements or modifications to your existing Mortgage Loan Account(s) will be reported to the Irish Credit Bureau and will appear on your credit report. The impact of this may affect your ability to borrow future funds. Please note that non payment of your loan can have a negative impact on your credit rating both within the Lender and with other financial institutions."*

The Complainant has submitted a copy of his Irish Credit Bureau Report dated 5 September 2016. I note that the last profile code indicator for the Complainant's account was denoted with "L". Underneath the heading "*Explanation of payment profiles*" on the ICB credit report it sets out that "*L = A/C settled for less than full amt*" and "*T = Terms revised*".

The Complainant submits that when he initially defaulted with the loan repayment in April 2015 he had been repaying the mortgage without fault since it had been set up. The Complainant states that "*The preceding 36 payments had been for the nub of the mortgage as I had sold the property in 2012 for less than what was owed. I had lost my job... in June 2014 due to company restructuring. I had been trying relentlessly to find work both in Ireland and abroad but in 2014 there was not as much opportunity as there is now. Nevertheless I had continued repayments during the period of unemployment where my only income was a social welfare payment. The repayment took up approx. 45% of my income. It was only when the social welfare payment was expired that I defaulted*".

The Complainant goes on to state that "*During this period I am somewhat reluctant to say that I was at something of a low ebb as I was unable to provide for my family, had sold the only asset I had and appeared to have little or no opportunity for an improvement in my circumstances. Nevertheless I did not [want] the matter of a defaulted mortgage and a compromised credit rating hanging over me. Over a number of weeks I engaged with the [Provider] team and found them to be courteous*".

The Complainant submits that when he initially offered the €5,000 in full and final settlement of the loan, the Provider's representative suggested that he use the money to bring the loan payments up to date. The Complainant states that "*I told at least two of the [Provider] staff that I had no assets, no savings and no income. If they wanted to come after me for the debt they could, and they would get nothing but a legal bill whereas I was offering €5,000. The quid pro quo was that my credit rating would not be adversely impacted*".

The Complainant submits that at the time he was vulnerable, and "*When I look back on the whole affair I feel that the duty of care that the bank had to a vulnerable customer was less than optimal, even inadequate. [It] did not, as I recall, confirm that I was happy with every aspect and left some issues open to interpretation. This was the case of the phone calls which had been shared with me. I got the impression that they were anxious to close the deal with the least loss to the bank which was fair enough if they were dealing with a non human entity. They were dealing with a person*".

The Complainant submits that when he queried a separate matter on the written agreement he was advised that the letter was a standard letter which was obliged to have certain provisions which were not relevant in his case as the asset was no longer in contention.

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The Provider has submitted a recording of a telephone conversation between its representative and the Complainant on 7 August 2015. I note that the Complainant raised queries regarding the conditions surrounding the agreement letter dated 27 July 2015. In this call the Provider confirmed that condition number 2 and number 3 (relating to interest) were standard conditions and would not apply in the Complainant's case.

The telephone conversation between the Complainant and the Provider's representative went as follows:

Complainant: *"I can continue to bank with [the Provider] and if I go back to you in X number of years you'll look at me as you'd look at any other and risk assess me in the normal way."*

Provider: *"Yeah but exactly, right, but also you know here's the thing right. If you go to fill in an application form right, not just for our bank for any bank... they'll ask you on it... did you ever have in your lifetime an arrangement to reduce your loan, or whatever way they word it right? And at that stage you'll have to come clean."*

Complainant: *"Of course... It'll be on my bureau that I missed three or four payments. I stopped paying it in April or May I think it is, my last payment... its on my bureau..."*

Provider: *"You also had a query there regarding the ICB, is that right?"*

...

Complainant: *"The question I had around that was... The initial person I was dealing with was a lady in your settlement office..."*

...

Provider: *"Now, on the ICB... I'll just give you an insight into the ICB, how it is reported, right. We do a report every month... if we raise a charge on a mortgage... between the 1<sup>st</sup> and the 31<sup>st</sup> of August and you don't make a payment on that, that report is uplifted into the ICB. It now says that an amount that should have been paid has not been paid. So they can see you were delinquent for one month. Now that only applies when we raise a charge so once this is done and dusted and there is no payments we don't raise a charge therefore it wont be reported to the ICB."*

Complainant: *"So when I give you my €5,000 and you stamp the form and say yeah we got that and there will be a "C" beside, there's a buddy of mine works in a bank and he said see can you have a "C". Will there be a "C" beside my name? I don't know what that means. That I am clear. So it will say in my bureau that I was delinquent in April May June July and probably August at this stage."*

Provider: *"Right and then it will be reported there for two years. It will show up on people's screens for two years but people actually can go back for five to six years and see what was going on there."*

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Complainant: *"Ok, and it will show that there was a settlement made and you wrote down a portion of the debt or."*

Provider: *"Yeah it will probably do that, yeah. But, from then on in it will start to wash out then."*

Complainant: *"So the debt write down shows."*

Having carefully considered all of the evidence before me, while I am of the view that the Provider's representative should have been clearer generally and confirmed to the Complainant that a "C" for completed would not appear on the ICB report and rather his report would be denoted with an "L" to indicate that the account had been settled for less than the full amount, it is clear from the telephone conversation that the Complainant was aware that the ICB would show that a settlement had been made and a portion of the debt written off. I also note that the letter of agreement dated 27 July 2015 highlighted that *"Any arrangements or modifications to your existing Mortgage Loan Account(s) will be reported to the Irish Credit Bureau and will appear on your credit report. The impact of this may affect your ability to borrow future funds"*.

I must point out that the Provider is obliged to provide an honest and truthful report of customers loan repayment patterns, and is not obliged to change or remove details from a report unless these details are inaccurate. While it is not clear from the evidence before me, and the Complainant has raised no issue, why the Provider took over five months to complete the write off (17 August 2015 to 1 February 2015), I must accept the Provider's submission that upon completion of the write off it was entitled to update the Complainant's ICB record with an "L" signifying *"Account settled for less than the full amount"*, as this was reflective of the agreement reached with it.

Consequently, it is my Legally Binding 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**

1 May 2018

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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.

