



<u>Decision Ref:</u>	2019-0420
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Union Loan
<u>Conduct(s) complained of:</u>	Arrears handling Delayed or inadequate communication Complaint handling (Consumer Protection Code) Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a loan account and the Provider's alleged poor customer service and complaint handling.

The Complainant's Case

The Complainant has a loan account with the Provider, a credit union. The Complainant states that her account has been in arrears since **January 2017** and since then she has been dealing with the Provider with regard to dealing with her arrears. She states that she has submitted a statement of means to the Provider and representations have been made on her behalf by an accountant but notwithstanding this, the Provider has taken a decision to send her account to its legal representatives for collection.

The Complainant states that she co-operated with the Provider and responded to its requests for information throughout 2017 and made it clear in her discussions with the Provider that she is seeking work but that until she has additional income she would not be in a position to make any repayments. The Complainant states that she offered to pay €10 per week in **October 2017** but this was refused by the Provider.

The Complainant states that on **16 November 2017**, the Provider wrote to her stating that the credit committee would give her until **31 December 2017** to arrange a payment plan or the account would be sent for collection. The Complainant states that in December, she agreed with the Provider to make repayments of €20 per week but unfortunately, she was unable to continue with this commitment.

The Complainant states that she understands that her account had been in arrears for 12 months and that she has no payment plan in place and that solicitors for the Provider would take over collection of the money owed. The Complainant states however, that she does not believe that the Provider has co-operated with her. She also stated that members of staff of the Provider have been unprofessional, obstructive and ill-mannered in their dealings with her.

The Complainant states that the basis for the decision to send her account for collection is not transparent. The Complainant states that the Provider has refused to tell her why the assessment of means and the representations made to the Provider by her accountant were ignored in reaching the Provider's decision. The Complainant states that she did not receive any acknowledgement that these documents were submitted or taken into account.

The Complainant alleges a conflict of interest because she has a commercial relationship with the Chair of the Credit Committee with whom she had an unconnected dispute.

In addition, the Complainant complains that a member of staff of the Provider telephoned her on **17 January 2018** in relation to her arrears and stated to her "you're dragging the axxx out of it". She states that this statement was made to her in a belligerent tone and that she considers the language and attitude towards her to be unprofessional. The Complainant states that this conversation led her to believe that there is a belief within the Provider that she has the ability to repay a loan but is refusing to do so.

The complaint is that the Provider has not explained to the Complainant its decision for sending her arrears for collection by its legal representatives. In addition, the Complainant complains that the Provider failed to keep the Complainant informed in relation to any assessment of her application for an alternative repayment arrangement including any submissions made on her behalf by her accountant. The Complainant complains of poor customer service arising out of the manner in which she was spoken to on the telephone conversation on **17 January 2018**. Finally, the Complainant states that the Provider has no complaints officer or complaints procedure which she states is in breach of rule 108 of the standard rules for credit unions.

The Provider's Case

The Provider furnished a very comprehensive response in its Final Response Letter to the Complainant and in response to the Summary of Complaint to this Office.

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In these responses, the Provider disputes the majority of allegations of wrongdoing but accepts a lack of professionalism in the manner in which the Complainant was spoken to in one phone call.

The Provider has stated that the Complainant borrowed €5,000 from the Provider on **19 August 2013**. She topped-up this loan by €7,000 on **13 June 2014**. She again topped-up this loan by €1,000 on **23 June 2015**.

Thus total borrowed was €13,000. Her balance at the **4 January 2017** was €6,467.23. The Complainant had no problems paying €25.00 per week off the first loan of €5,000. Repayments increased to €55.00 per week from June 2014 after the second loan was advanced. Again, the Complainant had no problems paying €55.00 per week (and sometimes more) off her loan. A perfect repayment record was maintained up to **4 January 2017**.

The Complainant applied for a specialised business loan of €40,000 on **13 January 2017**. This was assessed by the Provider and declined as considered high risk. The Complainant then stopped paying her existing loan. No payments were received from **5 January 2017** to **13 June 2017**. On **13 June 2017**, one payment of €54.50 was received. The next payment received was €20.00 on **3 August 2017**. Nothing then was received until **30 November 2017**.

The Provider states that it is, and always has been, its policy to comply with the Standard Rule for Credit Unions, including Rule 108 regarding disputes and complaints, and the Credit Union Act 1997, as amended.

Its Disputes and Complaints procedure was reviewed by Management and the Board on **23 January 2018**. The previous review was on **3 January 2017**. It supplied a copy of its Disputes & Complaints Procedures for 2017 and 2018 to this Office.

The make-up (names & qualifications) of all required officers and committees are reviewed and agreed annually by the Board. The complaints officers have always been Senior Management Team members. The complaints sub-committee has always been the Principal Officers (Chair, Vice-Chair and Secretary).

The Provider states that in compliance with Rule 108, the Provider has a 'Dispute and Complaints' Statement, showing the names of its Complaints Officers, displayed in a prominent position in all its Credit Union Offices and visible to all members. The dispute and complaints statement has also been included on its Web Site since early 2018.

The Provider states that the Complainant was advised during a phone call with [named official] a Credit Control Officer, in early January 2018 that [named Manager] was a Complaints Officer and the person to write to with a complaint. It also states that for some unknown reason [named official] did not elaborate on the Provider's 'Complaints Procedure' as outlined above, leaving [the Complainant] with the impression that there was not a procedure in place. In a telephone conversation between the Complainant and a Credit Control Committee Member on **18 January 2018**, the Complainant confirmed that she had

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been given [named Manager's] name as a person to contact with a complaint. The named official confirmed that the named Manager was a Complaints Officer.

In a telephone conversation with the Complainant and the Provider's CEO on **18 January 2018** the Complainant was informed that the Provider does have a Disputes & Complaints Procedure in place.

The Complainant made a written complaint on **22 January 2018** in a letter addressed to [named Manager] who acknowledged receipt of the Complainant's letter of complaint on **24 January 2018** and also attached a copy of the Provider's Disputes and Complaints' Statement.

The Complaints Officer responded to the Complainant's complaint on **1 February 2018**. The Complainant did not acknowledge receipt of this response or indicate if she was satisfied or not with the response.

The Complainant called in to the Provider's office around **23 August 2017** and spoke with a member of the Credit Control Team. She had advised in late **July 2017** that she was not taking up a Job Offer in Dublin but hoped to start work with a local employer starting on €300 per week, in September. The Complainant said she had nothing to pay towards her Loan. The Complainant was given a Financial Statement of means to fill in.

The Complainant's financial statement was reviewed by the Provider on **31 August 2017**. Three scenarios were examined in order to review the ability to repay the loan by the Complainant and to make a judgement on what the Complainant was able to afford. 1) The Provider reviewed the existing Income and Expenditure figures supplied by the Complainant. This showed a weekly deficit, or excess of expenditure over income of €76.00. The Provider felt that there had to be either understated income or over stated costs. 2) The Provider felt that by acquiring an extra €100 per week, from say obtaining part-time or temporary work, that this would enable the Complainant to pay €20 per week off her loan balance outstanding, and 3) the Provider felt that by prudent management of costs, or re-negotiating existing commitments, that this could also enable the Complainant to start paying €20 per week off her loan.

The Complainant had said in her letter dated **29 August 2017**, that she was waiting on a medical card; was meeting a Housing Agency; was due to start work, and expected '*to be in a position to start paying back my loan by the end of September*'. The Provider decided to hold off any action and to wait and see would these materialise and how much she could pay.

No payments were received. On **22 September 2017**, the Complainant advised the Provider that the local job did not materialise and that she was waiting on Family Income Supplement (FIS) and Housing Assistance Payment (HAP) to come back to her. She said she could probably manage €10 for the moment. Again, however, no payments were made by the Complainant. The Provider waited another month to see if anything would transpire or if any payment would be made against her loan balance.

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On **25 October 2017**, the Complainant contacted the Provider by e-mail saying that an accountant was helping her sell her intellectual property rights in a product she had developed. The Provider contacted the accountant by e-mail on **2 November 2017**.

The accountant's e-mail of **6 November 2017** was reviewed by the Provider on **7 November 2017**.

The Credit Control Staff were instructed to ask the Complainant for a 'payment plan' giving some indication of how she intended to repay her loan. It was also decided to hold off any legal action and to review the situation by the end of December 2017.

The Provider wrote to the Complainant on **16 November 2017** asking the Complainant to come up with a 'payment plan' to enable her to reduce her debt. The Provider informed the Complainant that if nothing was received by **31 December 2017**, it would have no option but to hand the account to its Solicitors.

On **24 November 2017**, a friend of the Complainant offered to pay €20 per week on behalf of the Complainant, commencing on **1 December 2017**. He was advised that this arrangement was acceptable. Six weekly payments of €20 were received up to **6 January 2018**. On **12 January 2018**, the friend cancelled this payment arrangement.

The account was not sent to the Provider's external legal representatives as a repayment arrangement of €5.00 per week was put in place since **3 August 2018**.

In its Final Response letter of **1 February 2018**, the Provider stated, that it 'totally rejected' the Complainant's allegation that the Provider had not co-operated with her. It outlined its extensive contacts with her and the history of non-payment of the loan: a fact which is not in dispute. The Provider states that it had made every effort to engage with the Complainant and only when the Complainant failed to make Alternative Repayment Arrangements, did it contemplate referring the loan to its solicitors.

The Provider also states that it had given the Complainant over twelve months to try to sort out her situation and accepted, in December 2017, a repayment arrangement of €20 a week towards her loan arrears. However, it states that this arrangement ceased as the Complainant stated that she did not "*have the funds to pay anything at this time.*" At that time, the Provider stated the outstanding balance on the loan was €6,635.09 with arrears of €1,723.97.

The Provider has stated that:

*"A telephone conversation did take place between an official of the Provider and the Complainant at 15.21 pm on **18 January 2018**. Following this conversation, a telephone conversation took place between [the CEO] and [the Complainant] at 15.51 pm on **18 January 2018**.*

*In [the CEO] conversation with the Complainant (**18 January 2018** at 15.51 pm) the Complainant raised early in the discussion that she was finding it difficult to get*

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information on what procedures and what channels her account went through. As [the CEO] was under the impression that the purpose of the conversation was to discuss a new loan repayment amount, and not to discuss procedures, [CEO] said 'to be fair [Complainant] that is just dragging the axxx out of it'. [CEO] did however, explain what the Provider's high level collection procedure is.

[Complainant] asked when her account was discussed by the Board. [CEO] explained that the Board do not get individual member's details and that credit control staff and credit control committee deal with operational issues, whereas the board deals with Strategy issues.

The CEO apologised in a letter to the Complainant from the Provider's complaints officer dated **1 February 2018** which included the following:

*"[CEO] asked [name] to apologise on [CEO's] behalf for the use of the inappropriate comment made during the conversation with her on **18 January 2018**. [CEO] again extends an unreserved apology to the Complainant for the use of the inappropriate comment [CEO] said to her in the conversation of **18 January**.*

In the [CEO's] defence, he can only say that this was out of character for him and said out of frustration and disappointment that the arrangement the Provider had in place had broken down".

The Complaints for Adjudication

The complaint for adjudication is that the Provider has not explained to the Complainant its decision for sending her arrears for collection by its legal representatives, that the Provider failed to keep the Complainant informed in relation to any assessment of her application for an alternative repayment arrangement including any submissions made on her behalf by her accountant, that the manner in which she was spoken to on the telephone conversation on **17 January 2018** amounted to poor customer service, and that the Provider has no complaints officer or complaints procedure which the Complainant states is in breach of rule 108 of the standard rules for credit unions.

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.

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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 29 August 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.

Following the issue of my Preliminary Decision, the parties made the following submissions:

1. E-mail, together with attachment, from the Complainant to this Office dated 18 September 2019.
2. Letter from the Provider to this Office dated 20 September 2019.
3. Letter from the Complainant to this Office dated 28 September 2019.
4. Letter from the Provider to this Office dated 4 October 2019.

All of the above submissions were exchanged between the parties.

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

Before I move on to consider the customer service aspects of this complaint, I note the serious issues raised by the Complainant of what, she asserts, are potential conflicts of interest on the part of the Provider. Other than the fact that the Complainant and the individuals are known to one another, I have no evidence before me of any conflict of interest or wrongdoing.

The Provider has rejected the allegations and furnished evidence to this Office that the first individual named by the Complainant was in no way linked to the account of the Complainant.

A second, named individual was asserted by the Complainant to have been instrumental in the rejection of a loan application. The Provider replied in its letter **5 June 2018** stating it *'Can categorically state that [named individual] was not aware at the time, January 2017, that [the Complainant] made a loan application for €40,000 and also that she had any hand*

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act or part in the decision making process in respect of this loan application. [Named individual] is prepared to swear an oath and sign an affidavit to this effect.'

The Provider has furnished further written evidence that the named individual was not present when the loan application was considered and rejected by the Provider's Credit Committee. I also note that rejection was not appealed by the Complainant.

While this Office will consider the reasonableness of the Provider's considerations and warnings provided to the Complainant that legal action may be taken against the Complainant arising out of her arrears, I note no such legal action was taken and a payment plan has been in place since **August 2018**.

There are many material factual matters that are not in dispute between the parties. Firstly the Complainant has a loan account with the Provider that has been in arrears since **January 2017**. It is common case that the parties have been interacting with each other with the view to putting in place a mutually agreeable repayment plan. The Complainant offered a repayment plan of €10 per week which was rejected by the Provider and in **December 2017**, the Provider and the Complainant made an agreement that the Complainant would make repayments of €20 per week. Unfortunately, the Complainant was unable to adhere to that agreement and following on from that, the Provider threatened legal action.

The core complaints are that the Complainant feels that the decision by the Provider to consider sending her account for collection was not transparent, that the Provider did not tell or explain to the Complainant why the assessment of means and submissions made by her accountant were ignored, that the CEO of the Provider was rude and unprofessional to her and that the Provider did not have a complaints procedure in place at the time.

In relation to the first aspect of the complaint, this Office has been provided with a copy of the financial statement furnished to the Provider by the Complainant. This was furnished by letter dated **29 August 2017** and that letter notes that the financial statement is enclosed and that the Complainant was awaiting a medical card and that she was due to start working in the next couple of weeks, that her application for family income supplement was being processed and that she expected to be in a position to start paying back the loan by the end of September. The Provider has also furnished a copy of the document which demonstrates that the financial statement was reviewed by the Provider. Amongst other things, this document shows that the Provider examined three potential scenarios in order to review the Complainant's ability to repay the loan. The conclusion reached noted that the contracted repayment amount was €55 per week and that the Complainant had offered €10 repayment per week. It is noted that the Provider was rejecting this offer as it believed the Complainant could increase her income, reduce costs or both and that the Provider was seeking a minimum repayment of €20 per week.

This was agreed with the Complainant but no payments were made and it also appears that no payments of €10 per week were made either.

Following this, the Complainant's financial adviser or accountant entered into correspondence with the Provider wherein representations were made that the

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Complainant was hoping to sell the intellectual property rights on an invention for which she hoped to receive a significant amount of money.

The documents supplied in evidence by the Provider show handwritten notes which clearly evidence that the CEO of the Provider considered the contents of the representations made to the Provider in this regard and notes that there is the potential for a possible windfall if the Complainant sells her company but that this appeared to be doubtful and it may not happen.

The internal notes go on to state or reflect that the Provider felt that there was no option but to proceed to get an instalment order for €10 or €20 per week but that before taking this action it should write again to the Complainant asking for a payment plan to reduce debt. As outlined above, ultimately the account was not sent to external legal representation as a repayment arrangement of €5 per week has been in place since **August 2018**.

The evidence shows that the Complainant was and remains in arrears on her loan account, that her contractual obligations were initially to repay €55 per week and that she had entered into a repayment plan of €20 per week which she failed to adhere to from the outset. She then submitted financial statements to the Provider and the evidence shows that these were appropriately and properly assessed by the Provider. Subsequently representations were made to the Provider on behalf of the Complainant in relation to a potential sale of intellectual property by the Complainant and again the evidence shows that this was considered but ultimately rejected by the Provider.

I accept that the Provider adequately assessed the Complainant's repayment application and did so in a fair and reasonable manner and in a manner that was consistent with the Provider's statutory obligations and accordingly, I do not uphold this aspect of the complaint.

In relation to the second aspect of the complaint which is that the CEO of the Provider was rude and unprofessional to the Complainant. The Complainant states that he stated to her "*you're dragging the axxx out of it*". She states that this statement was made to her in a belligerent tone and that she considers the language and attitude towards her to be unprofessional. The Complainant states that this conversation led her to believe that there was a belief within the Provider that she has the ability to repay a loan but is refusing to do so.

The Provider has furnished an audio recording of this phone call. The CEO of the Provider has responded directly to this aspect of the complaint and he states that he was under the impression that the purpose of the conversation was to discuss a new loan repayment plan and not to discuss procedures and he said he made that comment in response.

I have considered the audio recording of the call of **18 January 2018**. The Complainant informs the CEO of the Provider that she cannot meet the payment arrangements. The Complainant very clearly explains that she is trying to get some information and what the procedure is and what channel her accountant has been through. In direct response to this,

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the CEO of the Provider states "*To be fair here now [Complainant], that's only just dragging the axxx out of it.*

Our procedures are quite clear, you owe us the money and our procedure is that we try and make the best arrangement we can with you, an alternative arrangement to see if you can pay and if you can't pay we will go legal and get an instalment order and register a judgement against you".

The Provider's complaints officer wrote to the Complainant less than two weeks later, **on 1 February 2018**, to apologise to the Complainant on behalf of the CEO of the Provider for the use of the inappropriate comments that he made during this conversation. In his response to this office, he extended a further unreserved apology to the Complainant and he explains that it was out of character for him and it was said out of frustration and disappointment that the arrangement that was meant to be in place had broken down.

Having considered the conversation and the surrounding circumstances, I accept that the manner in which the Complainant was spoken to during this short portion of the telephone conversation was inappropriate and unprofessional. The apology that was quickly offered was warranted and also reasonable. While I acknowledge the veracity and validity of the complaint, I accept an appropriate apology has been tendered and I do not uphold this aspect of the complaint.

Finally, the Complainant states that the Provider has no complaints officer or complaints procedure which she states is in breach of rule 108 of the standard rules for credit unions.

The Provider has responded by stating that it has a number of complaints officers and that all complaints officers are members of the senior management team in the Provider. The Provider submits that it is and always has been, its policy to comply with the standard rules for Credit Unions, including rule 108 regarding disputes and complaints, and the Credit Union Act 1997. The Provider submits that it has had its disputes and complaints procedure in place since 1997. It has provided copies of its disputes and complaints procedures for the years 2017 and 2018 in evidence. In addition, the Complainant clearly invoked the complaints process in early 2018 and was provided with a comprehensive response by the complaints officer by letter dated **1 February 2018**.

In light of all of the foregoing, the evidence clearly shows that there were complaints officers and a clear and written complaints procedure in place at the material time and therefore I do not uphold this aspect of the complaint.

As I have stated above, a number of post Preliminary Decision submissions were made by the parties. None of the submissions made have persuaded me to change my decision as set out in my Preliminary Decision.

I will however, summarise and respond to the key elements of the Complainant's post Preliminary Decision submissions.

In her post Preliminary Decision submission, the Complainant has stated that she has *“not seen any evidence from [the Provider], as referred to in the preceding quote that [named individual] (the first individual) was in no way linked to my account.*

I would like to receive a copy of the evidence that was furnished to the FSPO that [named individual] was in no way linked to my account”.

I would point out to the Complainant that a full exchange of evidence and documentation occurred between the parties and she was provided, during the investigation of this complaint with all such documentation by this Office.

The Complainant believes the rejection of her business loan was raised by the Provider to infer, that the refusal resulted in her stopping her regular repayments.

In my Preliminary Decision, in setting out the background facts to this complaint, I state:

“The Complainant applied for a specialised business loan of €40,000 on the 13th January 2017. This was assessed by the Provider and declined as considered high risk. The Complainant then stopped paying her existing loan...”

While setting out the background facts I did not state or otherwise imply that this was the reason for the Complainant stopping her payments. This is simply setting out the order in which these matters occurred.

I accept that on reading the above paragraph it may possibly be inferred that the refusal was linked to the Complainant ceasing to make repayments and not the financial difficulties she was experiencing at the time. Therefore, I am happy to confirm that I am not implying anything by this statement. I am simply setting out the chronological order in which matters transpired.

The Complainant states that I am incorrect and that it is *“this incorrect belief that I reneged on a repayment arrangement I believe has influenced the decision not to uphold this aspect of my complaint that there was a lack of transparency in decision making on my statement of means and repayment ability”.*

This Office fully investigated the complaints raised in a fair and impartial manner. Having reviewed the submissions of both parties during the investigation of this complaint I found:

“The Provider adequately assessed the Complainant’s repayment application and did so in a fair and reasonable manner and in a manner that was consistent with the Provider’s statutory obligations...”

The Complainant has stated that I made an Error of Fact in my Preliminary Decision when I stated:

“I accept an appropriate apology has been tendered and I do not propose to uphold this aspect of the complaint”.

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The Complainant disputes this and states, *“The CEO has not apologised to me. I have been given a second hand apology through the Complaints Officer and the FSPO with the reservation that it was out of character for him...”*

The Complainant further states that:

“In my opinion [the CEO] appears to not be subjected to the same code of professionalism, decorum or courtesy as all other public sector employees if his sham apology is considered acceptable by the FSPO”.

I have not made any comment on any code of professionalism or stated what should be included in an apology. I simply made a decision on the appropriateness of the apology offered in this specific case, after considering how and when this apology was offered.

The Complainant states that I made an Error of Fact when considering the complaints procedure of the Provider.

The Complainant states that *“there was no complaints procedure on display in [named Credit Union Offices] when I decided to make a complaint”*. The Provider disputes this, stating that there is in fact a complaints procedure on display in its Office.

I am satisfied with my Decision that *“evidence shows that there were complaints officers and a clear written complaints procedure in place at the material time...”*

For the reasons outlined above, I do not uphold this complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

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**

3 December 2019

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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.

