



<u>Decision Ref:</u>	2019-0179
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Personal Loan
<u>Conduct(s) complained of:</u>	Incorrect information sent to credit reference agency Dissatisfaction with customer service
<u>Outcome:</u>	Upheld

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

Background

The complaint concerns the information furnished to the Irish Credit Bureau (ICB) by the Provider in relation to repayments made on an account held by the Complainant.

The Complainant's Case

The Complainant took out a loan with the Provider on **14 October 2016** in the sum of €7,000. The Complainant made all of the 12 scheduled repayments and as a result, the balance on the loan was cleared in **October 2017**.

In **November 2017**, however, he requested an ICB report and discovered that the loan was reported as having received just 9 payments, with no scheduled concluded date noted. The Complainant explains that at the time he was considering applying for a credit card and a financial service provider might have believed his loan to have still been active. He states that he contacted the Provider and was advised the matter would be resolved.

The Complainant states that in **February 2018** he sought an ICB report once again. When he received the report, he was shocked to discover that the loan was still reported as having received just 9 payments. The Complainant states that he again contacted the Provider and

was told the matter would be resolved. He states he did not follow up at that time to ensure the record had been updated, due to a busy work schedule.

In **April 2018**, the Complainant obtained another ICB report, and once again the details had not been updated to reflect the true position. He states that he was considering applying for a mortgage at the time and his mortgage broker queried the position in relation to the loan. He again contacted the Provider and was told that the problem was a delay by the ICB and not by the Provider. He contacted the ICB which told him that the report reflected the information it had from the Provider.

On the **18 May 2018**, the Provider confirmed in writing to the Complainant that his ICB record had been amended to reflect the true position, as of the **2 May 2018**.

The Complainant is very disappointed that it took in excess of 6 months to resolve the matter, and only after he had made many calls and repeated requests to rectify the situation.

The Complainant wants to be suitably compensated for this ordeal and/or for "*maximum financial penalties*" to be imposed on the Provider.

The Provider's Case

The Provider accepts that it failed to notify the ICB that the account balance had been cleared and that the account had been closed in October 2017. It notes that a "completed" code – "C" – should have been reported on the ICB entry after 11 repayments, rather than simply showing 9 repayments and nothing more. It has apologised for this error.

The Provider states that it acted swiftly to remedy the error once it was notified of the issue. It offered the sum of €150 by way of compensation for any inconvenience caused, and after the Complainant made this complaint to this office it has increased its offer to €250.

The Provider maintains that the Complainant was not financially impacted nor was he refused credit owing to this issue with his ICB profile. Whilst it appreciates the Complainant's concerns in relation to the issue which arose, it points out that the Complainant has made no assertions that any other financial institution queried his ICB profile during the relevant period, nor has he suggested that he was refused credit as a result of the error.

The Provider also submitted that "*the Complainant did appear to have issues with his ICB, ... which were not related to his [Provider accounts]. It is clear that the Complainant was aware that his ICB record was impaired relating to the repayment history on facilities held with other lenders and he could not have considered the absence of the "C" profile [on the Provider's loan account record] as a singular blemish on his ICB record.*"

The Provider points out in that regard that although the Complainant made contact with the Provider in November 2017, it holds no evidence that this contact was for the purpose of

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expressing concern regarding his ICB record. Rather, the Provider's records show that the Complainant made contact with the Provider on 20 November 2017 to apply for an additional personal loan but this was ultimately declined on the basis that the ICB check which was run at that time, returned with a negative result. The Provider notes from its records that the Complainant had commented that this could have occurred as a result of missed payments earlier in 2017, on a car loan which was not held with the Provider.

The Complaint for Adjudication

The complaint is that the Provider mis-reported the status of the Complainant's loan to the ICB.

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 5 June 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 any substantive submissions from the parties, within the period permitted, the final determination of this office is set out below.

The Complainant drewdown a loan for €7,000 in October 2016. He made his 12 scheduled repayments and cleared the balance as agreed with the Provider, in October 2017. When the Complainant cleared the balance, the last two entries on the account should then have

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been reported as 11 ticks and a “C” – meaning 12 repayments, the 12th one “*completing*” the repayments and clearing the loan balance. Instead, the report simply showed 9 ticks – indicating 9 repayments only.

It should be noted from the outset that a Provider is under an obligation to furnish accurate and fair information to the ICB. This serves to protect both provider and customer. The Provider holds a weighty responsibility in that respect in circumstances where the credit profile of an individual has very significant implications, and if not accurately recorded, it can severely affect that person’s ability to access other credit facilities.

The Complainant has furnished a recording of a telephone call that he made to the ICB which he says was in December 2017. Although the content of that telephone call suggests that he had already been in contact with the Provider, the Provider has not furnished any audio evidence of the Complainant raising the issue with the Provider earlier than in April 2018. From April 2018 until the issue was resolved there are a number of telephone calls from the Complainant seeking an update. The Provider has confirmed that telephone calls prior to April 2018 were in relation to other banking services such as credit card limit increases and assistance with the Provider’s online services (its “app”) and did not touch upon the issue raised in this complaint, which runs contrary to the impression created by the audio file of the Complainant’s telephone conversation with the ICB.

The Provider states that it acted swiftly to resolve the issue. While I accept that the Provider was proactive from April 2018, which it says was when it was notified of the issue by the Complainant, nevertheless, it is clear that the Provider furnished incorrect information to the ICB in October 2017. It was not up to the Complainant to detect this error and to inform the Provider – the error should not have happened in the first place, and it is disappointing that it remains unclear as to why, after the Complainant had fully discharged his loan in October 2017, and indeed in the previous months, the accurate indicators were not notified by the Provider to the Irish Credit Bureau, in accordance with the Provider’s obligations.

I am also disappointed to note that both the Provider’s letters issued to the Complainant on 4 May 2018 and again on 30 May 2018 suggested that the Provider’s only error had been the failure to register a Status “C” with the ICB regarding the Complainant’s loan. It is abundantly clear from the excerpt from the Complainant’s ICB report dated 5 April 2018, that at that point, the payment history for the loan indicated 9 payments only. Whilst there was no suggestion from the ICB report in question that the Complainant was in any arrears, as each of the indicators registered was a positive “*tick*”, nevertheless, it is clear that the payments made by the Complainant were not being reported within the correct frequency, but this is not in any way acknowledged in the Provider’s correspondence to the Complainant in May 2018.

There is limited evidence that the incomplete ICB report caused the Complainant any prejudice. I note however, that the Provider itself had cause to access the Complainant’s credit profile in November 2017 when he sought a new loan. Although the Provider has referred to a missed payment on a separate car loan, it is clear that the Provider took the Complainant’s ICB credit profile into account in its assessment of that loan application, in circumstances where that report contained the Provider’s own incorrect information.

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The Complainant has also advised that his broker enquired about his ICB profile with him, though he omitted all of the pages from his credit report from his submissions to this office, except the cover page and the page with this loan on it. For that reason, the degree to which the incomplete and inaccurate information recorded by the Provider (regarding the loan which the Complainant held and had fully repaid by October 2017) affected or impacted the Complainant's ability to access credit facilities, therefore remains unclear, given that the other pages of the Complainant's ICB report from that time, had not been made available to this office.

It is not in dispute that the Provider furnished incomplete information to the ICB and there is no doubt that the Provider's conduct was wrong. I am also not satisfied that the Provider acted as swiftly as it contends, even in April 2018, and at that point, while there may have only been a delay of a few weeks between being informed of the issue, and resolving it, and some of that time may have been due to delays on the part of the ICB, the fact of the matter is that incorrect information was maintained on the ICB record for more than 6 months. It is not up to the customer to ensure that the Provider has furnished accurate information, the fact it went undetected for a number of months is the fault of the Provider. Given that the Complainant explained the ongoing problem to the Provider, in the clearest of terms at latest on 9 April 2018, it is disappointing that the matter was not confirmed to the Complainant as being fully resolved until approximately a month later, in early May 2018.

Whilst the Complainant seeks "*maximum financial penalties*" to be imposed on the Provider, it is not a matter for this office to impose fines or penalties on a financial service provider; any such issue is a matter for the Central Bank of Ireland as the regulator of the financial service provider. Rather, in the context of the adjudication of a complaint, it is open to the FSPO to direct compensation as appropriate, to reflect the inconvenience or loss visited upon a Complainant, by the wrongful conduct of a financial service provider.

Accordingly, to reflect the issues raised by this complaint and the wrongdoing of the Provider, including its failure to acknowledge the full extent of the mis-reporting of indicators to the ICB, in its correspondence of May 2018, I consider it appropriate to make a direction to the Provider to make a compensatory payment to the Complainant in the sum of €800 in recognition of the very serious nature of the error in question and also to reflect the inconvenience caused to the Complainant arising from the error in question.

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)(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 €800, 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

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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

27 June 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.