Decision Ref:	2019-0394
Sector:	Banking
Product / Service:	Direct Debit
Conduct(s) complained of:	Complaint handling (Consumer Protection Code)
Outcome:	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a credit card the Complainant held with the Provider and its reporting to the Irish Credit Bureau (ICB).

The Complainant's Case

In 2016, the Complainant was issued with a credit card by the Provider. The Complainant received a bill and he contacted the Provider in order to pay it. The Provider's representative suggested that a direct debit be set up in order to facilitate payment. The Complainant requested a direct debit mandate. Subsequent contact between the Complainant and the Provider resulted in the direct debit failing to be properly set up. In January 2018, the Provider received a direct debit mandate and the direct debit was properly set up.

In April 2018 in the course of applying for a loan to a third party financial service provider, the Complainant was informed that the loan would not be approved because of information received from the Irish Credit Bureau (ICB). The Complainant ascertained that missed credit card payments had been reported by the Provider to the ICB. The Complainant lodged an initial complaint with the Provider in respect of this.

On **25 April 2018**, the Provider responded to the Complainant indicating that his complaint was upheld and offering €100.00 compensation.

The Provider accepted that the Complainant had repeatedly asked for a direct debit to be set up and accepted that the Complainant returned the direct debit mandates. These appear not to have been received by the Provider which caused late payments. The Provider indicated that the relevant form had been sent to the ICB to update them.

Subsequent to that letter, however, the Complainant complained that the ICB record had not been updated and lodged the complaint that is the subject of this investigation and adjudication.

The Complainant notes that the Provider in its letter dated **25 April 2018** accepted that his initial complaint was upheld. In that complaint, the Provider accepted that it had sent multiple direct debit mandates. The Complainant says that he completed these but that it was never implemented. The Complainant states that the Provider promised that it would update the ICB record. In his e-mail dated **17 May 2018**, the Complainant asserts that he contacted the ICB, but that it advised that the Provider had not contacted it in relation to his status. The Complainant also states that updating his ICB file is of immediate relevance to him, as the third party bank that he had sought a loan from had not approved the loan due to his credit score on the ICB file. The Complainant asserts that the Provider is responsible for his credit rating being inaccurate and is, therefore, responsible for the delay or impact that his inaccurate credit rating would have on his loan application with the third party bank. The Complainant asserts that the Provider is obliged to remedy this with the ICB and that it has accepted that it is its fault.

The Complainant takes issue with the customer service and delays that he has experienced. The Complainant asserts that the Provider did not determine his dispute in accordance with their own timelines. The Complainant says that he contacted the Provider on **13 April 2018** by phone in order to lodge his complaint. The Complainant states that the Provider indicated that it would take four working days. On **20 April 2018**, the Complainant had not received any confirmation and called the Provider again, it indicated that it could potentially take 15 days to resolve the complaint. Additionally the Complainant complains that he was not transferred to the correct representative in the Provider. On **25 April 2018**, the Complainant received confirmation that his complaint had been upheld by the Provider. The Complainant notes that the Provider's website says that complaints will be resolved in 4 days.

The Complainant states that he called the Provider on **13 April 2018** to apply for a credit limit increase. The Complainant asserts that this was refused and that it should not have been. The Complainant says that he was not furnished with sufficient information during that phonecall.

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The Provider's Case

The Provider asserts that it did not accept in the letter dated **25 April 2018** that it was responsible for the issues with the ICB. The Provider states that it sent a letter to the ICB that same day asking it to have the Complainant's credit file updated.

The Provider states that the Complainant was obliged to make the payments and did not do so, and that any reporting was therefore accurate.

The Provider states that the Complainant should have confirmed through his statement that the direct debit had been set up properly. The Provider states that it did not receive the earlier direct debit mandate forms that the Complainant asserts that he set up. The Provider states that it was only after the completed direct debit was received on **4 January 2018** that the statements furnished confirmed that payment was being made by direct debit. On **30 May 2018**, the Provider states that it again e-mailed the ICB to have the Complainant's credit record updated.

On **16 April 2018** the Provider states that it sent a letter of acknowledgement in respect of the Complainant's complaint made by phonecall. On **20 April 2018**, the Complainant called and was transferred to the complaint's team in the Provider. On **24 April 2018**, the Provider's representative spoke to the Complainant and said that she needed to investigate further. On **25 April 2018**, the Provider sent the final response letter upholding the complaint as set out above. While the Provider accepts that it could have been clearer in respect of the timelines that applied, the Provider asserts that it did not unduly delay in processing the complaint or in handling it.

The Provider states that on **13 April 2018**, the Complainant asked for the credit limit increase, but that this was rejected. The Provider states that it was not rejected because of any missed payments, but rather because the Provider had ended its relationship with the ICB and did not have the necessary information to make a reasoned decision in respect of the loan.

The Complaints for Adjudication

There are three complaints for adjudication.

> That the Provider acted inappropriately after sending its letter dated **25 April 2018** upholding the Complainant's initial complaint;
>
> That the Provider's conduct in handling the subsequent complaint was unreasonable;
>
> That the Provider acted inappropriately with respect to the Complainant's application for a credit limit increase made on **13 April 2018**.

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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 13 September 2019, outlining my preliminary determination 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.

Following the issue of my Preliminary Decision, the Provider made two further submissions under cover of its e-mails to this Office dated 1 and 4 October 2019, copies of which were transmitted to the Complainant for his consideration.

The Complainant has not made any further submission.

Having considered the Provider's additional submissions and all of the submissions and evidence furnished to this Office, I set out below my final determination.

The critical document in respect of the first complaint is the letter upholding the complaint dated **25 April 2018**. In this letter the Provider accepts a number of matters. It accepts that the Complainant had repeatedly requested that a direct debit be set up. The Provider accepts that those direct debit mandates were sent by the Complainant but that they may not have been received. The Provider accepts that this was frustrating and resulted '*in your payment being made late as you thought the DD would be in place*'. The Provider accepts that the Complainant was not informed during the phonecalls that he would be reported to the ICB for these missed payments. Critically, the Provider states that it would contact the ICB in order to amend this. The Provider states that it attempted to contact the ICB on two occasions being **25 April 2018** and **30 May 2018**. On **30 May 2018**, however, the Provider

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wrote to the Complainant stating that if the ICB failed to action the Provider's request, then there was nothing more that the Provider could do. In the system notes furnished by the Provider there is a note that seems to be contemporaneous with the **30 May 2018** letter.

These notes show that the Provider contacted the ICB which said that the ICB '*have changed the process and would not accept the amendment in the format [the Provider] had given*'. It would appear that the Provider at this point decided to stop trying to fulfil the promise that it made in its letter dated **25 April 2018** to remedy the ICB record.

I note the Provider states:

> *"In relation to the credit file being updated, this is something you'd need to request from the ICB as we have no control over how long it would take them to update this information".*

This is clearly most unreasonable and is extremely unfair on the Complainant who was trying to establish a new business, but had been impaired by his credit score with the ICB. The Provider cannot accept responsibility for this in its letter dated **25 April 2018**, promise to remedy the situation and then fail to do so based on some sort of administrative inconvenience.

It is fully responsible for any report given by it or failed to be given by it to the ICB. It is completely unacceptable to somehow suggest it is a matter for the Complainant to follow up, *"this is something you'd need to request from the ICB".* The report was made to the ICB by the Provider and only the Provider can correct it.

I note the Provider, in its post Preliminary Decision submission of 4 October 2019, states that:

> *"The submission is being made on the basis that it is of the opinion "an error of fact has occurred leading to an incorrect understanding of the consequences of this fact.", and that this error has "lent itself to the direction of a compensation payment in excess of what could be considered fair and reasonable".*

In the submission the Provider quotes the above section of my Preliminary Decision:

> *"…The Complainant has been particularly impacted by the conduct of the Provider. The Complainant was attempting to set up a new business that required a third party loan. That financing was directly impacted by the total failure of the Provider to remedy the ICB record".*

The Provider states that the above quote *"suggests"* that the understanding is the Complainant *"attempted to achieve the loan after complaining to [the Provider] about their credit file had been negatively impacted and after we'd said we'd remove the adverse information but failed to do so"*.

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The Provider rejects this, stating *"the correct sequence of events is that the complainant had already been advised their loan wouldn't be approved as a result of the information on their credit file"* and that this rejection of a loan application is what prompted the Complainant to make a complaint to the Provider.

The Provider would appear to be stating that I made an error of fact in this section. By appearing to be of the view that, the Complainant was refused the loan by a third party financial service due to the provider not correcting the ICB record promptly. The Provider appears to suggest that at the time the conduct of the Provider did not impact the Complainant as they had not yet received a complaint about its conduct or the ICB reporting. The Provider further states that:

> *"It is worth pointing out that irrespective of our decision later to remove the adverse information, at the time where the consumer had applied for the loan, the information regarding the missed payments we'd recorded was absolutely correct and should have been available to assist other financial organisations with their lending decisions".*

The Provider in its post Preliminary Decision submission of 4 October puts forward the argument that despite the lack of a Direct Debt mandate the Complainant "*knew he had manual payments to make in line with the requirements of his credit agreement".*

The Provider states *"it should also be noted the consequences of failure to meet these payments is detailed when he opened the account and we also wrote to him whenever the payments were missed explaining the same".*

The Provider further states the Complainant *"was notified on each of these occasions by letter and by his own admission he was aware he had been late while he knew no active Direct Debt was on the account".*

The Provider puts forward that although the Complainant *"was not explicitly notified during his calls to the business during this time about the impact on his credit file, it doesn't change the fact that he was notified by other means".*

The Provider suggests that while my Preliminary Decision notes that the Provider accepted that the complainant was not informed during the phone calls that he would be reported to the ICB, it is of the opinion that *"consideration must surely be given that he was notified by other means and so should have been aware in any case".*

The Provider expresses concerns that by *"omitting this fact, it appears the understanding is"* that the phone conversations where the only opportunity the Provider had to make the Complainant aware of the consequence, which the Provider believes *"isn't the case".*

The Provider ends its submission with reference to the intended compensation amount being considered by it to be very high especially when parallels can be drawn with the other published cases.

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The Provider requested the rational and *"Clarity around the basis"* for the intended figure of *€15,000*.

It is evident to me that the Provider completely fails to understand he seriousness and impact of its conduct. The most serious aspect of this complaint is that the Provider committed to amending the Complainant's ICB record and then simply abandoned its commitment because there was an administrative issue making it inconvenient to do so. The Provider draws comparison with other published decisions of this Office. While each complaint before this Office is dealt with on the individual facts and merits of that complaint, I would point out that this Office treats as very serious any matter that impacts wrongly in a negative way on the credit rating of a complainant. I would also point out that a particularly unique and egregious aspect of this complaint is the fact that the Provider agreed to amend the record and then abandoned its commitment.

It is this aspect of the complaint and the inconvenience caused by the Provider's conduct in this regard which has primarily influenced the compensation directed. I believe it is largely irrelevant when the Complainant applied for the loan which brought this matter to his attention. The fact is his credit rating continued to be negatively affected long after he brought the matter to the attention of the Provider and even after it agreed to amend his record.

In respect of the Provider's conduct in handling the complaint, I find that on **13 April 2018** the Complainant was incorrectly advised that it would take four days for a resolution to be made by the Provider. On **20 April 2018**, the Complainant had to call the Provider in order to ascertain whether or not the resolution would be forthcoming. I find that the Complainant was put onto a different representative to one dealing with his case. I find that the Complainant was informed on **20 April 2018** that it may take 15 days to resolve his case. The Complainant notes that the Provider's website stated that the Provider aimed to resolve complaints within 4 days, but that an acknowledgement would be sent after 5 working days if the Provider felt that it could not be resolved in that time. As noted above, on **25 April 2018** the Provider confirmed that the complaint was being upheld by phonecall but no letter to this effect was received by the Complainant. While I find that the Provider did deal with the complaint relatively quickly, I also find that the Complainant was not given coherent information regarding the appropriate time lines, and had to persistently call the Provider in order to ensure that his complaint was properly dealt with. I find that the Complainant had to persistently follow up to try and ensure that the Provider was fulfilling the promise that it had made to him to resolve his credit rating issue. I find that the Provider acted unreasonably in the manner in which it handled the complaint.

I note in an e-mail to this Office dated 10 April 2019 in relation to the Complainant's request to speak to a supervisor, the Provider stated:

> *"I've already explained in my submission about there not being a supervisor available for [the Complainant] to speak with. There is no requirement for any call to be passed to one. It is our internal process which is not something your service can rule on …"*

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The Provider is wrong in this assertion. I would direct the Provider in that regard to the ***Financial Services and Pensions Ombudsman Act 2017***. In particular,

> ***Section 44 (1)*** Subject to *section 51(2)*, a complainant may make a complaint to the Ombudsman in relation to the following:
>
> (a) the conduct of a financial service provider involving—
>
> (i) the provision of a financial service by the financial service provider,
>
> (ii) an offer by the financial service provider to provide such a service, or
>
> (iii) a failure by the financial service provider to provide a particular financial service requested by the complainant;

Further, I would direct the Provider to:

> ***Section 60 (4)*** Where a complaint is found to be upheld, substantially upheld or partially upheld, the Ombudsman may direct the financial service provider to do one or more of the following:
>
> (a) review, rectify, mitigate or change the conduct complained of or its consequences;
>
> …
>
> (c) change a practice relating to that conduct;

It is irrelevant whether the Provider's conduct results from an internal process or not, it still falls within the jurisdiction of this Office to investigate and adjudicate.

With respect to the application to increase the credit limit made on **13 April 2018**, I find that that in general the decision of whether or not to increase a customer's credit limit is the Provider's decision to make within its commercial discretion. A Provider is entitled to refuse to increase a credit limit if it does not have sufficient information to make that decision at the relevant time. There was nothing unreasonable in deciding to not increase the credit limit based on the phonecall made on **13 April 2018**. This is particularly so if the Provider intended to sell its credit card business to a new entity and did not want to undertake any new risks. I have not found the Provider's handling of the Complainant's application for a credit limit increase unreasonable.

In all of the circumstances, I find that the Complainant has been negatively impacted by the conduct of the Provider. The Complainant was attempting to set up a new business that required a third party loan. His ability to secure finance was directly impacted by the total failure of the Provider to remedy the ICB record.

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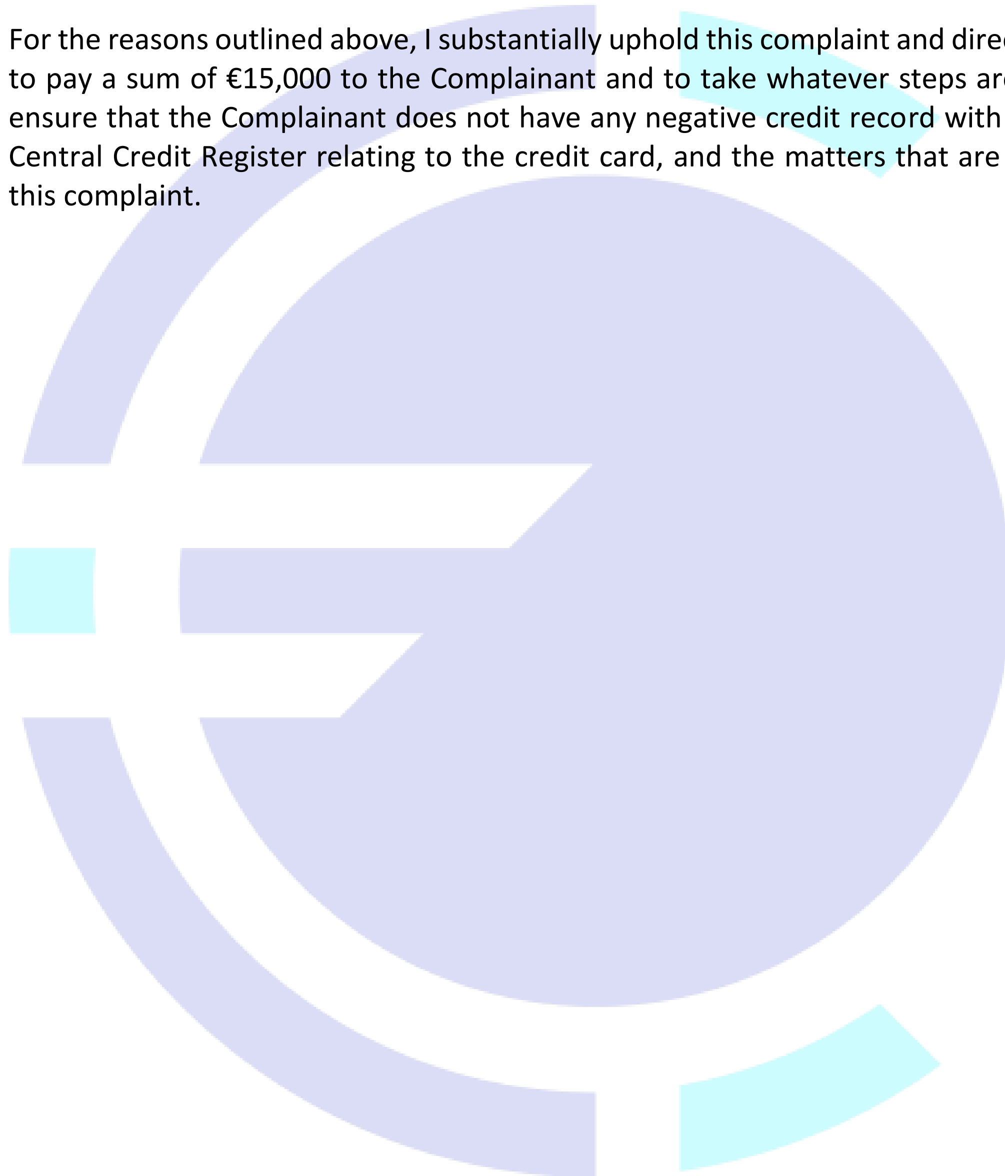
In all of the circumstances, I find that the Complainant was treated unfairly and unreasonably by the Provider and I note the Provider's offer of €100 compensation but find this to be derisory.

An adverse credit record can have a very significant negative impact. It was totally unacceptable that the Provider decided to simply abandon its efforts to correct the Complainant's ICB record because it had withdrawn from the Irish market and its systems were no longer compatible with those of the ICB.

For the reasons outlined above, I substantially uphold this complaint and direct the Provider to pay a sum of €15,000 to the Complainant and to take whatever steps are necessary to ensure that the Complainant does not have any negative credit record with the ICB or the Central Credit Register relating to the credit card, and the matters that are the subject of this complaint.



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Conclusion

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

Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to (i) 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 and (ii) take whatever steps are necessary to ensure that the Complainant does not have any negative credit record with the ICB or the Central Credit Register relating to the credit card, and the matters that are the subject of this complaint.

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

13 November 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.