



<b><u>Decision Ref:</u></b>	2019-0247
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Car Finance
<b><u>Conduct(s) complained of:</u></b>	Errors in calculations Level of contact or communications re. Arrears Complaint handling (Consumer Protection Code) Dissatisfaction with customer service
<b><u>Outcome:</u></b>	Upheld

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

### **Background**

On **14 September, 2007**, the Complainant entered into a motor loan with a third party. In **August 2014**, the Provider purchased the loan from the third party. That loan agreement was due to conclude in **October 2015**. On **31 March, 2015**, and **21 April, 2015**, the Complainant called the Provider to make enquiries about settling the account at an earlier date. By telephone on **21 April, 2015**, the Complainant provided debit card details to the Provider to clear the balance on the account of €2,401.92, which the Provider represented to be the entire settlement figure. Notwithstanding the payment of that sum, the Provider and a fourth party engaged by the Provider to service the loan contacted the Complainant about the account on a number of occasions over a two year period indicating that there was an outstanding balance on her account.

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

The Complainant says that on **14 October, 2015**, almost six months after she had cleared the balance on the account, the fourth party wrote to her saying "*you have missed a payment on your account and it is now showing in arrears.*" The fourth party asked her to discharge "[a] missed payment on [the] account" of €463.81. The Complainant informed the

fourth party by letter on **21 October, 2015**, that the debt had been discharged and provided a bank statement that she believed demonstrated this.

The Complainant says that over the two years that followed, she and her family “*contacted [the Provider] on numerous occasions, in writing and on the phone to explain that the balance has been cleared in April 2015.*”

Despite these efforts, the Complainant was contacted by letter and telephone a number of times until **25 November, 2017**, when the Complainant’s son wrote to the Provider on her behalf informing the Provider of the clearance of the account in **April 2015** and providing supporting documentation. In that letter, the Complainant’s son also asked that the Provider consider whether the Complainant was entitled to a reduced settlement amount in view of the fact that the account was settled over five months prior to the proposed termination date. He asked for an apology, which he viewed as particularly warranted in circumstances where his mother was recovering from open-heart surgery during the period at issue.

In the Provider’s Final Response Letter dated **15 December, 2017**, the Provider “*accepted that the account [had] been paid in full.*” After the Provider sent this letter and, after the Complainant submitted her complaint to this Office, on **1 April, 2019**, the Provider sent the Complainant a letter that stated, among other things, that her credit rating would be affected if she did not “*meet repayments on your credit agreement.*” This caused her further stress.

The Complainant, who is in her seventies and in ill-health, is represented by her son. In the complaint to this office, he states:

*My mother had a motor loan which was sold on to [the Provider] She contacted them in April 2015 to clear the loan and was told to pay €2401.92 which she duly did via her bank account. Subsequently, [the Provider] started to send letters for an amount outstanding of €436.81 in 2017. My mother, myself and my brother contacted them on numerous occasions in writing and on the phone to explain that the balance had been cleared in April 2015. They continued to chase and harass my mother by text, phone and letter. My mother was recovering from open heart surgery in October 2017 when they contacted her to say they were issuing legal proceedings for non-payment. She explained she was recovering from a major life-threatening surgery and would contact them again after she got out of hospital. She again explained that she had been assured in April 2015 there was nothing owing on the account. [the Provider] then issued a letter to her on November 8<sup>th</sup> saying the account had been sent to their solicitors to issue court proceedings. This letter was waiting for her when she got home from hospital and it was at this point she made me.....aware of what had been happening with them. I got hold of all historical account information of payments made as well as her bank account information from the period in question and proved conclusively to [the Provider] that all monies owing were paid in April 2015. I sent a letter of complaint and they eventually came back saying they had made an error and there was nothing owing. This episode caused considerable stress to my mother who never missed a single direct debit payment and paid off the loan*

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*early. According to [the Provider] statement of account issued, she may have been entitled to a reduction for paying off the loan early. I raised this point to [the Provider] in my letter dated November 25<sup>th</sup> but they ignored this in their Final Letter.*

*[The Provider] have admitted they were completely wrong in pursuing the €463.81 and in threatening to bring my mother to court. I am seeking financial compensation for my mother for the stress and harassment the [the Provider] caused her. They ignored her when she said that she didn't owe anything and continued to send threatening letters.....They also continued to contact her by phone when she was in a fragile state after having open heart surgery.*

*They treated her in a disgraceful manner and had I not retrieved the paperwork from her attic and proved them wrong, she would have agreed to pay the money they were claiming they were owed to make the letters and the phone calls stop."*

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

In its Final Response Letter, the Provider apologised for the manner the account was dealt with and for the inconvenience that this caused. It accepted that the Complainant was told on **13 November, 2017**, that the account had been paid up in full and closed. It said that it failed to "*confirm this with [the fourth party].*" The Provider said "*we are happy to accept that the account has been paid in full.*" The Provider did not address the Complainant's request for a review of the settlement figure that should have been owing given the early repayment or offer any financial compensation.

The Provider says that the Complainant owed the sum of €400.32 on the account on **9 April, 2015**, which was deducted by direct debit. It says this direct debit was returned unpaid on **8 May, 2015**, a point in time after the Complainant had discharged the settlement sum. This, the Provider says, is the basis for the sum of €463.81 owing on the Complainant's account until it was closed.

From approximately **March 2015** until **25 September, 2017**, the account was serviced by the fourth party on behalf of the Provider. When the file was transferred back to the Provider, the fourth party did not provide any history of the account interactions. The Provider asserts that it acted promptly when the complaint letter was received by it on **23 November, 2017**, by reverting with its Final Response Letter on **15 December, 2017**.

The Provider has offered to pay €463.81 in compensation and would like to write a letter of apology to the Complainant.

In respect of the letter that was sent to the Complainant on **1 April, 2019**, the Provider says "*unfortunately, this letter was erroneously captured as part of this letter batch*", has apologised for its mistake and indicated a willingness to apologise to the Complainant should she desire one.

## **The Complaints for Adjudication**

The complaint for adjudication is that the Provider:

Wrongly pursued the Complainant from **14 October, 2015**, to **15 December, 2017**, for an outstanding balance of €463.81, failed to investigate the Complainant's objections to being pursued for this debt between **October 2015** and **November 2017** despite having previously been informed the debt was discharged and failed to address the Complainant's queries regarding the loan being paid early and the possibility of a consequent reduction in the settlement sum.

## **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 15 July 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, I set out below my final determination.

In its Final Response Letter, the Provider accepted that the account was paid up in full. Then, in its submission to this Office, the Provider seems to resile from that position by saying that a direct debit returned to it unpaid and that unpaid direct debit comprised the outstanding sum on the Complainant's account. This, in my view, does not excuse the Provider from the conduct complained of.

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According to the fourth party's statement of account, a direct debit of €400.32 was "reversed" on **9 April, 2015**, rather than **8 May, 2015**, as contended by the Provider. This distinction is significant because the Provider says that the settlement sum quoted to the Complainant was given on the assumption that the direct debit was successfully discharged. The outstanding balance on the account was discharged on **21 April, 2015**, which was after the direct debit was reversed on the fourth party's own statement of account. The Provider would have known, or ought to have known, by that stage that the direct debit was returned unpaid and taken that into account in the settlement sum quoted. In addition to that, in the telephone conversation that the Complainant settled her account, the Provider advised her to cancel her direct debit. If the direct debit returned unpaid after that date, the Provider's own advice may well have caused that. Clearly the Complainant should not be blamed for that.

The Provider or the fourth party, which the Provider is responsible for, communicated, or attempted to communicate, with the Complainant or her son on the following dates after the debt was discharged to the date of the Complainant complaining to the Provider:

1. By letter dated **14 October, 2015**;
2. By telephone on **26 October, 2016**;
3. By telephone on **13 April, 2017**;
4. By letter dated **25 April, 2017**;
5. By telephone on **30 May, 2017**;
6. By letter dated **25 September, 2017**;
7. By telephone on **3 October, 2017**;
8. By telephone on **17 October, 2017**;
9. By letter dated **10 November, 2017**;
10. By telephone on **14 November, 2017**.

The Provider should not have made contact or tried to make contact with the Complainant on any of those dates as the debt was cleared and the account was, or should have been, closed during that period.

The Complainant responded to the fourth party's letter of **14 October, 2015**, by stating that the account had been cleared earlier that year. The fourth party inquired into the account between **December 2015** and **October 2016** but the nature of those enquiries are unclear to me. On **2 March, 2017**, the fourth party placed a note on the file that accords with the Provider's explanation for the belief that there was a sum outstanding on the Complainant's account. The Provider did not take any steps to investigate the balance until it received the complaint on **29 November, 2017**. This might be explained by the fact that the Provider did not receive any history of account from the fourth party so it would not have known of any complaints made by the Complainant to the fourth party. That is not, however, a satisfactory explanation. The Provider should have insisted on a history of the account from the fourth party. In any event, the Provider is responsible for the actions of the fourth party.

I accept the Provider's explanation that its failure to address the Complainant's request for a reduced early settlement sum was an oversight. It is not possible for me to adjudicate on

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the complaint that the Provider was obliged to offer the Complainant a reduced settlement sum because of early repayment as I note that the Provider says the loan was restructured to allow for an extended repayment period.

On the basis of the foregoing, I find that the Provider failed:

*To act with due skill, care and diligence in the best interests of the Complainant contrary to its obligations under General Principle 2.2 of the Consumer Protection Code 2012 ("CPC");*

*To correct errors and handle the complaints raised by the Complainant speedily, efficiently or fairly Complainant contrary to its obligations under General Principle 2.8 of the CPC; and*

*To ensure that the activity outsourced to the fourth party complied with either of the foregoing provisions contrary to its obligations under General Principle 2.10 of the CPC.*

The Provider's failure to exercise adequate supervision and control over the administration of its accounts is exemplified by the fact that the Provider sent a letter to the Complainant about the account a year and five months after it informed the Complainant that the account was paid off in full and closed. That is a particularly egregious failing.

I have carefully considered all of the submissions and evidence submitted. I note the manner in which the Complainant, an elderly and unwell woman, was wrongfully pursued by the Provider. The repeated letters and phone calls seeking money that was not due were most unacceptable.

I note the letters contain statements such as, "You have also neglected to contact us with any proposal for repayment. We have therefore been instructed by our client to send your account to our solicitors to issue court proceedings"

I find the conduct of the Provider to be unreasonable unjust and oppressive.

On the basis that the Provider remains willing to provide the Complainant a written apology, I will make no further direction to that end.

I consider the Provider's offer of €463.81 in compensation to be totally insufficient. I believe that a far greater sum of compensation for the inconvenience caused to the Complainant is merited. For this reason I uphold the complaint and direct the Provider to pay a sum of €10,000 in compensation.

## **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) (a), (e) 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 €10,000, 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**

8 August 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**
- (iii) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.**