



<u>Decision Ref:</u>	2020-0008
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Leasing Agreements
<u>Conduct(s) complained of:</u>	Incorrect information sent to credit reference agency Delayed or inadequate communication Complaint handling (Consumer Protection Code) Failure to provide correct information
<u>Outcome:</u>	Partially upheld

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

This complaint concerns the First Complainant's lease agreement with the Provider.

The complaint is that the Provider incorrectly wrote off the First Complainant's lease agreement without notifying the First Complainant, which in turn had a negative impact for the credit rating of the First Complainant with the Irish Credit Bureau (ICB).

The Complainants' Case

In August 2011, the Complainants' financial position changed, and as a result the First Complainant missed a number of repayments with the Provider. The First Complainant contacted the Provider by letter dated **22 June 2012** informing it of the change in circumstances.

The First Complainant received correspondence from the Provider dated **28 August 2012, 7 September 2012, 28 September 2012, 15 October 2012** advising the First Complainant that they were in arrears of €347.96 as of **15 October 2012**.

"Accounts in arrears attract surcharge interest at the rate referred to in your Agreement and your credit rating will also be affected".

The First Complainant received correspondence dated **30 May 2013** from the Provider advising

“Following previous correspondence we have today instructed our Agent [name of Debt Collection Service] to collect the outstanding debt”

The First Complainant replied to the Provider by letter dated **30 May 2013** outlining his financial position and offered to pay €250 as a full and final settlement of the amount owed.

The First Complainant sent the Provider a completed financial statement on **30 July 2013** and again requested that the Provider accept his offer of €250.

On **22 January 2015**, the First Complainant wrote to the Provider to set out the sequence of events that led to the First Complainant’s negative repayment history being notified to the ICB.

The First Complainant has stated:

“We were not in a position at the time to repay the monies outstanding and tried to come to an arrangement with you. The Provider handed the case to a debt collection agency who contacted me in or around March 2013 and I started negotiations with them re a repayment plan.

...I sent a financial statement to them and following that, when I did not hear back from them, and with the support of the Provider’s business manager, I wrote to you and offered a sum in full and final settlement of the account. You did not reply to my letter.

...I was also in dealings with the Provider regarding my new business. The Provider sanctioned a personal loan of approx. €40,000 in November 2013. If there had been a problem with our ability to raise finance, it would have shown up during this period.

...It was not until last month when I was refused as guarantor for an education loan for my son that I found out that the Provider had written off the lease in May 2014 and therefore given us a negative credit rating.

No action was taken by the Provider from my letter dated 30 May 2013 until May 2014, the date of writing off the loan.

I am prepared to raise my offer to €750 in full and final settlement on condition that the Provider instructs the ICB to remove the arrears indicators and restore my credit rating”.

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The First Complainant received a response from the Provider by letter dated **11 February 2015**:

“In view of the above assessment of your financial circumstances, it was decided not to actively pursue this debt further and the sum of €2,257.84 being the outstanding balance was written off for accounting purposes in May 2014. The final coding with the Irish Credit Bureau was updated accordingly”.

The Complainants state that they have no issue discharging the balance owed but ought to have had the opportunity of knowing that their offer had been rejected.

The Complainants are seeking for the ICB records to be amended by the Provider.

The Provider’s Case

The Provider states that the First Complainant entered into a lease agreement in **February 2010** to acquire CCTV equipment. The Provider states that the term of the agreement was 36 months with monthly instalments of €160.60 over the three year period.

The Provider states that the agreed instalments were received for the period of **March 2010** to **October 2011**. The Provider states that the First Complainant requested and was approved for a three month deferral of payment in **November 2011** and **March 2012**. The Provider states that instalments were received following the end of the deferral period in **April 2012**, covering the period from **May 2012** to **July 2012**.

The Provider states that no payments were received after **July 2012**.

The Provider states that a number of arrears letters were issued to the Complainant before a termination notice was issued in **November 2012** due to multiple missed payments.

The Provider states that the Complainants’ account was referred to its debt collection service for collection in **May 2013**. The Provider states that it received the First Complainant’s letter of **30 May 2013** on **11 June 2013** proposing €250 in full and final settlement of his debt.

The Provider states that on **17 June 2013**, the debt collection agency spoke with the First Complainant in relation to this offer and agreed to contact the bank to see if any decision had been made about the offer. The Provider informed the debt collection agency to place collection on hold for one month and that the Provider would send a document to the First Complainant for completion.

The First Complainant submitted a financial statement to the Provider on **20 August 2013**. The Provider states that this was assessed and showed no ability to pay.

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The Provider states that in **October 2013**, the Second Complainant informed the debt collection agency that €250 was all the Complainants could afford and that the Complainants had communicated this offer to the Provider. The Provider declined this offer and the debt collection agency advised the Second Complainant of this decision on **23 October 2013**.

The Provider states that a decision was made not to pursue the First Complainant and the outstanding balance of €2,257.84 was written off on **29 May 2014**.

The Provider states that the First Complainant's credit record was updated to reflect the previous 24 months when the account was in arrears and reported to the ICB. The Provider states that the First Complainant was given the option to pay the balance owing on the debt in full and that if he did, his ICB report would be updated as a completed transaction. Alternatively, the First Complainant was advised that if he submitted a new statement of means and a revised settlement offer, the Provider would review it.

The Complaint for Adjudication

The complaint for adjudication is that the Provider failed to notify the Complainants that the debt was written off and notified incorrect repayment indicators regarding the debt to the ICB.

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 Complainants were 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.

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A Preliminary Decision was issued to the parties 13 December 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.

The First Complainant entered into a lease agreement with the Provider in February 2010.

The Complainants financial position changed in August 2011 and as a result, the Complainants missed a number of repayments. The Provider had taken the decision to write off the Complainants' loan and refer the First Complainants details to the ICB.

The Complainants state that they only found out about the impact on the First Complainant's credit rating when he tried to provide a guarantee for their son's university fees. This came as a surprise to the Complainants as they were of the view that the Provider was still considering their repayment offer of €250.

I note from the documentary evidence before me that the First Complainant wrote to the Provider on **22 June 2012** informing the Provider that his financial position had changed and he would be unable to recommence payments.

I note from the Provider's submissions that a three-month deferment of payment in **November 2011** and **March 2012**. Payments recommenced for the period between May and July 2012 however, the First Complainant stopped repayments in July 2012.

During this time, the First Complainant was granted a business loan from the Provider. The Complainants submit that

"if there had been a problem with our ability to raise finance, it would have shown up during this period."

It is the Complainants' position that the Provider should have clearly communicated to them that it was the Provider's intention to write off the loan and report the matter to the ICB.

The Provider states in its submissions that it has no record of a new loan facility sanctioned in the First Complainant's name following the loan write off on 29 May 2014. The Provider states that an existing loan facility originally sanctioned in 2012 in the Complainants' names was restructured in 2013 by the Provider but that as no new funds were advanced as part of this restructure, the Provider's processes did not require that an ICB check be carried out.

I note in the Provider's submissions it states that from inception of the leasing facility, the First Complainant was aware that a default would be recorded with the ICB. The Provider states that this was clear from the warnings included in the Leasing Agreement dated **17 February 2010**. The Provider further states that it was also outlined in correspondence that issued to the First Complainant in relation to arrears on the account and notification that the recovery of the outstanding liability was being passed to a debt collection agency.

I note from the Lease Agreement referred to by the Provider, the relevant provision on default can be found at point 14 of the agreement which states:

"On default by the Lessee, the Lessor reserves the right to refer the outstanding debt under this Agreement to another organisation or debt-collection agency for the purpose of collection of payment and to give that organisation or agency such information as it deems necessary in relation to the Lessee and this Agreement".

While I accept that the Provider is required to report to the ICB on a monthly basis. I do not accept that the First Complainant was clearly made aware that the details of his loan repayment history was going to be recorded by the ICB as "W" meaning write off, as a result of the arrears on his account. I note a letter dated **30 May 2013** from the Provider to the First Complainant states:

"Please note that accounts in arrears attract an adverse coding with the Irish Credit Bureau".

Having a negative credit rating with the ICB can have very serious consequences. Therefore any proposed action in this regard requires the fullest and clearest possible communication.

The First Complainant did not receive any further correspondence in relation to the ICB until he tried to act as guarantor for his son's university loan. The level of communication that this matter was being recorded by the ICB fell below a reasonable standard that a customer could expect. The First Complainant ought to have received final confirmation that the outstanding money had been written off and his details were going to be recorded by the ICB which would have an impact on any future borrowings.

In light of the above, I partially uphold the complaint and direct the Provider to make a compensatory payment of €3,000 to the Complainants.

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) (b), (f) 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 Complainants in the sum of €3,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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**

10 January 2020

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.