



<u>Decision Ref:</u>	2019-0080
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Personal Loan
<u>Conduct(s) complained of:</u>	Incorrect information sent to credit reference agency Delayed or inadequate communication
<u>Outcome:</u>	Partially 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 personal loan with the Provider. The Complainant states that when he suffered financial difficulties in late 2011, he was no longer able to meet the repayments on the loan. In 2012, the Complainant entered into a repayment arrangement in respect of the loan in the amount of €300 per month. The Complainant asserts that these repayments were made in line with this arrangement up until the account was closed and paid in full in June 2017.

The Complainant applied for a mortgage in July 2017 which was rejected on the grounds of his credit history as reported by the Irish Credit Bureau. Having taken up a copy of his record with the Irish Credit Bureau, the Complainant discovered that it showed an arrears position of in excess of nine months missed payments which reduced down to 4 months missed payments towards the end. The Complainant states that this was a surprise to him and it

was completely contrary to his understanding as to the terms and effect of the repayment arrangement made in 2012. The Complainant states that the Provider failed to disclose or clarify the adverse impact on his credit rating that would be reported to the Irish Credit Bureau notwithstanding the repayment arrangement.

The Complainant states that had the Provider informed him and made him aware of the impact on the treatment of his repayment arrangement he would have sought to have either repaid the loan earlier through increased payments or settle the loan in full at a much earlier date. The Complainant states that all of the foregoing has resulted in the rejection of a mortgage application.

The complaint is that the Provider wrongfully and inaccurately reported the Complainant's credit history to the Irish Credit Bureau and failed to adequately advise him of the full effect of entering into the repayment arrangement in 2012.

The Complainant is seeking to have his loan account record removed from the Irish Credit Bureau rating in full.

The Provider's Case

The Provider states that due to the fact that the Complainant did not meet the contractual repayments, his account was transferred to the customer recoveries department to continue the collection of the debt. The Provider states that it issued the Complainant with a letter of demand of 30 July 2012, demanding immediate payment of the debt in full. The Provider states that it is satisfied that the correct procedures were followed in relation to arrears handling and reporting to the Irish Credit Bureau. The Provider states that following the Complainant's account being classified as a bad debt, it demanded immediate payment of the full amount owing which meant that the entire balance on the loan account was effectively in arrears from that point onwards and that this is accurately reflected on the Irish Credit Bureau record.

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.

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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 February 2019, 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.

This Complainant does not dispute or challenge the Provider's right to provide information to the Irish Credit Bureau about the Complainant. Rather, it relates to the allegation of unfairness on the Provider's part in failing to warn or advise the Complainant adequately or at all, as to how the Provider would report to the Irish Credit Bureau following the repayment arrangement that was entered into from 2012 onwards.

It is not in dispute that the Complainant was in arrears and it has not been disputed that the Provider was entitled to pass his account to the recoveries department. Furthermore, it is not in dispute, and the documentary evidence shows, that a repayment arrangement was entered into between the Complainant and the Provider on 29 August 2012. That letter from the Provider states as follows:

"Dear Customer,

I refer to our telephone conversation today and please be advised [the Provider] will accept repayment proposals of €350 per month into loan account [redacted] ... Commencing 30 September 2012. This is subject to a review in September 2013. Interest will continue to accrue but will not be payable to the account until the principal balance is paid in full. Failure to adhere to this agreement, may result in [the Provider] taking further action. If you have any further queries please contact this unit."

This arrangement was continued from 9 March 2013 and the letter from the Provider to the Complainant of 9 March 2013, is largely identical to the above quoted letter of 29 August 2012. There is further letter of 3 October 2013, in identical terms.

Recordings of telephone calls between the Complainant and the Provider have been provided in evidence. I have considered the contents of the audio recordings of these telephone calls between 2014 and 2017.

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On 1 April 2014, the Provider telephoned the Complainant regarding his loan agreement and his repayment arrangement. The Provider informed the Complainant that he missed a €300 payment for the month of February and that he was therefore in arrears of his repayment arrangement. The Complainant undertook to make up that payment on the same day by way of online payment.

The Provider called the Complainant on 1 July 2014 and 23 February 2015 and left voicemail for the Complainant asking him to make contact with the Provider.

On 2 June 2015, the Complainant called the Provider regarding his loan. He stated that he had received a letter from the Provider dated 13 April 2015 terminating his banking facilities. He informed the Provider that he was in a position to continue with the repayment arrangement and the Provider agreed to recommence the arrangement.

On 10 May 2017, the Complainant called the Provider and stated that he had been refused a mortgage application due to his credit rating and that when he queried this with the Irish Credit Bureau, he was informed that his loan account was still showing up as being in arrears. The Provider informed the Complainant that when the full demand was made on the loan account, the full amount of the loan was due and owing and the repayment arrangement was not a new credit agreement and therefore the loan account would show up as being in arrears until such time as it is cleared in full.

The Provider informed the Complainant that this would remain on record with the Irish Credit Bureau for a period of five years. The Complainant asked the Provider why the specified amount of monthly arrears had begun to decrease over the previous seven months. At that stage the Provider was unable to answer that question on that call. It telephoned the Complainant back the following day, 11 May 2017, and explained to him that the reason his Irish Credit Bureau report was showing up as being nine months in arrears is that when the demand goes out for the full amount, the maximum amount of arrears is shown and the number 9 signifies that full demand was issued as that is the maximum number. On this call the Provider's agent explained to the Complainant that the Irish Credit Bureau report is based on the original repayment monthly amount which was in excess of €500 and not the agreed repayment arrangement of €300. It was further explained that in recent months, the number has decreased from 9 to 4 months in arrears because he is down to his last few monthly repayments.

At this stage, the Complainant appeared quite shocked by this information and he argued that this was very unfair in light of the fact that he agreed a repayment programme with the Provider and had kept to it. The Complainant stated to the Provider during this call that he would never have agreed to the repayment arrangement had he been aware of this and that the Provider never gave him this information as to how it would continue to report the status of his loan with the Irish Credit Bureau.

In the month following, the Complainant cleared the principal and interest on the loan account in full.

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The Provider was asked by this Office to provide evidence of compliance with the provisions of the applicable Consumer Protection Code relevant to the complaint. In response, the Provider referred only to the obligations on it to handle complaints raised by the Complainant and in that regard it stated that it was satisfied that provisions 10.7 – 10.12 of the Consumer Protection Code have been adhered to.

However, the Provider was silent as to its obligations on providing certain information to customers when a revised repayment arrangement has been entered into.

In that regard, Clause 8.11 of the Consumer Protection Code 2012 provides:

“Where a regulated entity reaches an agreement on a revised repayment arrangement with a personal consumer, the regulated entity must, within five business days, provide the personal consumer, on paper or on another durable medium, with a clear explanation of the revised repayment arrangement and clarification on what data relating to the consumer’s arrears will be shared with the Irish Credit Bureau or any other relevant credit reference agency.”

Pursuant to Clause 8.11 of the Consumer Protection Code 2012, the Provider is obliged to provide the Complainant with *“a clear explanation of what data relating to the consumer’s arrears”* will be shared with the ICB. From the documentation provided in evidence, it appears that the Provider gave no explanation or notice to the Complainant that as a result of his monthly repayments being reduced to €300, the Provider would report to the ICB that the Complainant’s loan account was in full arrears. This is evident from the absence of such information in the letters dated 29 August 2012, 9 March 2013 and 3 October 2013.

However, when the Provider renewed this repayment arrangement by letter dated 8 June 2016, the Provider’s manner of providing this information was starkly different. Amongst other things, this letter stated:

“As a consequence of the Provider’s agreement to the above revised repayment arrangements:

- *Where applicable, the Irish Credit Bureau (ICB) has been informed of the balance due on your account(s) and further updates to your ICB records will be made by the Provider following closure of your account(s).”*

Identical wording was provided in the letter of 11 May 2017 where the Provider indicated it would continue to accept the Complainant’s monthly repayments of €300 for a further 12 months.

In my view, the provision of this important and necessary information in the letters of 8 June 2016 and 11 May 2017 do not cure the defects in the letters dated 29 August 2012, 9 March 2013 and 3 October 2013 and I am satisfied that the Provider failed to comply with its obligations pursuant to Clause 8.11 of the Consumer Protection Code 2012.

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However, the Provider has explained in its response to this office, that when the repayment arrangement was first entered into with the Complainant, his account had already been transferred to the Provider's customer recoveries unit and the Complainant's record with the Irish Credit Bureau would already have been negatively impacted. In addition, the Provider had called in the full amount of the loan which meant that the Complainant at that stage was in arrears of the full amount of the loan.

While I accept that the Provider has failed to comply with its obligations as set out above, I also accept that notwithstanding that, the information provided to the Irish Credit Bureau was the accurate reflection on the current state, at the relevant times, of the Complainant's loan account with the Provider. Therefore, I do not uphold this aspect of the complaint.

I note the Complainant's insistence that he could have paid higher repayments on the loan or paid it off earlier. This course of action was always open to the Complainant and I do not hold the Provider responsible for agreeing to reduced repayments to facilitate the Complainant's financial situation as he had presented it.

Information provided to the ICB can have very profound implications for an individual and their credit rating. Therefore it is essential that the information is accurate and that the consumer is aware of what information will be reported.

While I accept that the Provider was entitled to record the information it did record with the ICB, I believe that greater clarity with regard to how it communicated with the Complainant in relation to the changed repayments and the implication for reporting to the ICB was required.

In recognition of the Provider's failings with regard to Clause 8.11 of the Consumer Protection Code 2012 and the provision of information to the ICB, I partially uphold this complaint and direct the Provider to pay compensation to the Complainant in the amount of €2,000.

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)(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 make a compensatory payment to the Complainant in the sum of €2,000, 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**

11 March 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.