



<b><u>Decision Ref:</u></b>	2018-0163
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Credit Sale Agreements
<b><u>Conduct(s) complained of:</u></b>	Incorrect information sent to credit reference agency
<b><u>Outcome:</u></b>	Upheld

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

##### **Background**

This complaint relates to a loan account and the Provider's alleged maladministration and wrongful reporting of inaccurate data to the Irish Credit Bureau (ICB) in relation to the account.

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

The Complainant took out a loan with the Provider or around June 2009. He states that he was always of the belief that the loan had been paid off but that when he received his credit check record from the Irish Credit Bureau, it showed that the loan had been "written off" by the Provider. In addition, he states that there was a number of other incidents of inaccurate information recorded in his credit history in relation to this loan. He states that there were incorrect addresses recorded on his entry and that the letter "B" was noted on his report which means that the borrower cannot be located by the lender. He said this appears notwithstanding the fact that the Provider was still taking payments from him by way of direct debit. In addition, he states that the credit report erroneously shows that his payments in arrears tripled from 3 to 9 even though payments were still being made.

The complaints states that he contacted the Provider and paid off the remaining balance. He states that he was assured by the Provider at that time that his credit report would be updated to reflect this but he said that two months later this had not been done. He states that he then lodged a complaint with the Provider and on 26 November 2015, he received a letter from the Provider stating that they would uphold his complaint and adjust his credit

report as there are a number of errors on the report such as an incorrect address and incorrect reporting of payments.

The Complainant states that when he made the payment in October 2015, he was told that his credit report would change to replace the payment as C instead of W. The Provider had previously recorded the outstanding balance as being written off which results in a "W" appearing on the credit report. The Complainant states that over the next seven months no changes were made despite assurances by the Provider. He states that as of 26 June 2016, his credit report had only been updated to show his new address and that the payment history balances were not changed to reflect the corrected amendments. He stated it was not until 5 July 2016 that the balance was changed from W to C.

The Complainant states that there are still a number of inaccuracies present on the credit report which the Provider has failed, refused or neglected to correct. In particular, the Complainant states that the report still shows an incorrect payment history. He says that it currently shows that nine payments were missed which he says is incorrect. The Complainant states that according to his own account statements and the Provider, a maximum of four payments were missed during the lifetime of the loan. In addition, the Complainant is unhappy with the fact that the scheduled removal date of this data with the Irish Credit Bureau has been extended to 1 January 2019. The Complainant asserts that under the Irish Credit Bureau rules, the removal date would ordinarily be five years from the date that the account became inactive. The Complainant states that his account was set as inactive in August 2013 by the Provider and therefore the scheduled removal date should have been set for August 2018.

The complaint is that the Provider wrongfully and inaccurately listed the Complainant's credit history with the Irish Credit Bureau.

The Complainant is seeking to have all inaccurate information corrected by the Provider with the Irish Credit Bureau although he states that he does not want the file cessation dates to be changed from January 2019.

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

The Provider states that the loan taken out by the Complainant was with [another Financial Service Provider] and that all accounts owned by [the other Financial Service Provider] were transferred and are now being serviced by the Provider. The Provider states that its records confirm that throughout the term of the loan, the Complainant did not comply with all of the contractual monthly payments by their due date and therefore, in accordance with the terms and conditions of the loan agreement, late or unpaid payments would have been reflected on the Complainant's credit file. The Provider states that the Complainant missed four monthly payments on 9 December 2010, September 2011, February 2012 and March 2012 respectively. The Provider states that the data in relation to the missed payments and arrears on the Complainant's credit file is a true reflection of how the account had been maintained by the Complainant. However, the Provider accepts that certain other information was not reflected correctly on the credit file and that it has taken steps to replace that information with the correct information.

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## **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 13 November 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, I set out below my final determination.

The Complainant does not dispute or challenge the Provider's right to provide information to the Irish Credit Bureau about him. Rather, his complaint relates to the allegation of the provision of incorrect information to the Irish Credit Bureau about the Complainant which has adversely affected his credit rating and his ability to obtain other credit facilities.

The Complainant complains that the Provider had recorded an incorrect address for the Complainant. The Provider states that during a telephone conversation with the collection's adviser on behalf of the Provider on 6 November 2012, the Complainant's address details were updated. According to the Provider the address was changed at this time to [incorrect address 1]. This in itself appears to be inaccurate as the Complainant has demonstrated that his address is [correct address]. In addition, it appears from the ICB report dated 23 December 2014, that the address that the Provider had registered with the Irish Credit Bureau was as follows [incorrect address 2]. It appears therefore that the address that had been registered was incorrect. He states that the Provider updated his record in 2016 to show the correct address.

However, the Complainant states that he did not find out that his loan had not been fully paid off and that there was an outstanding balance that had been written off by the Provider

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and that this was due to the fact that the Provider had not made contact with him due to the incorrect address.

The Complainant states that he had a direct debit set up to make the monthly payments on the loan and in May 2013 his bank statement made a direct debit payment to the loan account with the message “[Provider] final payment”. The Complainant states that after seeing this on his account he believed everything to be in order and he points out that the direct debit remained active until October 2014 and despite that no further direct debits were taken by the Provider. The Complainant states that his credit report states that the Provider was unable to contact him as the address had been updated in the system incorrectly. The Complainant states that as a direct result of this, a number of errors appeared on his credit report in addition to the incorrect address. This included the letter “B” being noted on his report. The use of the letter “B” means that the borrower cannot be located by the lender. The Complainant points out that this was noted on his credit report notwithstanding the fact that payments were still being taken by the Provider by way of direct debit.

The Provider in its final response letter states that its investigation showed that during the period, the Complainant’s home address was not known and the code “B” was automatically updated. The Provider has stated that this information is incorrect, as payments were being received during this period.

The Provider assured the Complainant that additional instructions have been provided to the Irish Credit Bureau to remove the payment code “B” and replace it with the correct payment codes, for the relevant months. The Provider states that as the Complainant’s address details were updated incorrectly in December 2010, this resulted in mail being returned. Consequently, the Provider explains that the Complainant’s address details were updated as “unknown”. The Provider further explains that this subsequently prompted a “B” code on his credit file.

Accordingly, insofar as this complaint relates to incorrect information relating to the Complainant’s address and the incorrect recording of the payment code “B”, I uphold this aspect of the complaint.

The credit report initially showed the letter “W” when the account had been closed by the Provider. The Provider has explained that the code “W” was incorrectly created following the account being transferred to the Providers internal bad debt department. The Provider explains that when the payment of €116.12 was made by the Complainant on 5 October 2015, to settle the account, it did not instruct its customer account information sharing team to update the Complainant’s credit file. The Provider states that it has now arranged for the Irish Credit Bureau to remove the “W” code, and replace this with “C” code. The Complainant has confirmed that as of 24 August 2017, the relevant code has now been recorded as “C” code. Accordingly insofar as this aspect of the complaint is concerned, I accept that the Provider erred and that it delayed unreasonably in ensuring that the Complainant’s credit file with the Irish Credit Bureau reflected the true position. Therefore, I uphold this aspect of the complaint.

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The Complainant still complains that his credit report currently shows 9 missed payments which estate is incorrect. The Complainant states that there were only 4 missed payments during the lifetime of the account.

The Provider states that the adverse data on the Complainant's credit file insofar as his repayment history is concerned is a true reflection of how was account was maintained. The Provider states that the record of the Irish Credit Bureau will reflect the actual payment history for five years after the settled date of the account. The information provided by the Provider and the Complainant show that the Complainant missed four monthly payments on 9 December 2010, September 2011, February 2012 and March 2012 respectively. The Provider states that it continued to collect contractual monthly payments throughout 2012 while the account remained in arrears. The Provider states that the account was not brought up-to-date and as a consequence, the direct debit payments applied to the account were paying the previous month. The Provider further states that the final direct debit payment was received on 7 May 2013 due to the loan reaching maturity on that date. According to the Provider, no further direct debit payments would have been collected as the direct debit instruction had expired and a manual payment would have been required after this date.

The Provider then explains that as the account remained in arrears, a business decision was made on 29 August 2013, to register the account internally as a bad debt. At this time, the full balance outstanding of €116.12 became due. The explanation from the Provider as to how the recorded missed payments jumped from 4 to 9 in a short space of time on the credit file is not clear or adequately explained or documented.

I accept that the Complainant missed four payments and this should be reflected on the credit file. By the Provider's own admission, it did not present for any direct debit payments after May 2013 and therefore the only unpaid direct debits or payment reversals from the Complainant's Provider were the aforementioned four missed payments. It may be that the Provider deemed the fact that no payments were made from May 2013 onwards as ongoing incidents of missed payments but it still doesn't explain the large jump from 4 missed payments to 9 missed payments in the space of two months on the credit file. The Provider has already conceded that as the Complainant address details were updated incorrectly in December 2010, this resulted in mail being returned. Consequently, the Provider explains that the Complainant's address details were updated as "unknown" and therefore it appears that the Provider did not and was unable to communicate with the Complainant in relation to the ongoing payment obligations.

Accordingly, in light of the foregoing, and in particular in light of the lack of adequate and clear explanation as to why nine missed payments were recorded on the Complainant's credit file, I uphold the complaint. I also note that the scheduled removal date on the Complainant's credit file is January 2019 and that the Complainant stated in his complaint form that he does not want the file cessation date to be changed from the current January 2019.

Having a negative ICB credit rating can have very serious consequences for an individual. I find the conduct of the Provider in being so irresponsible in reporting the Complainant's credit history to the ICB to be most unreasonable, careless and appalling.

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For the reasons set out above I uphold this complaint and direct the Provider to correct the Complainant's ICB record and ensure that the file cessation date for his negative record is January 2019. Further, I direct that the Provider pay the Complainant a sum of €7,000 in compensation for the inconvenience caused.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld, on the grounds prescribed in **Section 60(2) (b) and (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to (i) correct the Complainant's ICB record ensuring that the file cessation date for his adverse credit rating will be January 2019 and (ii) pay the Complainant the sum of €7,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

6 December 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) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.