An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0210
Sector:	Banking
Product / Service:	Personal Loan
Conduct(s) complained of:	Incorrect information sent to credit reference agency Arrears handling Dissatisfaction with customer service
Outcome:	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint refers to a loan account which the Complainant has with the Provider which was referred by the Provider to its insolvency and debt recovery unit. This referral has resulted in a negative impact on the Complainant's Irish Credit Bureau ("ICB") rating.

The Complainant states that the Provider did not inform her of the referral of the loan account to the insolvency and debt recovery unit and that the Provider did not advise the Complainant that her ICB credit rating would be affected as a result of this referral.

The Complainant's Case

The Complainant signed a consumer credit agreement with the Provider for a personal loan in the amount of €17,700 on **24 November 2010**. The loan was to be repaid over a term of 5 years with 59 monthly payments of €382.87. The Complainant made the scheduled repayments in respect of this loan up to **23 May 2011**.

The Complainant states that in or about **January 2011** to **May 2011**, her mortgage rate on her family home, which was held with a different provider, increased from 4.5% to 5.9%.

This had the effect of increasing her monthly mortgage payments from €1,000.47 to €1,822.48.

As a result of this increase in her mortgage payments, the Complainant states that she had to de-prioritise all of her un-secured debt and she went to a third-party debt advisor for assistance in carrying this out.

The Complainant states that the third-party debt advisor made contact with the Provider and an agreement was reached wherein the Provider would accept reduced loan repayments from the Complainant.

The Complainant claims that following this agreement to accept reduced payments, the Provider placed her loan into its insolvency and debt recovery programme and that this decimated her ICB credit rating. She further claims that she was never informed by the Provider that this would happen.

The Complainant places particular reliance on a letter she received from the Provider on **16 June 2015** which she states contains an admission by the Provider that it made a mistake with her credit rating and would contact the ICB to amend this mistake.

The Complainant states that she only realised that her loan had been transferred into the insolvency and debt recovery programme and that her ICB credit rating had been affected in **February 2017** when she requested an ICB report. When the Complainant followed up on this report over the phone with the ICB she states that she was informed that the Provider never changed her credit rating with the ICB and further that her loan account with the Provider was still showing as in arrears for the purpose of her credit report, even though the Provider was accepting reduced payments on the loan account.

The Complainant contacted the Provider in **February 2017** to query the credit rating and to inform the Provider that she did not know that the loan had been transferred to the insolvency and debt recovery programme. At this stage, the Complainant offered to increase her payments if that would assist her credit rating. She states that the Provider informed the Complainant that it would not change her credit rating regardless of any increase in payments made.

The Complainant made a complaint in relation to how the Provider had handled the complaint on **6 February 2017**. The Complainant states that she never received any correspondence from the Provider in relation advising that it would be referring her loan to its debt recovery unit and she specifically denies receiving a letter from the Provider dated **16 February 2017**, a copy of which was furnished to this office by the Provider in the course of the investigation.

The Complainant states that the downturn in her credit rating has had a detrimental effect on her ability to progress in her employment, which in turn has had the knock on effect of her not being in a position to increase the value of the repayments being made on the loan, and also has had an effect on her ability to secure future loans with other lending institutions.

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The Complainant is requesting the Provider to amend her ICB credit rating.

The Provider's Case

The Provider states that under the terms and conditions of the credit agreement for the loan account entered into by the Defendant on **24 November 2010** there is a warning which states:

> *"If you miss a repayment your account will go into arrears and you will be in breach of this agreement. You will be liable to surcharge interest as set out in 2.2 below. This may affect your credit rating"* .

The Provider states that on **26 July 2011**, the Provider's central arrears management team wrote to the Complainant to advise her that her loan account was the equivalent of 1.47 payments in arrears since **23 June 2011**. This followed contact from both the third-party debt advisor and the Complainant with the Provider on **30 June 2011** and **6 July 2011**, wherein attempts were made to restructure the loan.

The Provider claims that on **19 September 2011**, the Provider spoke with the third- party debt advisor by telephone to advise that demand letters would be issued calling in the debt and that the loan account would be transferred to the Provider's insolvency and debt recovery unit. The Provider asserts that a staff member from the third-party debt advisor advised the Provider that it would inform the Complainant of this.

The Provider states that it wrote to the Complainant on **19 September 2011** and **20 September 2011** and highlighted the excess on both her current and loan accounts. The Provider states that this letter noted that it would be*"[if] necessary, referring the matter to the Provider's Insolvency and Debt Recovery Unit"*.

Revised monthly payments of €99.57 were agreed on the loan account on **8 November 2011** for a period of 6 months after consultation between the Provider and the third-party debt advisor. This was revised to €91.96 per month on **3 July 2012** and further revised on **5 November 2012** to €26.51 per month.

The Complainant informed the Provider that the third-party debt advisor was no longer acting on her behalf on **9 May 2013**. Following a lack of response to a letter issued by the Provider to the Complainant, the Provider issued a letter of demand to the Complainant on **5 June 2013**. The third-party debt advisor was then re-engaged to act on behalf of the Complainant and on **4 March 2014**, the Provider accepted €25.79 monthly repayments. On **31 March 2015**, the monthly repayments paid by the Complainant increased to €41.79 by agreement.

The Provider wrote to the Complainant on **16 June 2015** stating that it had made a mistake in relation to her credit rating and would contact the ICB to correct this. The Provider states that the mistake referred to in this letter was that it had stopped reporting the Complainant's repayment history early which meant that repayments were not reflected on

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her record and that this happened after the Complainant's loan account was downgraded to a bad debt in **October 2011**.

The Provider states that it brought the ICB record up to date in **2015**. The Provider acknowledges that the letter sent on **16 June 2015** may have caused confusion given its wording but states that it is under an obligation to report each account to the ICB accurately and fairly. Therefore, the Provider states that as the Complainant's loan account was classified as a bad debt and still had a significant amount due and owing, the Provider could not amend its reporting to the ICB.

The Provider states that the correct procedures were followed in relation to arrears handling and reporting to the ICB and claims that the Complainant's current ICB record outlines an accurate reflection of the performance of the loan account and therefore the Provider states that it is not in a position to remove or amend the information on the ICB.

The Provider also states that it welcomes any increased payments that are forthcoming from the Complainant but it cannot amend her previous ICB record on the basis of increased payments. The Provider also states that it is willing to work with the Complainant to assess her current financial situation and potentially restructure her loan in an effort to help the Complainant work towards improving and clearing her ICB rating, provided the Complainant is in a position to satisfy the Provider's credit lending criteria and show affordability to meet full capital and interest repayments over a set term of a maximum of 7 years in order for this to be considered.

The Provider states that it has handled the Complainant's complaint pursuant to the provisions of the Consumer Protection Code 2012.

The Provider has stated that as a gesture of goodwill and in recognition that the contents of its letter of **16 June 2015** sent to the Complainant could have caused confusion to the Complainant, the Provider is agreeable to paying the Complainant a sum of €1,000.

The Complaints for Adjudication

The complaint for adjudication is that the Provider transferred the Complainant's loan account into its insolvency and debt recovery unit without any notice to the Complainant, that the Complainant's ICB credit rating was negatively affected as a result of this and that the Provider did not act in line with its letter dated **16 June 2015**.

The Complainant also states that the Provider did not correctly handle her complaint.

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

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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, including recordings of six telephone conversations between the Complainant and the Provider on **25 October 2013**, **26 March 2015**, **18 March 2016**, **10 February 2017**, **9 March 2017** and **4 September 2017**, 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 **24 May 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.

On **28 May**, the Complainant made two further submissions to this Office referring to correspondence with the Irish Credit Bureau in in 2017 and seeking clarification about her credit rating.

10 June. The Provider replied, after the above had been exchanged, that it saw no reason to alter or amend the information held by the ICB.

Following the consideration of the additional submissions and all the submissions and evidence, my final determination is set out below.

The Provider has stated that although it had agreed, through a third party debt management agency, to accept reduced debt repayments, in November 2011, this was not the contractual amount of money originally agreed. In addition, since the account had been in arrears, the Provider had previously demanded the full amount of the loan.

I note that the Provider states the money paid each month was in reduction of a debt for which the provider had demanded full repayment, since that was all the Complainant could afford. The Provider states that this was not a new repayment restructure agreement which would have resulted in a new loan agreement with the Complainant. According to the Provider, such an arrangement would require the borrower to satisfy the Provider's lending criteria.

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The conduct originally complained of took place before the introduction of the Consumer protection Code on 1 January 2012. The 2006 Code does not apply specifically to this set of circumstances.

Section 8.11 and 8.12 of the subsequently introduced Consumer Protection Code 2012 would cover this eventuality.

> *8.11 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.*
>
> *8.12 Where arrears arise on an account and where a personal consumer makes an offer of a revised repayment that is rejected by the regulated entity, the regulated entity must formally document its reasons for rejecting the offer and communicate those to the personal consumer, on paper or on another durable medium.*

I note the Provider's contention that its original non-acceptance of the proposal by the debt management agency on 12 September 2011 was based on the fact that the amount offered [€99.57 per month] was insufficient to cover the debt. Only once the account had been classified as a bad debt and was under the management of the Insolvency and Debt Recovery Unit, did the Provider accept the third party recommendation for a reduced payment, in the same amount of €99.57 per month, on 8 November 2011.

The Provider's letter of 8 November 2011, accepting the proposed reduced monthly payment, sets out that it is for a period of six months and would be subject to a review at the end of that period. It does not explain any implications for the Irish Credit Bureau rating although, at that time, the 2012 CPC was not in force, therefore, while it would have been good practice, prudent and helpful for the Provider to do so, it was not obliged to do so.

The letter of 3 July 2012 does not comply with section 8.11 of the CPC mentioned above, and the requirement to inform the complainant of what data would be shared with the ICB following acceptance by the Provider of the repayment proposal.

The same applies to the acceptance letters of 5 November 2012 and 4 March 2014.

With reference to all of the letters from 8th November 2011 to 26th September 2014, I note that the terminology used varies:

> *"Interest will continue to accrue but will not be charged out until the principal debt has been cleared in full."*
>
> *"Interest will continue to accrue until the debt is paid in full."*

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"Interest will continue to accrue but will not be payable to the account until the principal balance is paid in full."

"Interest will not be charged to the account but will continue to accrue until the balance is paid in full."

"Interest will continue to accrue."

I do not accept that it is sufficiently clear what the Provider meant by these letters, from the perspective of the complainant, particularly in relation to how the loan would be reported to the ICB.

The letters from the Provider of 26 September 2014 are compliant with the requirements of the CPC. These letters make it clear what information would be sent to the ICB.

The letter of 2 July 2013, rejecting the third party proposal for a revised repayment, does not comply with section 8.12 of the Code since it does not document the reasons for the rejection nor communicate them to the consumer.

In relation to the complaint that the Provider moved the Complainant's loan account to its insolvency and debt recovery unit without notifying this to the Complainant, I note that documentary evidence has been furnished to this Office by the Provider that demonstrates that the Provider wrote to the Complainant on **19 September 2011** and **20 September 2011** stating that it would be*"[if] necessary, referring the matter to the Provider's Insolvency and Debt Recovery Unit"*. Therefore, I find that the Complainant was aware that there was a possibility that her loan account would be transferred to the Provider's insolvency and debt recovery unit.

I note that the Provider has admitted making a mistake by stopping reporting the repayment record of the Complainant to the ICB for a significant period of time (from **October 2011** to an unspecified date in **2015**). The Provider acknowledges in its letter dated **16 June 2015** that a search of the Complainant's credit history was carried out at some stage during that period of time and that this may have resulted in a decision being made by a provider as to the Complainant's ability to repay based on incorrect information.

The Provider furnished this Office with no explanation as to why it stopped reporting the repayment record of the Complainant to the ICB for such a prolonged period of time other than to state that the failure to report began when the Complainant's loan account was downgraded to a bad debt in **October 2011**. The lack of proper explanation by the Provider as to why it stopped reporting the repayment record of the Complainant to the ICB is wholly unsatisfactory.

I am of the view that the letter sent by the Provider to the Complainant's solicitor on **16 June 2015** was poorly worded and may have caused confusion for the Complainant and I note that the Provider has accepted this.

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Notwithstanding the above, I find that the Provider is obliged to return accurate and up to date information to the ICB and must provide an honest and truthful report of the Complainant's repayment pattern. Therefore, the Provider is under an obligation not to change or remove details from an individual's report unless they are inaccurate. The Complainant furnished a copy of the Complainant's ICB record dated **24 January 2017**, in her Post Preliminary Decision submission of **28 May 2019**, however, there is nothing to suggest that the information retained by the ICB in respect of the Complainant is inaccurate.

The implications of the non-reporting to the ICB are unclear. I have not been provided with any explanation or evidence to suggest whether the information not supplied had a negative impact on the Complainant's credit rating. This Office has been provided with copies of letters dated 26 July 2011, 19 September 2011 and 20 September 2011 from the Provider which advised the Complainant that her credit rating could be affected by the arrears on the loan account at that time.

The Provider submits that those letter precede the loan being designated as a 'bad debt' and allowed the Complainant the opportunity to address the issue. There is also a warning to that effect in the original loan document of 24 November 2010.

The Provider's letter of 16 June 2015 states as follows,

> *"We are writing to tell you that we made a mistake in reporting the repayment record on your above account to the Irish Credit Bureau [ICB]. Due to our error we stopped reporting your repayment record early on the above account which may mean that repayments made were not reflected on your record. We apologise for this error and confirm we have rectified it fully by correcting your repayment record with the ICB. We know a search for your credit history with ICB was carried out during the last five years, before we corrected this error."*

It is not made clear what effect on the record the failure to continue reporting the repayments had. While the Provider has offered a sum of €1,000 to the Complainant as a goodwill gesture, it remains unclear what the precise effect of not reporting the repayment history was, if any.

I note the Provider, in its submission to this Office dated 21 March 2018 states:

> *"However, it should be noted that the bank must report each account to the ICB fairly and accurately. Therefore, as the Complainant's loan account is classified as a bad debt and still has a significant amount due and owing, the Bank cannot amend its reporting to the ICB."*

In its Final Response Letter of 16 February 2016, the Provider explained that the corrections to the ICB record were made because the Provider had not supplied data to the ICB that the account was in arrears. The information relating to the loan account was then updated onto the Complainant's ICB record. Since the loan had been classified as a bad debt, this had a negative effect on the credit rating.

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It is logical to conclude that the amendments to the ICB record by the Provider as notified in the June 2015 letter, would have corrected the previous failure to provide accurate data. The more comprehensive information, taking into account the accurate payment history, would have reflected the loan being in arrears and adversely affected the Complainant's credit rating. Effectively the Provider has rectified its error but is not in a position to amend the data now showing on the ICB report since it asserts that it is an accurate reflection of the repayment history.

The Complainant has stated her ICB record is 'decimated' but has not shown what detriment she has suffered as a consequence of the Provider's conduct. It may in fact be the case that the lack of reporting her repayment history did not actually have any more adverse effect on her credit rating than the accurate report would have had.

I accept that the Provider stated in its correspondence of **26 July 2011** to the Complainant that *"missed payments could affect your credit rating"* and further, that the Provider stated at bullet point 6 in the correspondence sent to the Complainant on both the **19 September** and **20 September 2011** that the Complainants failure to comply with her agreement with the Provider *"may be noted on the Irish Credit Bureau".*

Therefore, I find that the Complainant was aware, or ought to have been aware, of the negative effect that missed repayments/failure to repay her loan may have on her credit rating with the ICB. I understand that a negative ICB record presents a particular problem for the Complainant, but I accept that the Provider must accurately reflect the status of the loan.

In relation to the manner in which the Provider dealt with the Complainant's complaint, I accept that the Provider dealt with the Complainant's complaint efficiently and in accordance with the provisions of the Consumer Protection Code 2012. In particular, I refer to the letter sent by the Provider to the Complainant dated **16 February 2017** (6 days post the Complainant's complaint) and note that in this letter the Provider clearly and in detail sets out its position in relation to the complaint and referred the Complainant to this Office should the Complainant wish to proceed further with her complaint.

I note that an offer of €1,000 was made by the Provider to the Complainant in recognition of the confusion that could have been engendered by the letter of **16 June 2015** and I believe that this offer is reasonable in respect of the issues in relation to the letter from the Provider dated **16 June 2015** which could have been clearer and that fact that it did incorrectly stop reporting the repayment record of the Complainant to the ICB for a period of approximately five years. However, given the lack of clarity also in the correspondence relating to the reduced repayments agreed, I believe a greater sum of compensation is merited.

Therefore, I partially uphold this complaint and direct the Provider to make a compensatory payment of €3,000 (to include the sum of €1,000 offered by the Provider) to the Complainant. I do not make any direction in relation to the ICB record as it should accurately reflect the status of the loan account and I have not been provided with evidence that this is not the case.

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Conclusion

My Decision is that this complaint is partially upheld, pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, on the grounds prescribed in ***Section 60(2) (f) and (g).***

I direct pursuant to ***Section 60(4)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** that the Respondent Provider make a compensatory payment of €3,000 (to include the sum of €1,000 offered by the Provider) to the Complainant.

- 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

29 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.