



<u>Decision Ref:</u>	2019-0016
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Incorrect information sent to credit reference agency
<u>Outcome:</u>	Substantially upheld

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

Background

This complaint relates to a mortgage account and the Bank's inaccurate or insufficient reporting of the Complainant's repayments to the Irish Credit Bureau (ICB).

The Complainant's Case

The Complainant is a joint mortgage account holder with the Bank. He states that the Bank has failed to keep the ICB record up to date in relation to his mortgage repayments and that he applied for a credit facility with another provider to purchase a car but was refused on the grounds that the report was negative. He further asserts that the ICB report only contains information up to December 2014 and no further relevant information for the period January 2015 to December 2016. The Complainant states that he is fully in compliance with the terms of his mortgage which is not reflected on the ICB report.

The Complaint is that the Bank has wrongfully and unreasonably and in breach of agreement allowed his credit rating to be adversely affected and had failed to adequately reflect the true position in relation to his mortgage for the years 2015 and 2016 and to continue to update it accordingly. The Complainant is seeking to have his credit profile updated to reflect the true position.

The Provider's Case

The Bank states that in November 2014, the Complainant entered into a Positive Equity Arrangement with the Bank and this was reported to the ICB in December 2014, which reflected the new repayment arrangement that was applied to his account.

The Bank states that the letter "T" which appears on the ICB report stands for "terms revised" and is correctly entered on the Complainant's ICB profile for the month of December 2014. The Bank states that due to "technical restrictions" it is unable to report payments he has made to the ICB since the restructure was put in place. The Bank states that all payments under the restructured agreement have been met in full. The Bank contends that the Complainant's ICB profile has been reported correctly and that it has endeavoured to assist the Complainant as best as possible in obtaining finance by providing him with a letter and supporting statements which confirmed that his mortgage repayments are up-to-date and that all repayments had been made for 2015, 2016 and 2017.

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 10 October 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.

Further to the issue of my Preliminary Decision in this matter, the following submissions were received:

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1. E-mail from the Complainant to this Office dated 17 October 2018.
2. E-mail from the Complainant to this Office dated 27 October 2018.
3. Letter from the Provider to this Office dated 23 October 2018.
4. E-mail from the Complainant to this Office dated 12 November 2018.
5. E-mail from the Complainant to this Office dated 14 November 2018.
6. Letter from this Office to the Provider dated 29 November 2018.
7. Letter from the Provider to this Office dated 6 December 2018.

Following consideration of those additional submissions from the parties, I set out my final determination below.

The Complainant entered into a home loan agreement with the Bank in April 2008. It appears from the documentation provided, that the Complainant's account began to accrue arrears and the Complainant submitted a standard financial statement to the Bank on 15 October 2014. On foot of this, the Bank conducted an assessment and deemed a Positive Equity Sustainable Solution to be the most suitable long-term sustainable arrangement for the Complainant. The Complainant accepted the offer of the Positive Equity Sustainable Solution and this was applied to the account in December 2014.

In the offer letter dated 10 November 2014 and the confirmation letter dated 23 December 2014 the Bank stated, amongst other things, the following:

“Any arrangements or modifications to your mortgage loan account(s) as a result of agreeing to participate in the arrangement 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 with the lender and with other financial institutions. On a monthly basis, information will be passed to the Irish Credit Bureau, including your payment profile information and the number of missed payments.”

The Complainant had been compliant with the terms of the 2014 agreement since its inception until he went into arrears of one month in July 2018. From a review of a copy of the ICB report, the most recent indicator indicates the letter 'T'. The Bank states that this was furnished to the ICB to reflect the fact that an adjustment had occurred on the Complainant's account in December 2014.

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The Bank explains in its submissions that due to limitations to its systems, it has been unable to report the repayment history on the Complainant's mortgage account to the ICB following the application of the Positive Equity Sustainable Solution. The Bank states that it is unable to report the repayment history on the borrower's mortgage account following the application of the "T".

The specific details of the restrictions are that the system was devised in 2003 and reported to ICB numeric indicators of payments made and missed. The ability to report on re-structured accounts was not completed when the system was set up. The economic downturn increased the frequency of the need for this data and the Provider had intended to complete enhanced reporting to ICB once they had developed solutions.

This was not completed due to the proposed creation of the Central Bank's Central Credit Regulations (CCR) which was intended to replace the ICB after a period of co-existence. The Provider prioritised changes to enable reporting to the newer CCR. The Provider can 'reflect' account behaviour to the ICB but it cannot reflect **both** the re-structure (use of the letter T in the monthly reporting box) **and** the subsequent payment profile. The situation remains that once a T code has been entered, the Provider cannot input anything else subsequently.

While this is not ideal, I note however, that the system is now operating to the Complainant's advantage. Since the Provider system is unable to update the ICB after the T report (for 'Terms Revised') in December 2014, the ICB system is unable to show the fact that he was one month in arrears as of July 2018. If the Provider system were able to update the ICB, the Complainant would be shown, correctly, as one month in arrears.

The Bank states that on 10 May 2017, the Complainant contacted his branch in relation to his ICB record and advised that he had been refused credit due to the ICB reporting on his mortgage account. The Bank states that the Complainant confirmed he was seeking finance from the credit union and in an effort to assist, the Bank states that the Complainant's branch manager wrote a letter for the Complainant which confirmed that the repayments were in line with the Positive Equity Sustainable Solution arrangement and were up-to-date and that there were no arrears on the account.

The Bank states that the Complainant's branch also provided up-to-date mortgage statements as further evidence that the repayments were being met and that these letters were provided to the Complainant in an effort to assist in obtaining credit.

Furthermore, the Bank states that the Central Credit Register has been established pursuant to the Credit Reporting Act, 2013 and that reporting requirements apply to consumer loans outstanding at 30 June 2017.

The Bank states that it has been reporting to the Central Credit Register since 30 June 2017 and that the Complainant's record with the Central Credit Register shows that the repayments are up-to-date with no arrears outstanding on the account as he is allowed "*one month's grace*" on that register.

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Having considered all of the submissions and carefully reviewed all the documents in the terms contained therein, I accept on balance that the Bank has endeavoured to the best of its ability, to assist the Complainant by ensuring that he was provided with documentary evidence to present to any credit institution to demonstrate that his repayments under the agreed arrangement were up-to-date. I also accept that it may be to his advantage that the missed payment for July 2018 is not recorded.

However, the Complainant is correct, and the Bank accepts, that the terms of the 2014 arrangement provide that monthly information would be passed to the ICB. I accept the Bank's explanation that it is unable to report the repayment history on the Complainant's mortgage account following the application of the letter "T". However, given the importance of the information contained in the ICB register and its potential impact on consumers, I believe the Bank should have been more careful in its communications with the Complainant in relation to how the loan repayments would be, or indeed would not be reported to the ICB.

I believe it is unacceptable that such payments cannot be reported for "*technical reasons*", and that the Bank incorrectly communicated to the Complainant in relation to this.

I have to consider the reasonableness of the Bank's behaviour in this regard and in circumstances where the Bank has provided the Complainant with a number of supporting documents in order to assist him in obtaining credit facilities, I accept that the Bank has behaved reasonably in this regard.

It is also worth pointing out that insufficient documentary evidence has been provided to this office that definitively demonstrates that the Complainant's request for credit facility from his credit union was refused on the basis of the information contained on the ICB report, particularly in light of the supporting documentation that was provided to the Complainant by the Bank.

That said, I believe that an individual's ICB record is extremely important and that it should reflect the true position of the individual's credit history. For the reasons set out above, I believe the Complainant's ICB record does not reflect that he has, in the main, honoured his commitment to the Bank since the terms of his loan were revised in 2014.

On entering into that revised arrangement, he was in fact advised by the Bank "*on a monthly basis, information will be passed to the Irish Credit Bureau, including your payment profile information and the number of missed payments*".

This information appears to have been incorrect and the Complainant now finds that having mostly honoured his payment since the revised arrangements were put in place in 2014, that the only information submitted to the ICB is the information that reflects adversely on him.

I believe he is entitled to a compensatory payment from the Bank for having been provided with incorrect information in relation to how his ICB record would reflect his new payment arrangement.

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For the reasons set out above, I substantially uphold this complaint and direct the Provider to pay a sum of €3,000 to the Complainant in compensation.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld on the grounds prescribed in **Section 60(2) (c) 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 make a compensatory payment to the Complainant in the sum of €3,000, 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**

23 January 2019

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.