



<b><u>Decision Ref:</u></b>	2019-0213
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Personal Loan
<b><u>Conduct(s) complained of:</u></b>	Incorrect information sent to credit reference agency
<b><u>Outcome:</u></b>	Upheld

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

**Background**

This 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 the 8<sup>th</sup> of January 2008 in the sum of €1,115.92 for the purpose of purchasing a computer. The Complainant acknowledges that there was a period of arrears on the account, but submits that he subsequently cleared the outstanding balance on the loan and the account was closed by the Provider on the 27<sup>th</sup> of February 2012.

The Complainant states that in 2015 and 2017, he made attempts to secure credit facilities (including mortgage facilities) from a number of different financial service providers but he was unsuccessful due to his poor credit rating. The Complainant states that upon further enquiry of both the ICB and the Provider, he was advised by the Provider that it failed to notify the ICB that his loan account had been closed in February 2012, and that as a result an incorrect arrears code had been reported on his credit file between February 2012 and late 2017.

The complaint is that the Provider wrongfully and negligently failed to communicate his correct credit status to the ICB which resulted in a five year negative credit rating and the refusal of subsequent credit and mortgage applications. The Complainant states that this has had adverse effects on his life.

The Complainant wants the Provider to compensate him for the inconvenience and financial loss as a result of the negative credit rating.

### **The Provider's Case**

The Provider states that the loan was taken out with a predecessor of the Provider, as a result of which the loan was administered on a different system and it was initially unable to locate the account details when the complaint was received. It accepts that this would have caused inconvenience to the Complainant when he attempted to resolve the issue, and has apologised for this inconvenience.

The Provider has accepted that it failed to notify the ICB that the account balance had been cleared and the account had been closed in February 2012. It notes that a "completed" code – "C" – should have been reported on the ICB entry from that date rather than the nine months in arrears code – "9" – that was in fact recorded on the ICB entry for the loan account until the end of 2017. It has apologised for this error.

The Provider states that it is not in receipt of sufficient evidence to show that the Complainant was declined a mortgage as a result of this error, and notes that he successfully obtained a loan for housewares. It offered the sum of €300 by way of compensation for any inconvenience caused, and since the Complainant made the complaint to this office it has increased its offer to €500.

### **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

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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 23 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 11 June, the Provider made an additional submission to this office. This was exchanged with the Complainant who made no further submission.

Following the consideration of additional submissions from the parties, as well all of the evidence submitted, my final determination is set out below.

The Complainant took out a loan of €1,115.92 for the purchase of a laptop in 2008. He states that shortly afterwards his relationship with his wife deteriorated and he agreed with her that she could keep the laptop and she agreed she would keep up the repayments.

The repayments fell into arrears and by the time the Complainant cleared the balance (in February 2012), 9 repayments (or more) had been missed. When the Complainant cleared the balance, the last two entries on the account should then have been reported as "9" and "C" – meaning 9 repayments (or more) missed, then "complete". Instead the last two entries on the account were "9" and "9" (in other words, in arrears and unpaid), from January 2012 and this continued until this issue was finally rectified in late 2017.

I note the Provider states that *"due to the passage of time, we aren't able to locate a copy of the original agreement, however, I have provided you with a copy of the Constituted Legal Agreement, with the relevant terms"*.

In the absence of the signed agreement the Provider is unable to demonstrate its entitlement to provide the Complainant's details to the ICB. Furthermore, I find it extraordinary that the Provider was providing information to the ICB on a loan for which it has or had no records and was initially unable to find when the Complainant first raised the issue.

If the Provider had reported the correct information to the ICB, it would still have shown multiple missed repayments on the account up until it was cleared in full. Therefore the Complainant's credit rating would not have been perfect had the correct information been reported. However, there is no doubt that the incorrect reporting did impair the Complainant's credit rating unnecessarily, unjustifiably and unreasonably from 2012 to 2017.

The Complainant contends, at its simplest, that this impaired rating resulted in him being unable to obtain a mortgage.

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The Provider states that it has not been provided with tangible evidence of a financial loss.

The Complainant has supplied this Office with copies of his ICB record. I note there only appear to be two records of loans. One from a credit union for a loan of €5,000 which shows all payments fully up-to-date and the other from the Provider showing 9 months' arrears consistently every month for 23 months and "C" for cleared record on the 24<sup>th</sup> month, being October 2017 when the error was finally corrected.

The Complainant has furnished to this office a number of letters confirming refusals of applications for credit from various institutions.

One such letter is dated the 1<sup>st</sup> of June 2016 regarding the refusal of a credit card application. It refers to the general functions of the ICB and information held by it and states that *"it was information of this nature that failed to meet our criteria and resulted in our decision to refuse you a card"*.

Another letter dated the 24<sup>th</sup> of November 2016 regarding the refusal of a mortgage application states *"While considering your application we carried out a Credit Reference Search, on which a query has appeared. This has prevented us from approving your mortgage application at this time"*.

An undated letter from another financial service provider concerning a mortgage loan application states *"Regrettably, we are not in a position to approve your application at this time due to Credit Bureau History"*. This letter was addressed to both the Complainant and his wife. I have no information about the Complainant's wife's credit history.

### **Analysis**

There is no doubt and it is not in dispute that the Provider furnished incorrect information to the ICB for over five years.

The Complainant has submitted a number of ill effects that this situation inflicted on him, primarily involving a diminished sense of self-esteem and a sense of embarrassment that he was unable to obtain credit for a house "on his own".

I find the conduct of the Provider to be most unreasonable and unacceptable.

Furnishing incorrect information to the ICB is a most serious issue and can cause major inconvenience to a borrower. I believe the conduct of the Provider has caused major inconvenience to the Complainant.

It is most disappointing that when the matter was first brought to the attention of the Provider it firstly could not find the records the Complainant was referring to.

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It referred him to the ICB which, not surprisingly, stated that it could only change the record on the instruction of the Provider as it had furnished the incorrect information to the ICB in the first place.

When the Complainant managed to overcome this hurdle, I find the conduct of the Provider in dealing with his complaint to be disingenuous and unreasonable.

In its letter to the Complainant dated 25 January 2018 it stated:

*"I refer to your comment that you were declined credit and a mortgage. As explained I am unable to comment on the lending criteria of other financial Providers, or if [the Provider's] reporting had a direct impact on why you were declined.*

*However, I note in your letter you successfully acquired a number of loans through [electrical store], as advised by your mortgage adviser. Please note a credit score is carried out each time you apply for credit, which could affect your overall credit score.*

*As discussed, I would like to offer you €300.00 in respect of the incorrect code being applied to your credit file and any inconvenience caused to you and your wife. Should you wish to accept this offer, please complete and return the enclosed Acceptance of Offer Form and return it to the address provided.*

*However, if you are able to provide evidence to support [the Provider] were solely at fault that your applications were declined, we will be happy to review our compensation offer".*

The Provider made a very serious error in reporting the Complainant's credit rating incorrectly. I find it most disappointing and unreasonable that it would then seek to suggest other reasons such as loans through an electrical retailer were affecting the Complainant's credit rating.

I believe the Complainant is entitled to a significant sum of compensation for the inconvenience caused by the conduct of the Provider. I find the Provider's offer of €300, later increased to €500 to be derisory in the circumstances. It shows a serious lack of understanding of the impact of its conduct on the Complainant.

I note the Provider states in its Post Preliminary Decision submission of 11 June that the ICB record was deleted in October 2017. However, in order to ensure this is the case particularly given the serious errors made by the Provider to date, I will make a direction in relation to the Complainant's ICB record.

In my Preliminary Decision, I indicated my intention to uphold this complaint and direct significant compensation in the sum of €15,000.

The Provider, in its submission of 11 June states, "I would like to confirm that I do not agree that the €15,000 is fair and reasonable in this case. " The Provider, in that submission, goes on to once again play down the impact of its conduct on the Complainant. It further states,

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“...the €15,000 compensation award appears punitive when we have had no direct and tangible evidence of the consequential losses attributed solely to the error made. We would request further clarity around what losses the €15,000 covers, with supporting documents to evidence this.”

Throughout this entire episode, including the investigation and adjudication of the complaint by this Office, the Provider has shown a complete lack of understanding of the impact of its conduct on the Complainant. I find the Provider’s post Preliminary Decision submission of 11 June to be further evidence of this.

The Provider shows no understanding that having a negative credit rating wrongly reported over a five year period is a most serious matter. It has greatly inconvenienced the Complainant. The compensation I have directed is in respect of that inconvenience caused.

For the reasons outlined above, I uphold this complaint and direct the Provider to pay a sum of €15,000 to the Complainant.

Further, I direct that the Provider ensure that no trace of the transaction is visible on any search of the Complainant’s credit history, either on the ICB or the Central Bank’s Credit Register.

## **Conclusion**

- My Decision pursuant to *Section 60(1)* of the *Financial Services and Pensions Ombudsman Act 2017*, is that this complaint is upheld, pursuant to *Section 60(1)* of the *Financial Services and Pensions Ombudsman Act 2017*, on the grounds prescribed in *Section 60(2) (b), (d) and (f)*.
- Pursuant to *Section 60(4) and Section 60 (6)* of the *Financial Services and Pensions Ombudsman Act 2017*, I direct the Respondent Provider to rectify the conduct complained of by ensuring that no trace of the loan is visible on any search of the ICB or CCR, and to make a compensatory payment to the Complainant in the sum of €15,000 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

16 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.