



<u>Decision Ref:</u>	2019-0105
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Car Finance
<u>Conduct(s) complained of:</u>	Failure to provide product/service information Dissatisfaction with customer service Maladministration Failure to implement options at end of agreement
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a Consumer Hire Purchase Agreement, terminated by the Provider before the expiry of the agreed term, and without the Complainant's knowledge. The Complainant is also aggrieved by the Provider's poor customer service, and maladministration, shown in dealing with his complaint.

The Complainant signed the Consumer Hire Purchase Agreement on the **24th March 2014** for a motor vehicle (PCP agreement). The finance agreement had an agreed term of 37 months and was due to end after 36 monthly payments, plus a final lump sum due to be paid on the 37th month. Options were to be offered to the Complainant at the end of the agreement, which included keeping the vehicle and paying one final lump sum, returning the vehicle to the Garage or re-financing with a new finance agreement. The Consumer Hire Purchase Agreement was in the name of one 'Hirer', the Complainant. The Provider states that the monthly direct debit instalments were made from a joint account owned by both the Complainant and a third party. However, the vehicle was registered in the name of the third party only.

During the final three months of the agreement, the Provider issued two reminder settlement letters to the Complainant, at the address previously given on the original PCP agreement. The letters were issued on the 2nd November 2016 and 1st February 2017, prior

to the end of the agreement. The Complainant called the Provider on **19th January 2017** to enquire about the end of contract options; an option was not agreed upon at this time.

It seems that the third party approached the Provider on the 27th February 2017, with a *“reminder letter in their possession”*, to enquire about the settlement balance.

Subsequently a new finance agreement in the third party’s name was agreed, clearing the previous balance, despite the PCP agreement being in the Complainant’s name only. This new contract was activated on the **20th March 2017**.

The Complainant understands that the third party was given details of the Complainant’s PCP account balance while arranging to re-finance the vehicle in a new agreement, in that third party’s name only. This automatically cleared the outstanding balance on the Complainant’s finance agreement. It also prompted a series of letters being sent to the Complainant’s address. The Complainant was unaware of this transaction, until he made enquiries, nearing the end of the agreed term. It is noted that a final one month reminder letter did not issue to the Complainant, as the finance agreement had been terminated by the Provider, on **20th March 2017**.

The Complainant contacted the Provider on the **4th April 2017**. He was told that *“a third party had paid off and terminated the agreement a month earlier”*. The position which had arisen was noted by the Provider on this date. Over the following eight days the Provider investigated the complaint, cancelled the new agreement with the third party, and issued a replacement contract to the Complainant, activated from **12th April 2017** to cover the remainder of the original agreement period. The Complainant was given an extended deadline, up to the end of May 2017, to confirm his selection from the ‘end of agreement options’. The Complainant confirmed, in a letter dated **24th May 2017**, that his chosen option was to return the vehicle to the Provider. The Provider confirmed this option to the Complainant in a letter dated the **9th June 2017**.

It is noted that on the **4th April 2017**, the Complainant also advised the Provider of a change of contact address, which was different from the address given on the original finance agreement, dated 24th March 2014.

The Provider states that it reported a data breach to the Office of the Data Protection Commissioner on the 5th April 2017. Issues in relation to breaches of the Data Protection Legislation are a matter for the Data Protection Commission and not a matter for this office. Consequently in a letter from this office, dated the 1st May 2018, the Complainant was referred to the Data Protection Commission regarding the complaint concerning his personal information being shared with the third party.

The Complainant had also alleged fraud or collusion on the part of the Provider. However any complaint of fraud or collusion on the part of a Provider is a criminal matter, which falls outside the Jurisdiction of the Financial Services and Pensions Ombudsman, and is more appropriate for An Garda Síochána or for the courts.

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The Complainant's Case

Poor customer service issues and complaint handling

On the 20th March 2017 the Provider terminated the PCP agreement it had with the Complainant, without his knowledge or agreement. When the Complainant contacted the Provider on the 4th April 2017 requesting the balance on his finance agreement, he was informed that the PCP agreement had been settled and the vehicle had been re-financed by a third party.

The Complainant submits that the agreement had been terminated prematurely, against his will and without his knowledge. He had also been denied the opportunity, of deciding which option he would take, regarding the vehicle, at the end of the agreed term.

Confusing communication/poor administration

The Complainant advised the Provider on the 24th May 2017 that he was returning the vehicle at the end of the hire purchase agreement. The Provider acknowledged confirmation of this in a letter dated 9th June 2017. The Complainant states he did not receive this letter. On the 17th August 2017 the Provider issued a "Clearance of obligation" letter to the Complainant. This letter incorrectly stated that the ownership of the vehicle had returned to the Complainant, when it had in fact reverted to the Provider. In a letter dated the 25th August 2017 a letter of apology and explanation was issued from the Provider to the Complainant. This letter confirmed that ownership of the vehicle had transferred back to the Provider, however the Complainant was aware that the third party had possession of the vehicle. The Complainant received an additional letter from the Provider on the 11th September 2017. In this letter the Provider accepted that correspondence issued to the Complainant contained "*standard wording*" and it apologised for "*this confusion*", The Provider went on to explain how the vehicle was re sold as is its "*standard process*".

Delayed response to the Complainant's correspondence

The Complainant submits that the Provider did not respond to his complaint in a timely manner and that a letter dated 9th June 2017, was not received by him. He also submits that when he raised his complaints in April 2017, the Provider was evasive and slow to respond to his calls and emails.

The Provider's Case

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The Provider acknowledges its error in terminating the Complainant's finance agreement early, and agreeing to re-finance the balance amount on the vehicle account with the third party, without his knowledge or signed agreement. It contends that it did reply to the Complainant's correspondence within the required consumer code time frames.

It is the Provider's position that within eight days, it reverted the Complainant back to a position he had been in before the incident. The Provider apologised for the confusing and incorrect administration letters sent to the Complainant. A compensation sum of €150.00 (one hundred and fifty euro) was offered to the Complainant. This was not accepted by him.

The Complaints for Adjudication

1. The Provider demonstrated poor customer service and maladministration, in facilitating the early termination of the Complainant's PCP finance agreement, without the Complainant's knowledge or agreement.
2. The Provider failed to communicate effectively with the Complainant, issuing of confusing and incorrect letters to the Complainant, particularly after he had selected an "end of arrangement" option.
3. The Provider did not respond to the Complainant's correspondence in a timely manner.

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 20th March 2019, outlining the preliminary determination of this office in relation to the complaint. The parties were

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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.

Analysis

The Purchase Finance Agreement was between the Complainant and the Provider. The monthly instalments were paid from a joint bank account and it would seem that the PCP account payments were kept up to date. In this regard there was no reason for the Provider to terminate the contract prematurely in the 36th month. I accept that an error was made by the Provider in re-financing the agreement with the third party. The Provider was approached by the joint bank account holder and, as suggested by the Provider, the vehicle's registered owner. However, the agreed 'Hirer' (the Complainant) was not contacted despite the contract having one further month to run before an expiration date of April 2017.

A series of incorrect letters issued by the Provider, in my opinion, illustrate poor communication when dealing with this account. It is noted that the Provider states it has now changed "*two of [its] internal process*" due to the issues raised in this complaint. The Provider also states that it has "*changed the wording*" of some of the correspondence it now issues to customers.

With regard to the provision of information to a consumer, the Consumer Protection Codes 2012 (as amended) states that a regulated entity must ensure that all information it provides to a consumer is clear, accurate and comprehensible.

Having examined the matter, I take the view that the Provider wrongfully terminated the Complainant's PCP finance agreement, without the Complainant's knowledge or agreement. I am cognisant that the Complainant feels angry and aggrieved with the actions of the Provider.

I am not satisfied that the standard of care taken by the Provider was sufficient in dealing with the cancellation of the PCP finance agreement. There was a breach of contract between the parties and unwarranted behaviour towards the Complainant. It is noted that the Provider has, following this instance, introduced a new procedure to reduce and hopefully eliminate the risk of these errors happening again. This is a welcome development. I consider however that the issuing of wrongly worded correspondence by the Provider, after it had confirmed the return of Complainant's vehicle, was careless and showed poor administration on its part.

It is noted that the Provider states it issued correspondence to the Complainant, dated 9th June 2017, however the Complainant asserts he did not receive this.

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Under the provisions of the Consumer Protection Code 2012 (as amended) a Provider must acknowledge each complaint on paper or on another durable medium within five business days. I am satisfied that this was adhered to by the Provider.

My legally binding Decision is that the complaint is substantially upheld and while the Complainant did not suffer any financial loss, I am cognisant of the concern and inconvenience caused to the Complainant as a result of the Provider's errors. In those circumstances I do not believe that the compensatory payment of €150.00, offered by the Provider is adequate and instead, to mark this decision, I direct the Provider to make a compensatory payment of €400.00 (Four Hundred Euro) to the Complainant.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld grounds prescribed in **Section 60(2) (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 €400.00, 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.

**MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION ADJUDICATION AND LEGAL SERVICES**

16 April 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.