



<b><u>Decision Ref:</u></b>	2019-0195
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Credit Union Loan
<b><u>Conduct(s) complained of:</u></b>	Disputed transactions Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Maladministration
<b><u>Outcome:</u></b>	Upheld

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

**Background**

The Complainant is a member of, and held a loan with, the Provider Credit Union. On 16 December 2015 she entered into a loan agreement with the Provider, in the sum of €11,962.68.

The Complainant submits that the scheduled repayments on her loan account were €60.00 per week but that she fell into financial difficulty and could no longer meet the repayment. She submits that she agreed with the Provider to pay €30.00 per week but advised that she was unsure as to when she would be in a position to meet the full repayment amount again. The Provider has submitted that it was agreed with the Complainant that she would make the lower repayments for a period of one month and then revert to the scheduled repayments.

The Complainant submits that she furnished the Provider with a completed standing order mandate, authorising payment of €30.00 per week from her (third party) bank, toward her Credit Union Loan.

The Complainant submits that she subsequently noticed that the €30.00 had not been taken from her bank account, as authorised. She submits that she rang the bank to query why this was the case and was advised that the standing order in the amount of €30.00 had

been cancelled and replaced by a new standing order in the amount of €60.00 per week. The Complainant submits that, as she had not given any such instructions, she asked the bank to investigate the matter. The Complainant says she was furnished with a copy of the mandate, which the bank had received by post to its bank centre, which showed that the standing order mandate, with her signature, authorising weekly payments of €30 had been altered without her permission, with the effect of changing the sum to €60 per week.

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

The Complainant submits that she took out a top up loan with the Provider, in December 2015, with weekly repayments due in the amount of €60.00. The Complainant submits that due to her financial circumstances at the time – she was in receipt of income of €186 per week in the form of social welfare illness benefit, she was not in a position to meet the €60 repayment per week. The Complainant submits that on **11 April 2016** she phoned the Provider and spoke with a member of management.

The Complainant submits that she explained to the member of management that she was not in a position to meet the scheduled repayments, at that time, and asked whether she could pay a reduced amount. The Complainant submits that the member of management agreed to repayments of €30.00 per week but that she wanted to set a date with the Complainant for a return to the full scheduled repayments of the loan. The Complainant submits that the member of management told her that a month of €30.00 repayments would be too long, but the Complainant says that she explained to her that she was unsure when she would be able to commit to making the full €60.00 weekly repayments toward the loan again, due to her financial circumstances.

The Complainant submits that on or about **12 April 2016** she received two Standing Order mandates, which had been sent to her by the Member of management. One of these Standing Order Mandates authorised a weekly payment of €30.00 per week and one indicated €60.00 per week. The Complainant submits that she signed and returned to the Provider the Standing Order mandate authorising payment of €30.00 per week and that she kept the one authorising €60.00 per week.

The Complainant submits that on or about **19 or 20 April 2016** she received back a copy of the mandate which she had sent to Provider together with a compliment slip stating that she had to hand the mandate into the bank, personally. The Complainant submits that when she tried to hand it in to the bank she was advised that she needed to set up the Standing Order online, which she did. The Complainant submits that, following this, repayments of €30 per week were taken from her account for a period of approximately one month.

The Complainant submits that on **17 or 18 May 2016** she received another Standing Order form, authorising payment of €60, from the Provider for her to sign, together with a compliment slip, upon which it was written, "*It must be done today*". The Complainant says that she did not respond or take any action, as she could not afford to make repayments of €60 per week.

The Complainant submits that on **26 May 2016** she checked her bank account and noticed that the Standing Order amount of €30.00 had not been taken from her account as scheduled. She submits that she rang her Bank's phone banking service to enquire as to why this was, and was told that the standing order for €30.00 had been cancelled on **19 May 2016** and replaced with a standing order in the amount of €60.00 per week, to commence on **27 May 2016**.

The Complainant submits that she was concerned, as she had not given these instructions and asked the Bank to investigate the matter. The Complainant submits that the Bank subsequently furnished her with a copy of the Mandate which had been furnished to it. The Complainant submits that the Mandate, which she had signed and handed in to the Provider had been altered, without her permission.

The Complainant submits the further following timeline of events:

On **26 May 2016** she emailed the Manager of the Provider.

On **27 May 2016** she received an email from the Provider's Member of management, asking the Complainant to contact her.

On **30 May 2016** she received an email from the Provider's Member of management, advising the Complainant that she was "*looking into*" the matter.

On **02 June 2016** she emailed the Provider, asking her whether there was an update on the matter and whether the Standing Order for €60.00 had come from the Provider.

On **03 June 2016** she received an email from the Provider's Manger, advising the Complainant that the Standing Order in question had not come from the Provider.

On **08 June 2016** she called to the Bank to view the Standing Order Mandate which it had received. She submits that she took pictures of the Mandate and printed out copies of these. She submits that she called to see the Manager of the Provider and gave him the copies which she had printed out. The Complainant submits that the Manager told her that he was still at a loss as to who had sent the Mandate.

On **09 June 2016** she wrote a letter to the Manager, making a formal complaint and requesting a report into how her complainant was being handled.

On **10 June 2016** she received an email acknowledgment of her complaint from the Provider.

On **15 June 2016** she received an email advising her that her complaint had been referred to the Provider's Board of Directors.

On **17 June 2016** she received an email from the Manager advising her that he was going on leave for two weeks and asking her to resume full loan repayments.

On **21 and 27 June 2016** she wrote a letters to the Chairman of the Board of the Provider, asking for a copy of the report into her complaint.

On **01 July 2016** she received a reply from the Chairman of the Board advising her that the matter had been closed.

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On **05 July 2016** she wrote to the Chairman asking for a full report into her complaint.

The Complainant submits that, (at the time of submitting her complaint to the Financial Services Ombudsman), she had not received any further correspondence from the Provider as regard her complaint.

The Complainant has submitted that she feels *“the response from the manager and the board have been insulting and they have not taken my complaint seriously. To imply I should consider my complaint closed, while denying me any answers is not only causing me stress but is extremely unfair.”*

### **The Provider’s Case**

The Provider submits that the Complainant is a member of it, and held a loan with it. It submits that from late **July 2015** the Complainant was making payments of €80.00 to the Provider, per week by way of Standing Order. The Provider submits that €60 of this was applied to the Complainant’s loan and €20 to her savings account. The Provider submits that the Complainant contacted its office by phone call on **11 April 2016** and spoke to a member of management, seeking to reduce payments temporarily and this request was noted on the member’s record on that same day.

The Provider submits that the Complainant’s request was agreed to, for a period of one month, after which normal repayments were to be resumed by the Complainant.

The Provider submits that *“providing the member with one mandate to reduce the payment and a second mandate to return the payment to the contracted repayment amount confirms this.”* The Provider further submits that *“our system records notes made contemporaneously and an entry made on the members record on April 11<sup>th</sup> noting the above”*.

The Provider submits that the Complainant’s last payment in the sum of €80.00 was received by it on **08 April 2016** and that three payments, in the sum of €30.00 each were made by her by debit card, over the phone, on three occasions from **14 April to 28 April 2016**. It submits that no further payments were received by it, until **27 May 2016**, when payment was made again over the phone by debit card.

The Provider submits that a note was made on the Complainant’s record on **16 May 2016** and a letter was sent to her, requesting that she return the Standing Order forms, to facilitate the resumption of the contracted repayment. The Provider submits that this note was dated 10 days prior to the receipt of any complaint to it from the Complainant.

The Provider submits that a further letter was generated on its system on **27 May 2016** and issued to the member, noting that the account was at that stage 5 weeks in arrears.

The Provider submits that it received a letter from the Complainant on **27 May 2016**, stating that a Standing Order had been sent to her bank, without her authorisation and requesting that the matter be investigated.

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The Provider submits that its Manager phoned her, in response to the letter, on the same day, **27 May 2016**, but got no answer. Its Manager then sent an email to the Complainant that day, acknowledging receipt of her letter and stating that he was looking into the matter and would make contact with her on the following Monday.

The Provider submits that the Complainant called to its office on Thursday **02 June 2016** and met with the Manager and handed over to him photocopies of a standing order form that bore the Complainant's signature, authorising the amount of €60 per week and with "Fridays" handwritten on the form, with no commencement date on it.

The Provider submits that it appeared from the photocopy of the mandate, furnished by the Complainant, that a label or labels may have been placed on the form, to cover up the amount which had been previously signed by Complainant (authorising payment of €30) and the commencement day had label placed over it, amending the amount, to read "€60" and "Fridays".

The Provider submits that its Manager asked a member of management for her opinion on the matter. The Provider submits that the member of management agreed that the writing on the photocopy looked like hers but advised that she couldn't explain it. The Provider submits that its Manager phoned the Complainant back later that day, to confirm that the matter was being investigated.

The Provider submits that its Manager called to the Complainant's bank branch on the same day and asked to see the Standing Order but was told that it was not on site at the time but would be returned to the office in a few days and could be viewed then.

The Provider submits that its Manager got a call from a bank official on **08 June 2016** to say the original Standing Order Mandate could be viewed and that the Manager went to the bank, viewed the document and took photos of it on his phone. The Provider submits that it was clear that two labels were placed on the form, covering the earlier instruction for €30 and "Thursday", with €60 and "Fridays" and that these entries were handwritten, while the earlier instructions were typewritten but that the signature on the form appeared to be original and not a copy.

The Provider submits that it was also noted by the bank that the form had been posted and not hand delivered, as is normal with correspondence from the Provider, to the bank.

The Provider submits that its Manager spoke again with the member of management and asked if she would be available to meet with him and the Chairman of the Board on **10 June 2016**. The Provider submits that it advised her (the member of management) that it was part of the ongoing investigation into this matter and that if she wished, she could have someone present at the meeting with her.

The Provider submits that on Friday **10 June 2016**, a registered letter was received from the Complainant, making a formal complaint and containing photos of the original standing order form, showing labels having been affixed as outlined above.

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The Provider submits that a meeting with the member of management took place at 3.30pm on **10 June 2016**, with the Manager, the Chairperson and the member of management present. The Provider submits that:

*“at the outset, the staff member was advised that the meeting was part of the investigation into the matter and was not disciplinary in nature, nor was any allegation or accusation being made. She was advised that a formal complaint had been received and the matter was being treated seriously.”*

The Provider submits that the meeting, the member of management was asked to outline her dealings with the Complainant and she confirmed that the Complainant had requested a short term reduction in payments, in **April 2016** as per the notes contained on the account and this was agreed. The Provider submits that the member of management had set up a “flexi account” to this end and posted the relevant Standing Order forms to the Complainant for signing, one authorising the amount of €30.00 per week and one to revert to €60.00 per week.

The Provider submits that the member of management *“denied all knowledge of the SO form for €60.00”* which the bank was in receipt of, *“even though she agreed that the writing on the form is very similar to hers.”*

The Provider submits that all of its other staff members were interviewed by the CEO, *“asking for details of any contact any of them would have had with this particular member but apart from some recalling taking an occasional telephone call to make a payment there was no contact with any other staff member.”* The Provider submits that the Complainant continued to make payments of €30 weekly by debit card up to and including **16 June 2016**, while from **23 June 2016**, these reduced to €10 per week.

The Provider submits that the Complainant was written to by email on Friday **17 June 2016**, advising her that the investigation was ongoing but that it was an *“internal matter”* and also asking her *“to resume normal loan repayments as soon as possible as agreed.”*

The Provider submits that it regrets that the Complainant feels that her complaint was not taken seriously by it and notes that the Complainant that the member felt insulted by the manner of the investigation, which, it submits was not its intention. The Provider submits that it is *“greatly relieved that the member suffered no financial loss”*. It submits that the matter was taken very seriously and a full investigation was carried out into the Complainant’s complaint but it *“could not be established definitively how the second standing order form was sent to the bank.”*

The Provider submits that the Complainant was kept advised on the progress of the investigation on a regular basis by email. The Provider submits that she also received an apology for the upset caused to her and at all times she was treated with the utmost respect.

The Provider has submitted that its Board, whilst recognising that the Complainant was *“very distressed and upset at the event are satisfied that the correct procedures were followed in its dealings with [the Complainant] once the complaint was made.”*

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The Provider submits that, *“finally, while appreciating and understanding the upset our member feels the board are of the view that there are no grounds for this complaint to be upheld”*.

### **The Complaint for Adjudication**

The Complainant’s complaint is that the Provider wrongfully amended the terms of the Standing Order form, which she had signed and submitted to it and further, that the investigation undertaken by the Provider in this respect was unsatisfactory.

### **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 19 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 additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

The essence of the Complainant’s complaint is the Provider wrongfully altered the terms of a Standing Order which she had submitted to it, so as to increase the amount of the weekly repayment being made toward her loan. The Complainant also submits that her complaint in this regard was not taken seriously by the Provider.

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The Provider has submitted that *“the matter was taken very seriously and a full investigation was carried out into the members complaint but it could not be established definitively how the standing order form was sent to the bank”*.

The Complainant has submitted that in or about April 2016 she requested an arrangement with the Provider, for a reduction in her loan repayments. I note that there is an internal document of the Provider, in the form of a *“Member Notepad”*. There is an entry in relation to the Complainant’s account dated **11 April 2016** which states: *“Caleld [sic] and needs to reduce to 30 week for a month as she has to get her car repaired = S/O mandate sent and also increase [sic] one sent”*

The Complainant has submitted however, that she did not, at this stage agree to increase the repayment amount to €60 after a month as she was *“unsure as to when [she] could resume normal repayments”*.

The Complainant submits that on or about **12 April 2016** two Standing Order mandates were sent to her by the Provider, one authorising a weekly payment from her bank account of €30.00 per week, and one authorising €60.00 per week. The Complainant submits that she signed and returned the Standing Order mandate, authorising payment of €30.00 per week, but not the one authorising €60.00 per week.

The Complainant has submitted that on or about **19 or 20 April 2016** she received a copy of the mandate back, together with a compliment slip stating that she had to hand the mandate into the bank, personally. The Complainant submits that when she tried to hand it in to the bank, it advised her that she needed to set up the Standing Order online, which she submits she then did. The Complainant submits that the repayments of €30 per week were taken from her account for approximately one month.

I have had regard to the compliment slip in question, which has been submitted by the Complainant. It is undated and it states: *“[Complainant], copy of mandate attached. The Bank need you to call in and change personally. Regards, [Member of management].”*

I have had regard to the copy Mandate to which the Complainant submits accompanied it, which is also undated. I note that it provides authorisation for a payment of €30 per week from the Complainant’s bank account, to the Provider and is signed by the Complainant.

The Complainant submits that on **17 or 18 May 2016** she received another Standing Order form from the Provider authorising payment of €60, to sign, together with a compliment slip, upon which it was written, *“It must be done today”*. The Complainant submits that she did not respond to this or take any action as she could not afford to make repayments of €60 per week.

I note that the compliment slip and the form furnished by the Complainant are undated and that the form is headed *“Change to Existing Standing Order Mandate”*. It provides that the sum of *“€60 loan”* is to be taken from the Complainant’s bank account (it was not specified on the face of the form whether this was to be weekly/fortnightly/monthly) but it stated *“commencing 20 May 2016”*. The Compliment slip stated, *“[Complainant] Please call into*

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*your bank today to increase standing order back to €60. It must be done today. Thank you [Member of management]”.*

The Complainant submits that, *“this was different to the original two mandates I had received. I did not go into the Bank with this mandate as I could not afford to repay €60.”*

The Complainant submits that on **26 May 2016** she checked her bank account and noticed that the Standing Order amount of €30.00 had not been taken from her account. She submits that she rang her bank’s phone banking service to enquire why and was told that the standing order for €30.00 had been cancelled on **19 May 2016** and replaced with a standing order in the amount of €60.00 per week, to commence on **27 May 2016**.

The Complainant submits that she had not given these instructions and asked the bank to investigate. The Complainant submits that it subsequently furnished her with a copy of the Mandate which had been furnished to it. The Complainant submits that the Mandate, which she had signed and handed in to the Provider had been altered to read €60, instead of €30, without her permission.

On **26 May 2016**, the Complainant wrote to the Provider and said:

*“Further to your demand received on the 18<sup>th</sup> of May I am not in a position to increase my payments back to €60 at this time, as I explained when I spoke to [member of management] on the phone. I have continued to pay the €30 per week.*

*However, this standing order has been cancelled and a new one presented for €60 which I did not authorise or have any knowledge of until I contacted the bank today to enquire why my standing order of €30 wasn’t taken today. The bank are now investigating this matter and I await a report. Until this has been resolved I have cancelled all standing orders...I would be grateful if you could also investigate as to why this happened...”*

By email dated **27 May 2016**, the Manager wrote to the Complainant stating:

*I received your letter today and I’m looking into the matter. I’ll be back to you on Monday if that’s ok with you.*

By letter dated **27 May 2016** the member of management wrote to the Complainant, this letter stated:

<b>Account Summary</b>	
<b>Share Balance</b>	:€1352.67
<b>Loan Balance</b>	:€11366.77
<b>Interest Accrued</b>	:€92.22
<b>Loan Arrears</b>	:€330.00
<b>Agreed Repayment</b>	:€60.00 WEEKLY

*Dear [Complainant]*

*I note from your statement, you are not paying the agreed amount.*

/Cont’d...

*Your loan is now in arrears. Details given above. Please call me today on [telephone number]*

*[The Provider] is now a member of the ICB (Irish Credit Bureau) and returns data on loans issued and their repayment histories. Missed repayments and arrears are recorded on the ICB database and will affect your ability to access credit in the future from [the Provider] and other lenders."*

A handwritten note appears on the face of the letter stating, "Please contact me today".

There is an email dated **30 May 2016** from the member of management to the Complainant, saying:

*"Looking into it right away and get back to you asap  
Did you post back here the increase €60 which I posted to you some time ago."*

There is a further email from the Complainant to the member of management dated **30 May 2016**, which states:

*"I have not returned the form to increase repayments to €60, I have both documents here unsigned.*

*In response to your letter dated 27.05.16 I explained when we spoke on the phone I am currently trying to get my car fixed and am unsure as to when I will be in a position to increase to the above amount, however as soon s[sic] I am in a position I will do so."*

There is an email from the member of management to the Complainant dated **31 May 2016**, which states:

*"We were to talk in a month – like yourself I have a copy of the unsigned standing order form here – I was going to contact you at end month for update.  
I am at a loss over your query but we are looking into it.*

*On the payment side of things – are u working? Can you drop a payslip or social welfare receipt into me and an email or note with expenses so I can report to the board as to why your account is going into arrears? And how long do you think it will be before you can go back to full payment."*

The Complainant sent an email to the Manager of the Provider, on **02 June 2016**:

*"I received your standing order form on the 17<sup>th</sup> of May, along with demand to increase my standing order to €60 that day. However, as I am not in a financial position to do so I have the form unsigned and did not make any amendments with my bank to alter my standing order for €30.*

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*I am currently on illness benefit and receive a total of €186 per week. I will forward you a copy of my social welfare receipt and a list of expenses as requested."*

*Has there been any progress with the investigation into what occurred with my account? can you please confirm if the order came from the Credit Union?*

The Manager of the Provider sent an email to the Complainant on **03 June 2016**:

*"As far as I can determine at this stage the request to the bank did not come through here.*

*[The member of management] tells me she sent a new form to you recently for you to sign to revert to the €60 as agreed but it didn't come back to her.*

*As you know the bank would not accept any such instruction from us and in any case the bank have not been accepting standing order requests on paper since February this year, these have to be done online and only by the account holder.*

*Perhaps you'd get the bank to give you a copy of what they got and send it to me so we can investigate it further."*

The Complainant wrote a letter of formal complaint to the Provider dated **09 June 2016**:

*"I became aware of the situation on the 26<sup>th</sup> May when I phoned [telephone banking service] to query why a standing order of €30 payable to [the Provider] had not been taken from my account. I was informed that on the 19<sup>th</sup> of May my standing order had been cancelled and a new standing order for €60 was set up and would be taken from my account on the 27<sup>th</sup> of May. I did not cancel or authorize these changes to my account.*

*When I set up the standing order for €30 payable to [the Provider] I personally brought the mandate into [her bank branch] after [member of management with the Provider] returned the form to me with a note saying I needed to call into the bank and change it personally, however, I was told the bank no longer accepts the forms and I would have to submit these changes online. I proceeded to make said changes online. Three weeks later I was informed a new standing order to which I have not authorized had been set up. I would like to know who sent this new mandate in my name without my acknowledgment or without me signature on a new mandate.*

*I am aware that the bank received a standing order mandate for €60 with my signature; however, this form was manipulated from a previous form I had signed to set up the €30 standing order..."*

I note that by email dated **15 June 2016** the Complainant wrote to the Manager of the Provider, asking, *"Can I please have a report on the investigation to date please so I know where things stand. As you can imagine this is very stressful."*

By email dated **15 June 2016** the Manager of the Provider wrote to the Complainant and stated:

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*I wish to advise that we are continuing to investigate your complaint and it has been reported to our board of directors.*

*The board are due to meet on Monday next and the matter will be discussed by them at their meeting.*

*In the meantime if I have any further update I'll get in touch with you.*

By email dated **17 June 2016** the Manager of the Provider wrote to the Complainant and stated:

*"I refer again to your recent complaint and I wish to confirm we are carrying out an investigation into the matter and any outcome will be dealt with internally.*

*On behalf of our board I wish to apologise for the upset this has caused you and we regret this very much.*

*I will be on leave for the next two weeks and if I have any further information for you I will be in touch then.*

*In the meantime we would appreciate if you would resume your normal loan repayments as soon as possible as originally agreed".*

The Complainant wrote to the Chairman of the Board of the Provider regarding her complaint on **21** and **27 June 2016**. The letter of **27 June 2016** stated:

*As you are aware I still have not received any report into the investigation into my complaint regarding my account. As already explained it is causing me a great deal of stress and anxiety, it is affecting my sleep and my daily routine. As it is now over a month I feel this matter should have been dealt with with greater urgency. It would appear you seem to be unconcerned about this matter, however, I would be grateful if you would send me a report on what stage the investigation is at and what is being done immediately.*

The Provider prepared a report for its Board, dated **17 June 2016** which sets out in detail the Provider's investigation into the matter and its conclusions. As this is instructive I have set it out, below:

#### **Report by the Provider to its Board of Directors**

*Report to the board of directors on data protection breach.*

*June 17<sup>th</sup> 2016*

*A letter was received from a member account number [ ] on Friday 27 May 2016 regarding complaint that a Standing Order form had been sent to [her Bank] without authorisation.*

*The member had reduced their loan repayments some weeks previously by agreement from €60 to €30 for a Short period... and this is confirmed by the notes on the account.*

*The manager phoned the member in response to the letter but got no answer.*

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*The member called to the office on Thursday June 2<sup>nd</sup> and met with the manager. Photocopies of a standing order form that was signed with the amount €60 on "Fridays" handwritten on the form with no commencement date on it were handed over to the manager.*

*The manager called to the bank branch on the same day asking to see the original document but it was not on site at the time. It would be returned to the office in a few days and could be viewed then.*

*It appears from the photocopy that a label or labels may have been placed on a form previously signed by the member for €30 to cover up the amount and commencement day or date with the revised amount - €60 and "Fridays".*

*The manager asked [member of management] for their opinion on the matter. The [member of management] agreed that the writing on the photocopy looked like theirs but they couldn't explain it. The [member of management] said a different form was sent to the member to sign but it had not been returned. This form would be kept for our records only. The [member of management] also stated that the [bank] branch don't take paper forms anymore and such instructions must be carried out online.*

*The manager phoned the member back later that day to confirm the matter was being investigated.*

*On Wednesday, June 8<sup>th</sup> the manager got a call from an official in the bank to say the original document could now be viewed. The manager went to the bank and took photos on his phone. It is clear that two labels were placed on the form covering the earlier instruction for €30 and "Thursday" with €60 and "Fridays". These were handwritten while the earlier instruction was typewritten. The signature on the form appeared to be original and not a copy.*

*It was also noted by the bank that the form was posted and not hand delivered as is normal with correspondence from the credit union to the [bank] branch in [location]. It seems that all post for a bank branch is now delivered to a central processing office and dealt with there. The form in question was forwarded to the local branch at their request when member approached them about this matter. The envelope that the standing order form was delivered in was not returned to the branch. A bank official confirmed that not all branches are operating an "online only" policy in respect of new and updates to standing order forms and that it is reasonable to expect that the central processing office that the form was delivered to acted on the instruction on the form.*

*The manager spoke again with the [member of management] and asked if they would be available to meet with the manager and the chairman on Friday June 10<sup>th</sup>. He told the member of management it was part of the ongoing investigation into this matter and that the member of management could if desired have someone present at the meeting with them but this was declined.*

*On Friday June 10<sup>th</sup> a registered letter was received making a formal complaint and containing two photos of the original SO form showing labels affixed as outlined above.*

/Cont'd...

*The meeting took place at 3.30pm on Friday June 10<sup>th</sup> with the manager, the chairperson and [member of management] present. At the outset [member of management] was advised that the meeting was part of the investigation into the matter and was not disciplinary in nature, nor was any allegation or accusation being made. The [member of management] was advised that a formal complaint had been received and the matter was being treated seriously.*

*The [member of management] was asked to outline their dealings with the member and the [member of management] confirmed that the member requested a short term reduction in payments in April to enable the member to carry out car repairs and this was agreed to. All communication was by telephone and post. The [member of management] set up a flexi account and posted two forms to the member for signing one for €30 and one to revert to €60. It was stated that these forms were for the internal records of the standing order as the bank required amendments of this nature to be carried out online.*

*The member confirmed in a telephone conversation with the manager that two forms were received from member of management. The member signed and returned one for the amendment to €30 to the CU. The [member of management] returned this form to the member and asked that it be brought to the bank. The member then brought the form to the bank and they told the member it should be done online which the member subsequently did. The payment for €30 came through as and from 13<sup>th</sup> May and in the interim, payments were made by debit card — 3 in total.*

*During the course of the meeting the [member of management] agreed that they had been in contact with the member in relation to the matter but denied all knowledge of the standing order form for €60 even though the [member of management] agreed that the writing on the amended form is very similar to theirs.*

*The [member of management] was adamant that they had no knowledge of or had anything whatsoever to do with the standing order form for €60 which was sent to the bank.*

*The [member of management] agreed that it was normally their function to deal with members who requested a change to their loan repayment terms and stated that they were unaware of anyone else within the office who might have sent the amended form to the bank.*

*At the conclusion of the meeting the [member of management] was asked if they had any idea how this error might have occurred and the [member of management] said they did not.*

*In follow up meetings on June 16<sup>th</sup> and 17<sup>th</sup> 2016 all other staff members were asked if they had any dealings with the member in question at any time in the previous two months. Two staff members recalled taking a telephone call to make a debit card payment but the rest stated that they had no contact with the member that they could recall.*

**Conclusion**

/Cont'd...

*The fact that a member of the credit union would make a complaint that someone falsified a document relating to their account is very disturbing.*

*We have a member who is seriously aggrieved and following her complaint a full investigation was carried out.*

*While the staff member who deals with these matters agreed that the writing on the form is very similar to theirs the staff member denies all knowledge of this form and is adamant that they had nothing to do with it.*

*The bank were requested to supply the envelope that the form was contained in but it was not available and presumed disposed of on receipt. Had we been able to obtain the envelope that the form was sent to the bank in that might have confirmed if the form came from the credit union or some other source but the bank did not retain the envelope.*

*No evidence can be found to establish to a sufficient degree who amended the form and sent it to the bank in relation to the member who made the complaint.*

*The board are conscious that this entire matter may cause reputational damage to the credit union however, in the absence of any individual admitting responsibility for this action it is not possible to state definitively who sent this document to the bank in relation to our members payment. The credit union believes it is not in a position to take any further action against any of its employees in this matter without falling foul of employment law.*

Although the Provider had prepared this report for its Board, dated **17 June 2016**, a copy of the Report was not however furnished to the Complainant at the time. It was not until after she had submitted a complaint to this Office that she was furnished with a copy by the Provider, by cover of letter dated **10 March 2017**.

The Provider had however, responded by way of its Final Response Letter to the Complainant, on **01 July 2016**. This stated as follows:

*"I wish to acknowledge receipt of your letters dated 21 and 27 June.*

*Your complaint has been reported to our Board of Directors and our manager advised you and we are continuing to investigate the matter.*

*We have established that an error was made in relation to your account and the standing order payment from your bank and we also note that no financial loss was incurred by you.*

*On behalf of the board I wish to apologise sincerely to you for the distress this matter has caused you.*

*I thank you for bringing this issue to our attention and I assure you that we are dealing with this matter internally to ensure that such an error will not arise again.*

/Cont'd...

*I trust that you will appreciate that your complaint is now closed..."*

**Provider's Investigation into the Incident and response to the Complainant's complaint**

The Complainant felt that her complaint was not taken seriously by the Provider whilst the Provider has submitted that *"the matter was taken very seriously and a full investigation was carried out into the members complaint but it could not be established definitively how the standing order form was sent to the bank"*.

I note from the submissions furnished, that one aspect of the investigation into the matter involved the Manager attending at the Complainant's bank branch to view the Standing Order mandate, which it held on file for the Complainant. He also took photographs of this form. The Complainant was unaware of these events at the time. I consider that this was questionable action on the part of the Manger, to have attended to view a document from the Complainant's file with a third party financial service provider, without having regard to the confidentiality of the Complainant's account.

His conclusion, in any event, having viewed the document in question was that it was *"clear that two labels were placed on the form covering the earlier instruction for €30 and "Thursday" with €60 and "Fridays" and that these notes were handwritten while the earlier instruction was typewritten.*

The investigation involved a meeting with the member of management. The Provider has submitted that this was *"part of the investigation into the matter and was not disciplinary in nature, nor was any allegation or accusation being made."* I note that the Provider has submitted that the member of management *"agreed that [she] had been in contact with the member in relation to the matter but denied all knowledge of the standing order form for €60 even though the member of management agreed that the writing on the amended form is very similar to theirs."* It has submitted that the member of management was *"asked if they had any idea how this error might have occurred and the [member of management] said they did not."* It has also submitted that *"all other staff members were asked for details any contact any of them may have had"* with the Complainant.

I have also had regard to a document furnished by the Provider, which is a *"statement from staff member"* in relation to the complaint. This statement in question, prepared by the member of management and addressed to the Manager and the Chairman of the Board of Directors, is dated **02 September 2016**. It provides as follows.

*"Ref Member [Complainant's Name]*

*11.04.04 [Complainant] made a telephone call to [Provider] – [Complainant] requested to reduce her payment to €30 a week for a month approx, due to financial difficulty and to pay for repairs to her car. [Member of management] posted 2 standing order mandates to [Complainant]. One to decrease her weekly payment to €30 and another to increase it back to the original amount*

/Cont'd...



16.05.16 [Member of management] sent a note to [Complainant] by way of reminder to return the increase [sic] standing order mandate and a copy to [the Provider]. Over a month had passed

27.05.16 [Credit Control Manager] sent an arrears letter to [Complainant] as there wasn't a reply to note on 16.05.16

30.05.16 [Member of management] opened an email from [Complainant] – notification of complaint

No standing order mandates were returned to [the Provider]. Payment €30 were made directly

[The Bank] do not accept any standing order mandates from [the Provider] – [Name]

The copy of the standing order mandate shown to me by [Manager] has [Complainant] signature on it

Following the email, [Complainant] started paying €10 a week/MABS letter has since been received

[original emphasis]

[The Manager of the Provider] has brought to my attention that the omnibus man [sic] is now involved. As very clearly stated previously to both [the Manager] and [the Chairman of the Board], "I did not sign a standing order mandate on behalf of [Complainant] or I did not send such a mandate to the bank."

This is causing me a considerable amount of concern as I am unable to solve or give you an answer. I follow, at all times, the policies and procedures set out by [Provider] to fulfil my role. As [Provider] have ensured that all staff is highly trained, I can't explain a breach of both ethics and member services like this. I have worked for [the Provider] [number] plus years now and I greatly appreciate all the trust placed in me. This has given me ability to feel tremendous pride in my work."

Having had regard to all of the evidence, I note that the statement of the member of management, underlined above, that "No standing order mandates were returned to [the Provider]. Payment €30 were made directly", does not appear consistent with the fact that the Provider subsequently sent a copy back to the Complainant with a compliment slip, signed by the member of management, which stated "Copy of mandate attached. The Bank need you to call in and change it personally."

I also note within the Report which was submitted to the Board, the Provider referred to the fact that a standing order mandate was returned to the Provider by the Complainant and that the member of management returned it to the Complainant:

*The member confirmed in a telephone conversation with the manager that two forms were received from [member of management]. The member signed and returned one for the amendment to €30 to the CU. The member of management returned this form to the member and asked that it be brought to the bank.*

/Cont'd...

There appears to be certain anomalies here, which were not addressed/investigated by the Provider, as part of its investigation.

Further, the Member of management's statement of **02 September 2016** that "[The Bank] do not accept any standing order mandates from [Provider]" does not preclude it having been issued by post to the bank. The Provider's Report to the Board dated 17 June 2016 acknowledged that "A bank official confirmed that not all branches are operating an "online only" policy in respect of new and updates to standing order forms and that it is reasonable to expect that the central processing office that the form was delivered to acted on the instruction on the form."

However, in the absence of the envelope containing the mandate, the Provider was seemingly content to simply accept that it was in a position to take no further action – and it concluded its Report to the Board into the matter, by stating:

*"If we had been able to obtain the envelope that the form was sent to the bank in that might have confirmed if the form came from the credit union or some other source but the bank did not retain the envelope.*

*In the absence of any individual admitting responsibility for this action it is not possible to state definitively who sent this document to the bank in relation to our members payment"*

Having had regard to all of the evidence made available to me, I am satisfied that on balance, it points to the Complainant herself as not having been the person who amended the form in question. Indeed, this appears to be accepted by the Provider insofar as it stated that it had not been able to adduce sufficient evidence as to "who amended the form...in relation to the member in question."

*[my emphasis]*

In relation to the conduct of the investigation by the Provider into the matter – I note that the written statement of the member of management as set out above, is dated **02 September 2016**. As such, this suggests that the Provider's investigation into the matter may still having been ongoing at that time.

The Provider's Final Response Letter to the Complainant, meanwhile was dated **01 July 2016**. It told her that it had "*established that an error was made in relation to your account and the standing order payment from your bank and we also note that no financial loss was incurred by you*". It did not however provide the Complainant with any details as to this error. It concluded by effectively informing her that it was really none of her business what had occurred and that it was "*dealing with this matter internally to ensure such an error will not arise again. I trust you will appreciate that your complaint is now closed.*"

I do not consider that it was appropriate for the Provider to have issued a Final Response until it had concluded its investigation into the matter. However, it is clear that it considered the matter to constitute a wholly internal matter from that point. It appears to have based this on the fact that the Complainant had not suffered financial loss arising from what occurred. I do not consider this a determinative factor however.

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In my view, internal investigations are a process to establish facts around certain questions, suspicions or allegations. They involve extracting and interpreting relevant information, in order to make decisions about the action to be taken in response. That the Provider does not appear to have taken any action in response to the information it was in receipt of, is alarming and to my mind points to serious flaws with regards to the Provider's processes.

The Complainant has submitted that she was distressed at the manner in which her complaint was dealt with by the Provider and that she felt that *"not once have I felt like I was being treated fairly or with respect. I have had to repeatedly ask for updates while being more or less told that it was none of my business that it was an internal matter"*.

Having considered all of the evidence and submissions before me, I can understand why the Complainant felt like this and why she was dissatisfied at the Provider's investigation into her complaint. I consider that there are serious questions, for which the Provider has not provided a satisfactory response and which give rise to grave concerns as regards its processes and procedures.

I am satisfied that it is appropriate to uphold the Complainant's complaint and to mark my findings in this regard, I intend to direct the Provider to make a compensatory payment to the Complainant in the amount of €5,000.

I also believe that in light of the serious nature of the allegations at the core of the Complainant's complaint, it will be appropriate for this Office to refer this matter to the Central Bank, for its consideration.

## **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) (f) 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 €5,000, 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**

12 July 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.