



<b><u>Decision Ref:</u></b>	2019-0217
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Credit Union Loan
<b><u>Conduct(s) complained of:</u></b>	Maladministration Delayed or inadequate communication Complaint handling (Consumer Protection Code)
<b><u>Outcome:</u></b>	Partially upheld

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

**Background**

The Complainant was a member of, and held a loan with, the Provider during the period relevant to this complaint.

The Complainant submits that his wife also applied to the Provider for a loan, in **June 2015**, and he submits that at the time she made the application, she was unaware that he held a loan with the Provider.

The Complainant submits that the Provider declined to offer her a loan and advised her that her loan application had been refused because of its obligations to consider the loans of connected borrowers.

The Complainant has submitted that he does not consider that he and his wife were “connected borrowers” as they had separate incomes and separate finances and that the Provider acted wrongfully in determining that they were connected borrowers.

The Complainant submits that the Provider acted wrongfully in treating him and his wife as “*connected borrowers*” in June 2015. The Complainant also submits that this has resulted in the Provider having breached the Complainant’s right to confidentiality under Section 71 of the Credit Union Act, 1997 by disclosing information about him, without his permission in a manner which made him identifiable, to his wife.

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

The Complainant submits that at the time when his wife applied for a loan with the Provider, she was unaware that he held a Loan with the Credit Union. The Complainant submits that in the course of informing her that her application had been rejected, the Provider informed her that it had been refused because of its obligations to consider the loans of connected borrowers. The Complainant submits that when she asked them to elaborate, they told her to *"talk to your husband"*.

The Complainant submits that they were not connected borrowers, as he says this would indicate that they constitute a single risk and that their finances were inextricably linked which he submits is not the case and they have separate incomes, assets and liabilities.

The Complainant further submits that even if it was contended by the Provider that they were connected borrowers, he deems it to be a breach of his right to confidentiality under section 71 of the Credit Union Act 1997, on the basis that his information was disclosed without his permission in a form so as to make him identifiable.

The Complainant submits that neither at any point did the Provider inform him of its complaints procedures or of his right bring his complaint to the Financial Services Ombudsman.

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

The Provider refutes the Complainant's contention that in or about June 2015, it breached his right to confidentiality under the Credit Union Act 1997, in the course of its dealings with his wife and her loan application.

The Provider submits by way of background, that it received a verbal complaint from the Complainant in March 2015, when he contended that someone working on behalf of the Provider had told his wife that he held a loan with it, as well as informing her of other very specific details regarding the loan which he held.

The Provider submits that the Complainant attended a meeting with its manager on **23 March 2015**, at which time he made *"serious allegations"* against the Provider, namely that a member of staff had made his wife aware that he held a loan with it, the amount of the loan, the fact that the loan was in arrears, and the fact that there was a payment arrangement in place.

The Provider submits that it took the matter very seriously and carried out a detailed investigation of the allegations. The Provider submits that the Complainant was kept updated of developments in this regard.

The Provider submits that during a telephone conversation with the Complainant on **24 March 2015** the Provider reminded him that it had written a credit control letter to him

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regarding his loan account arrears, on **12 November 2014**. It submits that it asked the Complainant about whether his wife may have seen that letter and come by the information that way, but submits that the Complainant dismissed that as a possibility. The Provider submits that the reason this was suggested to the Complainant as perhaps being the source of his wife's information was because that letter contained all of the information that the Complainant alleged a staff member had informed his wife about, i.e., the fact that the Complainant had a loan, the amount of the loan, that it was in arrears, that there was an arrangement in place and that he was not keeping to that arrangement.

The Provider submits that in those circumstances, when it subsequently received a loan application from the Complainant's wife, dated 04 June 2015, it was on "heightened alert" due to the March 2015 verbal complaint which it had received from the Complainant, and submits that it made an extra effort to ensure that the application was dealt with it, in accordance with correct procedures.

#### Connected Borrowers / Lending Restriction

With regard to the Complainant's wife's application for a loan, in June 2015 - the Provider submits that the Central Bank of Ireland (CBI) imposed a Lending Restriction on Providers, by letter dated 30 July 2009 stating that Providers "*must not lend more than €20,000 to any one individual, or connected parties, until further notice*".

The Provider submits that subsequent clarification from the Central Bank of Ireland advised that the €20,000 limit referred to a "net loan position" - e.g. if a member had €3,000 in Shares it would be possible to lend up to €23,000 to that person and connected parties.

The Provider submits that the Lending Restriction was not lifted by the CBI until 17 December 2015 and that the restriction was therefore in force during the period of time relevant to the complaint.

The Provider submits that as regards the issue of "connected parties", it has always been mindful of the CBI's position that it is a matter for each Provider to make the appropriate assessment as to what constitutes connected parties for lending purpose.

The Provider submits that it "*has always for prudence purposes regarded spouses as connected parties*" - irrespective of whether each spouse had a separate source of income or not. The Provider submits that it had, and continues to maintain the right to do so and to manage its own risk exposure.

The Provider submits that it is up to each Credit Union to manage the risk that it is willing to take on and that it was not itself willing to consider loan applications from members where the combined borrowings of the loan applicant and his/her spouse would exceed €20,000 net. The Provider submits that it would be inappropriate to impose an obligation on a Credit Union to take on a level of Credit Risk that it is not comfortable with.

#### Loan Application by the Complainant's Wife, dated 04 June 2015

The Provider submits that the Complainant's wife applied for a loan on 04 June 2015.

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The Provider submits it could not grant a loan of the amount applied for by the Complainant's wife because to have done so would have placed the Credit Union in breach of the Lending Restriction imposed on it by the CBI, with regard to connected borrowers.

With regard to the Complainant's wife's loan application, the Provider states that it informed her on 08 June 2015 that it could not approve her loan application in the amount applied for, as to do so would put her borrowings with the Provider over the CBI imposed connected party limit.

The Provider submits that following receipt of her application, it advised her that if she were to reduce her loan application by a certain amount, whilst pledging 100% of her Shares as security, it would be prepared to approve a loan application in that lesser amount for her. The Provider submits that the Complainant's wife agreed and was happy to proceed on this basis.

The Provider submits that reducing the amount of the loan applied for had the effect of leaving the combined net borrowings of the Complainant and his wife under, and in compliance with, the Central Bank's Lending Restriction limit.

*Finances 'inextricably linked'*

The Provider notes that in the Complainant's complaint, he says that his own and his wife's finances were not 'inextricably linked' and accordingly the Provider should not have regarded them as connected parties. The Provider submits that *"whilst we treat all spouses as connected parties we do nevertheless believe that, notwithstanding that practice, there was still evidence in this case of the financial affairs of one spouse affecting the other"*.

The Provider submits that during the first week of December 2014, its manager had a telephone conversation with the Complainant about the non-performance of his loan. The Provider submits that during that conversation the Complainant informed the Provider that he would recommence repayments in December 2014 and that some issue or delay concerning the renting out of his wife's property and / or expenditure on the maintenance of same, which he funded, had adversely affected his ability to meet his loan repayments.

The Provider submits that in its opinion *"this is clear evidence of the financial affairs of one spouse having an impact on the other — i.e. the house was belonging to his wife yet the delay in getting it rented out and/or he funding some maintenance costs on that house as opposed to her meant that his loan repayments here fell yet further behind."*

In respect of the Complainant's complaint that the Provider did not inform him of his rights as to its complaints process and of his right of complaint to the Financial Services Ombudsman, the Provider says that it acknowledges that its correspondence with the Complainant was lacking some detail in this regard but it submits that the Complainant's complaint was dealt with expeditiously and with respect. It submits that it does not believe that the Complainant suffered in any way as a result of it not formally informing him of its complaints procedure.

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Overall, the Provider submits that it never informed the Complainant's wife directly of any details concerning the Complainant's loan. It submits that it had to comply with the CBI's Lending Restriction, and that "*it was placed in a very difficult situation*", but it submits that it believes that it handled the matter as sensitively as possible".

### **The Complaints for Adjudication**

The Complainant's complaints are that:

- (i) The Provider acted wrongfully and/or incorrectly to considering the Complainant and his wife to be "connected parties" in June 2015.
- (i) The Provider breached the Complainant's right to confidentiality under Section 71 of the Credit Union 1997 by disclosing information about him, without his permission, in a form which made him identifiable.
- (ii) The Provider did not inform him of its complaint procedures, its complaints policy or his right to bring his complaint to the FSO.

### **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 07 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.

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In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

I will firstly examine the Complainant's complaint that in June 2015, the Credit Union acted wrongfully and/or unreasonably in determining that the Complainant and his wife were "connected parties", in the course of assessing a loan application from the Complainant's wife.

### Connected Parties

The Complainant has submitted that the Provider should not have treated him and his wife as "connected parties" for the purpose of her loan application, in circumstances where he and his wife had separate professions and separate incomes and that their financial situation was accordingly, separate.

The Provider's position on this issue is that it *"has always, for prudence purposes, regarded spouses as connected parties since the lending restriction was placed on us – irrespective of whether each has a separate income or not. We have and had the right to do that and indeed we still do that, despite not having a lending restriction in place. People may argue as to what constitutes a connected party – in our view it is a matter for each Credit Union to make its own judgment in this respect having regard to CBI guidance and [the Provider] always treats spouses as connected parties."*

The lending restriction to which the Provider refers was imposed on the Provider by the Central Bank, by letter dated **30 July 2009**, which stated that the Provider *"must not lend more than €20,000 to any one individual, or connected parties, until further notice."* The Provider has submitted that the lending restriction was in place until 17 December 2015 and was therefore in place at the time when the Complainant's wife applied to the Provider for a loan, in June 2015.

On the issue of *"connected parties"*, the Provider submits that it is a matter for each Provider to make an appropriate assessment as to what constitutes connected parties for lending purposes.

It submits that its practice at the time, and indeed its continuing practice, was/is to regard spouses as connected parties - irrespective of whether each spouse has a separate source of income or not. It submits that it had, and continues to have the right to do so. It submits that it is up to each Credit Union to manage the risk that it is willing to take on and that it was not willing to consider loan applications from members where the combined borrowings of the loan applicant and his/her spouse would exceed €20,000, net. The Provider submits that it would be inappropriate to impose an obligation on a Credit Union to take on a level of Credit Risk that it is not comfortable with.

The Provider has furnished a copy of "Year End Return Guidance Notes" published by the CBI and dated **December 2013**. I note that the document provided the following guidance to providers at that time in relation to connected borrowers:

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The following should be considered as connected borrowers:

- (a) Two or more, natural<sup>1</sup> or legal<sup>2</sup> persons between whom there is no relationship of control but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, the other or all of the others would be likely to encounter repayment difficulties; or
- (b) Where Two or more, natural or legal persons are in a relationship of control, the credit union should make an assessment as to whether those in the relationship of control should be regarded as a single risk because they are so interconnected that if one of them were to experience financial problems, the other or all of the others would be likely to encounter repayment difficulties.

*It is a matter for each credit union to make the appropriate assessment of all the relevant factors in identifying loans that may be connected with particular reference to the risks of non-recoverability of the outstanding loan(s) in the event of default by one or more of the borrowers. The outcome of such an assessment should be recorded on file.*

The Provider has also furnished an email from the Irish League of Credit Unions (ILCU) dated **07 March 2016**, which it submits it received in response to a request it made in March 2016 for guidance as to the definition of connected borrower.

The Provider has submitted that *“the purpose of my communication with the ILCU in March 2016 on the matter was more a case of me seeking reassurance from the ILCU that my understanding of the position that prevailed in June 2015 was thus.”*

This email dated **07 March 2016** from the ILCU states as follows:

*Thank you for your recent enquiry as to restrictions for connected borrowers and Data Protection Concerns for the Credit Union.*

*Please see below the Central Bank’s definition of Connected Borrowers. Below that you will also see communication from the Office of the Data Protection Commissioner regarding connected borrowers:*

*The following should be considered as connected borrowers [original emphasis]:*

- (a) Two or more, natural(1) or legal(2) persons between whom there is no relationship of control but who are to be regarded as constituting a single risk because they are so

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<sup>1</sup> In the case of natural persons this includes at least a spouse/partner and minor children. Other family, business and employment relationships should also be taken into account.

<sup>2</sup> This would include a member who guarantees a loan to another member as specified in section 35(3) of the Credit Union Act 1997 (as amended) (“the Act”)

*interconnected that, if one of them were to experience financial problems, the other or all of the others would be likely to encounter repayment difficulties;*

....

*It is a matter for each credit union to make the appropriate assessment of all the relevant factors in identifying loans that may be connected with particular reference to the risks of non-recoverability of the outstanding loan(s) in the event of default by one or more of the borrowers. The outcome of such an assessment should be recorded on file.*

*Examples:*

- *Loans for a specific common purpose to one or more credit union borrowers e.g. to purchase a house/property or to finance a building/business;*
- *Loans to credit union members who hold joint loan accounts;*
- *Loans secured by personal guarantees from a guarantor who also has loan/loans from the credit union;*
- *Loans where there is a common primary source of income to repay all such loans to the credit union;*
- *Loans to credit union borrowers that have common security/cross guarantees.*

.....

*Below is some information which came back in relation to the issue of connected borrowers from ODPC:*

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*I can advise that recently it has been brought to the attention of this Office that the Registrar of Credit Unions (the Regulator of Credit Unions) has required that Credit Unions connect borrowers on their account system in accordance with guidance that it has issued. We have been advised that persons are to be considered as connected borrowers where the parties constitute a single risk because they are so interconnected that, if one of them were to experience financial problems, the other or all other parties would be likely to encounter repayment difficulties.*

*We remain satisfied that it only places a requirement on a credit union to link loan accounts in that credit union in the above specific circumstances and that no general requirement to link accounts in the normal course arises outside of the above specific circumstances. We would not be of the view that this particular requirement would require the linking at an overly extensive level....*

*We accept that the guidance issued by the Regulator places an obligation on Credit Unions to be aware of existing borrowings when considering new applications and it is also clear that this assessment needs to be made very much on a case by case basis. That said, if these guidelines are strictly adhered to ...then this Office would not consider the Acts to have been breached if a loan applicant/connected borrower is informed by the lender, in this case a Credit Union, that the loan has been refused because of its obligations to consider the loans of connected borrowers.*

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It appears that at the time the Complainant's wife applied for a loan, the Provider did not appreciate the need to assess the financial relationship between spouses, on a case by case basis. Rather, the approach of the Provider seems to have been to automatically consider those in a spousal relationship to constitute connected borrowers and that this approach was informed by its interpretation of the CBI's guidance in this regard.

I note the Provider's submission that "[t]he reality is that we just had to comply with the Central Bank's Lending Restriction, that put us in an almost impossible situation in this case." I am of the view that the Provider in making the determination that the Complainant and his wife were connected borrowers did so, in light of the information which was available to it at the time, and with regard to what it understood its obligations to be in respect of the lending restriction.

I note that since 2018, the Credit Union Handbook included some additional information, with regard to identifying when spouses are connected borrowers, as follows:

*The purpose of identifying groups of borrowers who are connected is to identify if it is likely that the financial problems of one borrower would cause difficulties for other borrowers in terms of full and timely repayment of a loan and as such whether those borrowers present a single or common risk to the credit union. Single or common risk will generally occur where the credit union considers there is **material** financial interdependence between borrowers (such economic dependence may be mutual or one way). It would be expected that in practice that connected borrowers would be identified during the standard underwriting process for a loan. The following is a non-exhaustive list of examples of potential connected borrowers. It is a matter for each credit union to determine, taking account of all of the individual circumstances, if such borrowers are connected:*

- *A group of borrowers who are borrowing for a common purpose and who are dependent on a single income source to repay their individual loans;*
- *the borrower and his/her spouse/partner if by **contractual arrangements** both are liable and the loan is **significant for both – in terms of potential impact on the ability of the spouse/partner to repay (it should be noted all spouses/partners would not automatically be presumed to be connected borrowers)**; or*

**[original emphasis]**

The inclusion of this more recent information (which appears in bold) provides some useful clarification to Credit Unions on the issue. However, I am conscious of the fact that the Provider did not have the benefit of this guidance, in 2015, when it determined that the Complainant and his wife were "connected borrowers". I accept that whilst it adopted a cautious approach toward fulfilling its obligations under the lending restriction which was in place, I am satisfied that it did so in good faith, and according to what it understood its obligations to be, in this regard, at the time.

However, the Provider may now wish to be take this guidance into account insofar as it appears that its continuing practice, since April 2018, has been to automatically consider spouses to be connected borrowers, despite explicit guidance to the contrary.

I have also taken into account the Provider's submission that in or about December 2014, during the course of discussions about the non-performance of his loan with the Complainant, the Complainant informed the Provider that he would recommence repayments in December 2014 but that there was an issue or delay concerning the renting out of his wife's property and / or expenditure on the maintenance of same, which he funded and which had adversely affected his ability to meet his loan repayments. This, the Provider submits, led to its forming the opinion that, "*this was evidence of the financial affairs of one spouse having an impact on the other as "the house was belonging to his wife yet the delay in getting it rented out and/or he funding some maintenance costs on that house as opposed to her meant that his loan repayments here fell yet further behind."*

The Complainant has responded to this submission and disputed that he had any income or expenditure in relation to his wife's property and has submitted that there "*are no notes to suggest same, while there are detailed notes on other items."* The Provider has submitted that it does have contemporaneous notes dated **09 December 2014**, in its Credit Control System in this regard.

I have had regard to these Notes dated **09 December 2014**, which have been submitted in evidence. These notes state that "*I spoke to him by phone one day last week. He said he will commence repayments in Dec at monthly amount agreed on 4<sup>th</sup> Sept. He said that some delay or issues concerning the [location] house being rented out or expenditure that had to be incurred on it pre letting meant that he was not able to pay the promised €180 per month for the past few months."*

I consider that it was reasonable for this information to have informed the Provider's assessment of the situation and its determination that the Complainant and his wife were connected borrowers for lending purposes.

Taking all of the above considerations into account, I am of the view that the Provider did not act wrongfully or unreasonably in regarding the Complainant and his wife as connected borrowers for the purpose of her loan application, in June 2015.

**Breach of Confidentiality under Section 71 of the Credit Union Act 1997**

The Complainant has submitted that the conduct of the Provider, through its correspondence with his wife in relation to her loan application, breached his right to confidentiality.

The Complainant has submitted that the Provider's communication with his wife constitute a breach of his right to confidentiality under Section 71 of the Credit Union 1997, by disclosing information about him, without his permission in a form which made him identifiable.

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I have had regard to the provision of the Act in question and Sections 71(1) and (2) provide as follows:

*71.—(1) Subject to subsection (2), during his term of office or at any time thereafter, an officer or voluntary assistant of a credit union shall not disclose or permit to be disclosed any information which concerns an account or transaction of a member with, or any other business of, the credit union.*

*(2) Subsection (1) does not apply to a disclosure of information—*

*(a) if or to the extent that it is necessary for the proper conduct of the business of the credit union; or*

*(b) which is required by a court in connection with any proceedings; or*

*(c) which is made with the consent of the person to whom the information relates and, where not the same person, of the person from whom the information was obtained; or*

*(d) which, in a case where the credit union is acting or has acted as agent for a person, is made to that person in respect of that capacity; or*

*(e) where the information is in the form of a summary or collection of information and is so framed as not to enable information relating to a particular member to be ascertained from it; or*

*(f) which, in the opinion of the Registrar, is necessary for the protection of the funds of shareholders in or depositors with the credit union or to safeguard the interests of the credit union; or*

*(g) which is made to the Registrar for the purposes of his functions in relation to credit unions.*

I further note however, that section 71(5) states that, “A person who contravenes subsection (1) shall be guilty of an offence”.

PART XIII of the Act sets out the provisions in respect of “Offences and Civil Proceedings” and Section 171 provides as follows:

*171.—(1) If a credit union or any other person contravenes any provision of Part II , that credit union or other person shall be guilty of an offence.*

*(2) A credit union or other person who is guilty of an offence under subsection (1) or any other provision of this Act, other than an offence for which a different penalty is expressly provided, shall be liable—*

*(a) on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding three months or both; or*

*(b) on conviction on indictment to a fine not exceeding £5,000 or to imprisonment for a term not exceeding two years or both.*

In these circumstances, I do not consider that this Office is the appropriate forum to determine whether such an offence has been committed, pursuant to Section 71 of the Act, and it is a matter for the Complainant if he wishes, to pursue this aspect through the appropriate channels.

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However, I propose to examine the issue with regard to good practice, as to whether it was wrongful or unreasonable of the Provider to have communicated the matters which it did, to the Complainant's wife.

I note that the letter which the Provider issued to the Complainants' wife, dated **05 June 2015** advised as follows:

*Thank you for your recent loan application...*

*The Central Bank of Ireland (CBI) has stipulated to this Credit Union that we can only lend up to €20,000 (plus shares) to any individual or "connected party".*

*Furthermore, when assessing any loan application we have an obligation to consider the loans of connected borrowers.*

*The Central Bank's definition of "connected party" would include, amongst others, a spouse/partner. The position adopted by [the Provider] in order to be compliant with these CBI requirements is to regard all spouse/partner loans as connected borrowings.*

*In this respect we would be grateful if you could check and revert to me on whether you have any connected borrowings here."*

The Provider has submitted in relation to the above email, that:

*One could argue in relation to our letter to his wife dated 5/6/2015 that an inference could be drawn from same that [the Complainant] had a loan with us. In our view a distinction must be drawn between her drawing an inference from a letter and being directly informed by the Credit Union that her husband had a loan with us. In our view a distinction must be drawn between her drawing an inference from a letter and being directly informed by the [Provider] that that her husband had a loan and the amount of liability. His wife was never directly informed by [the Provider] of anything concerning the [Complainant's] loan here.*

The Provider goes on to submit that:

*The reality is we just had to comply with the Central Bank's Lending Restriction, that put us in an almost impossible position in this case, but we believe we handled the matter as sensitively as possible and absolutely never advised his wife of anything concerning her husband's loan here. We believe that our approach to the matter was entirely consistent with the aforementioned communication from the ODPC.*

The Provider has furnished files notes dated **08 June 2015**, which record the details of subsequent communications with the Complainant's wife, as follows:

*I took 2 telephone calls from [the Complainant's wife] on 8.6.15 in relation to a loan application she made last week.*

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*During both phone calls [she] volunteered to me (without me asking or prompting her in any shape or form) that around last February (2015) she found a letter that we had written to [the Complainant] in November 2014 that referred to [the Complainant's] loan here, the size of the loan and the fact that it was in arrears etc.*

*She said she had no idea [the Complainant] owed this money. She got upset at this stage. She also said that [the Complainant] told her that he had repaid his loan here in full. I did not discuss any aspect of [the Complainant's] affairs with [her] (nor even say if he had a loan here) and I made it clear to her that I was not going to discuss his affairs with her and she said she fully understood that.*

*Over a telephone conversation with [the Complainant] later that day I told him what [his wife] has advised me in terms of her finding a letter we sent to [the Complainant] regarding his loan, arrears, etc. [The Complainant] then acknowledged that that must have been the source of [her] information and not anyone in this Credit Union.*

The Provider has also submitted an undated Note, headed "Loan Application – [from the Complainant's Wife]"

This note states as follows:

*[The Complainant's Wife] made a loan application 4/6/2015 for €[redacted] Her husband is [the Complainant] and his loan here is in arrears – though I have an informal arrangement with him and he is now in conformity with that – largely by having paid a lump sum of 2k in mar 15 – but was not in conformity prior to that. However there are still ARREARS in his loan of over €4,200.*

*I sought advice from the ILCU on a no names basis and the ICLU have confirmed to me that a spouse is a connected party and furthermore that we are entitled to refuse a loan to a member if a connected party's loan is in arrears.*

*I Email [sic] a letter to [the Complainant's Wife] (copy attached) on Friday 5<sup>th</sup> June but it did not deliver as she had not given her correct email address in her on-line application. I E mailed it to her on 8<sup>th</sup> June when she informed me of the correct Email address. I did not mention [the Complainant's] borrowings to her in the letter. The purpose of the letter was to be extra careful because of the allegations [the Complainant] made in March 2015 about the CU informing [the Complainant's Wife] about his loan.*

*Subsequent to [the Complainant's Wife] getting the email from me on PM of 8/6/15 I had 2 phone conversations with her. During these phone calls:*

- 1. I did NOT discuss [the Complainant's] account with her in any respect and I advised her that I could not and she said that she accepted that.*
- 2. She was upset but said she acknowledged that it was not my fault – that it was [the Complainant] who would not talk freely about his loans.*
- 3. She said [the Complainant] told her he had repaid his loans here in full. I did not comment one way or the other and I reiterated that I could not discuss [the Complainant's] affairs with her.*

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4. *She said that c. last February she discovered a letter that we wrote to [the Complainant] in Nov 2014 which contained details of his loan here, the balance of his loan here, the fact that it was in arrears etc.*
5. *[The Complainant's Wife] asked if a parent guaranteeing her loan would do instead- I said we were obliged by the Central Bank to consider the connected party (CP) angle.*
6. *I told [the Complainant's Wife] that her loan application for €[redacted] would put her over the 'connected party' limit and that we could not grant same due to a Central Bank restriction which we take extremely seriously. On the following day I told [the Complainant's Wife] that if she were to reduce her loan application amount to €[redacted] whilst pledging 100% of her shares I would approve the loan and [she] expressed her agreement and gratitude for this.*

Within the same Note, the Provider recorded as follows:

*[The Complainant] rang me on 8<sup>th</sup> June 2015 subsequent to [his wife] being on the phone to me:*

- A. *He was annoyed. [The Complainant's Wife] had been on to him about our letter to her (dated 5/6/2015) and [the Complainant] said that he did not consider himself to be a connected party (CP) as he and [his wife] have their own separate incomes. [The Complainant] also repeated his allegation of last March saying that someone here had divulged confidential information to him regarding his loan here to [his wife].*
- B. *I did not disclose any of [the Complainant's Wife's] details with him.*
- C. *I said that our advice was that a spouse is a CP and that we always treat a spouse as a CP. That the Central Bank (CBI) have a direction on us not to lend beyond €20k to an individual or their connected parties.*
- D. *[The Complainant] said he proposed writing to our Secretary before our Board meeting 18<sup>th</sup> June.*
- E. *I told [the Complainant] what [his wife] said at '4' above and, in my view, that that answered all as regards his allegation against the CU last March that we provided [her] with detailed information regarding his loan account here. I told him that the allegations had been a stressful time for me and my staff and now it wasn't the CU at all that was responsible. Rather it was a case of [the Complainant's wife] finding and reading a credit control letter that we had sent to [the Complainant] in November 2014. [The Complainant] (hesitatingly) accepted that that must have been the source of [his wife's] information and not anyone in the CU.*

In examining in a general sense whether the Provider's actions were wrongful and/or unreasonable in respect of its communications with the Complainant's wife, it appears to me to have been somewhat unavoidable that, in circumstances where approval of the Complainant's wife's loan application would have brought the Complainant and his wife over the acceptable connected party limit lending restriction, that this would have to be identified to her.

The Provider's position is that it had to explain this due to the Central Bank restriction which, it submits, it took "extremely seriously". I note that the Complainant's wife agreed to reduce

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the amount of the loan which she had applied for and also to pledge 100% of her shares and that it was on this basis that the Provider proceeded to approve the loan.

The Complainant has submitted that the actions of the Provider, *“after informing by [sic] wife of my loan, in a form of words and refusing her a loan, subsequently granted her the Loan. This demonstrates that there was no necessity to inform my wife that I had a loan.”* I do not agree with this line of argument, and I am of the view that, if anything, the Provider’s subsequent approval of the loan for a lower sum, supports its contention that its initial refusal was due to the lending restriction which it was subject to.

As I do not consider that it was wrongful or unreasonable of the Provider to have identified the Complainant and his wife as comprising connected borrowers, I am of the view that the discussions between the Provider and the Complainant’s wife about her loan application were necessary, in the context of the lending restriction which it was subject to.

The final aspect of the Complainant’s complaint, that he was not informed by the Provider of its complaint process and of his right to bring his complaint before this Office. Whilst the Provider has submitted that the Complainant was not prejudiced in his progressing his complaint by its failings in this regard, and that due to the Complainant’s profession he was aware of his rights in this regard, I have not been furnished with any evidence of the Provider having a documented complaint policy in place.

The Provider has submitted that it carried out a thorough investigation into the Complainant’s grievances and complaint and it has submitted that *“complaint forms are available in our banking hall and on our Website. Our rulebook which is on our website sets out our Complaints procedures”*. I have not been furnished with a copy of the Rule Book in question, however I am conscious that this book will include all the Rules which govern the Credit Union itself. Such a document is likely to be lengthy and formal in tone and nature. A more transparent approach whereby the Provider clearly sets out its complaints procedure and informs its customers of their rights would be more satisfactory. I am satisfied that as a matter of good practice the Provider should have advised the Complainant of its procedures in this regard and of his right to refer his complaint to this Office, irrespective of his profession and own personal knowledge. The Provider has a case to answer to the Complainant in that regard.

Having had detailed regard to all of the evidence available to me and for the reasons outlined above, I consider it appropriate to partially uphold the Complainant’s complaint and to mark this determination I intend to direct the Provider to make a compensatory payment to the Complainant in the sum of €200.

## **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €200, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

MARYROSE MCGOVERN  
DIRECTOR OF INVESTIGATION, ADJUDICATION  
AND LEGAL SERVICES

3 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.