



<u>Decision Ref:</u>	2020-0072
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Personal Loan
<u>Conduct(s) complained of:</u>	Failure to process instructions Failure to process instructions in a timely manner Errors in calculations
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant took out a loan with a bank on **10 December 2008**. After a change in his employment circumstances he refinanced the loan with the bank. Subsequently, ownership of the loan was transferred by that bank to the Provider, against which this complaint is made in 2014.

The Complainant's Case

It was the agreed terms with the original bank that the Complainant would pay €100 off the loan monthly and €70 off the overdraft facility monthly. The Complainant states that he upheld this arrangement and received a letter on **11 February 2014** advising him that his loan had been passed to the Provider. The balance outstanding according to the letter was €4,148.67.

A series of factual disputes subsequently arose between the Complainant and the Provider in relation to the amount of monies owed to the Provider, due to a series of administrative errors.

The Complainant sought clarification of the balance listed on statements issued by the Provider and Solicitors instructed by the Provider, the Complainant claimed that there was a discrepancy with regards to the balance quoted.

The Complainant claimed that he had not received notification of the “10 day costs” which were applied to his account by Solicitors for the Provider on **9 January 2015**.

The Complainant claimed to have made additional payments towards the account that were not applied to the account.

The Complainant is aggrieved with the Provider contacting him via telephone when he claims to have expressed to the Provider that he wished for communication to be written.

The Complainant claims that on **30 November 2016** an agent of the Provider’s Solicitors divulged personal information to his neighbour via telephone. This information being that the Provider’s Solicitors was looking for the Complainant and that the agent of the Provider’ Solicitors confirmed to the third party that she was an employee of the Provider’s Solicitors.

The Complainant summarises his complaint as follows:

- *“ Between 2014 and 2016 payments made were not allocated to my account even though this was highlighted to a number of staff in [the Provider] on numerous occasions, resulting in a lot of harassing phonecalls and letters (7 payments)*
- *My account was passed to a solicitor [(Provider’s Solicitors)] for no apparent reason resulting in threatening letters (court proceedings / legal action), even though I was in contact with [the Provider] and making agreed payments. This caused me and my family a lot of stress and sleepless nights through no fault of my own.*
- *Withdrew authorisation to be contacted in Nov 2014 by phone asked letter only – continued to receive calls.*
- *Discrepancy in A/C balances – [Provider] and [Provider’s Solicitor] each letter and statement including final response letter.”*

Under the section “How do you want the Financial Service Provider to put things right” the Complainant states;

- *“I would like an investigation conducted to see how a customer’s account balance can be incorrect on two financial systems [(The Provider and the Provider’s Solicitors)].*
- *Why a customer’s account can be passed to a solicitor when co-operating (what are the processes and procedures)*
- *After authorisation to be contacted by phone being withdrawn why [the Provider] ignore this.”*

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The Provider's Case

The Provider accepts all of the complaints with the exception of one (divulging personal information via phone call to a third party) and puts them down to administrative errors. The Provider contends that the Complainant has not suffered any damage.

The Provider has offered €200 in compensation to the Complainant in acknowledgement of the Provider's shortcomings.

A summary of where the Provider accepts its shortcomings is evident from the Final Response letter dated **22 February 2017**, the Provider upheld the Complainant's complaint that;

- There was a discrepancy with regards to the balance quotes by the Provider and the Provider's Solicitor.
- That the Complainant did not receive notification of "10 day costs" which were applied to his account. These costs are stated to be legal costs on the court scale which would be applied if the debt resulted in litigation. The Provider states that these costs are not applied unless the matter results in litigation. These costs were listed in correspondence received from the Provider's Solicitors by way of a statement of accounts by letter dated **2 November 2016**. The Complainant raised this issue on phone call dated **2 February 2017**. No explanation was given as to what the "10 day costs" were, the Agent on the phone call attempted to explain the reasoning, however, not clearly. The Provider accepts that the cover letter accompanying the transactions should have explained the reasons for the costs.
- The Complainant contended that he had made additional payments to his account which had not been applied to his account. The Provider has accepted these payments were not applied and subsequently applied them. The Provider accepts that the Complainant had informed the Provider of this but at the same time contends that an investigation could not have been conducted until the Complainant provided them with the specific details.
- The Provider accepted that the Complainant had requested by letter that the Provider contact him by writing and not by telephone and that it had subsequently ignored this request.

By the same letter, the Provider did not accept that it divulged personal information to a third party by telephone.

The Complaint for Adjudication

The complaint for adjudication is whether or not the Provider has sufficiently dealt with the complaints where it accepts that there were shortcomings in its conduct.

The aspect of the complaint alleging a data breach is more appropriate for the Office of the Data Protection Commission and will therefore not form part of this investigation and adjudication.

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.

Following the issue of my Preliminary Decision, the Complainant made a further submission under cover of his e-mail to this Office dated 10 January 2020.

A copy of that additional submission was transmitted to the Provider for its consideration. The Provider has not made any further submission.

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

The subject matter of this complaint stems from a dispute relating to the repayment of the Complainant's loan. A series of phone calls have been provided in evidence to this office. I note the phone call in which the Complainant asserts that his personal information was divulged to his neighbour is not one of the calls. However, as I have pointed out the allegation of a data breach is more appropriate for the Office of the Data Protection Commission and does not form part of this Decision.

It is clear from the content of the calls furnished that the Provider and the Provider's Solicitor were unaware of the actual balance outstanding on the Complainant's loan as both the Provider and the Provider's Solicitors quoted different figures as being due.

It is apparent from the phone calls that the Complainant, whilst understandably annoyed with the errors, was less than helpful in providing his own accounts to the Provider when asked to help rectify this.

The series of phone calls ended in a call on **2 February 2017** where the Complainant is clearly upset about receiving phone calls even though he had requested that communication be by written correspondence, the Provider accepts that it was wrong to continue to phone the Complainant and have admitted fault in a number of the Complainant's complaint.

The Final Response letter was incorrect in the amount due and owing. The Provider accepts this, however, contends that the amount due is about €10 greater than the Complainant contends. In any event the amount quoted by the Provider was incorrect, albeit by their admission being incorrect by €1, compared to about €11 suggested by the Complainant. This is accepted by letter dated **24 March 2017**.

When asked by this office to explain how the discrepancy occurred, the Provider states:

"I would like to explain how such a discrepancy ensued. The payments made to [original bank] on September 25th 2014 was credited to the account by [the Provider's Solicitors] on 31st December 2014, however this was never applied to the account with [the Provider]. In addition, the payment of €100 from October 24th 2014 was applied by [the Provider's Solicitors] on two occasions (December 31st 2014 & 30th March 2015). This payment was applied only once by [the Provider] (March 30th 2015). Thus, the balance was incorrectly quoted by [the Provider] and [the Provider's Solicitors]. This discrepancy was a result of an administrative error and been brought to the attention of management who will handle the matter internally."

By Final Response letter dated **22 February 2017**, the Provider offered to waive the balance of the account which it contended was €188.67, the Complainant did not accept this offer and subsequently, the Complainant paid what he contended was the outstanding balance and the Provider closed the account although still contending that there was a remaining balance of €10.96, which the Provider has written off, the Complainant did not accept this was owing and believes he cleared the account in its entirety and does not accept that this was a concession on behalf of the Provider as it is his contention that he paid the debt he owed in full.

Ultimately the Provider has accepted responsibility for the administrative errors which have caused the dispute. It is also clear from the phone calls that the Complainant at the beginning of the process was proactive in addressing the situations.

Understandably by phone calls dated **20 November 2016** and **2 February 2017** the Complainant had become more aggrieved over the confusing situation he found himself in and was less tolerant in requests of him to provide statements and assist the Provider and the Provider's Solicitors, which lead to a prolongation of the dispute.

The Complainant was clearly distressed by the unclear information he was receiving from the Provider and the Provider's Solicitors. The Complainant accepts that he had been late on occasion in paying monies off the account but was otherwise compliant and honoured his obligation.

By letter dated **13 June 2017** the Complainant requested a detailed statement of account from the Provider, a letter from the Provider and the Provider's Solicitor that his account balance is zero, a letter of apology from the Provider and the Provider's Solicitors and compensation from the Provider.

The Provider in the course of document exchange has provided relevant statements, has apologised for the inconvenience caused to the Complainant, has closed the Complainant's account with no money owing and has offered the sum of €200 in compensation.

I believe the Provider's offer of compensation shows a lack of understanding of the inconvenience and stress it has caused the Complainant and is not sufficient in the circumstances of this complaint. Therefore I substantially uphold this complaint and direct the Provider to pay a sum of €750 to the Complainant for the inconvenience caused and furnish a letter to the Complainant confirming that the account is closed and that no money is owed by the Complainant to the Provider.

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) (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 (i) make a compensatory payment to the Complainant in the sum of €750, 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) furnish a letter to the Complainant confirming that the account is closed and that no money is owed 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**.

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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 February 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.