



<u>Decision Ref:</u>	2020-0075
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Loans
<u>Conduct(s) complained of:</u>	Errors in calculations
<u>Outcome:</u>	Rejected

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

The Complainant is a customer of the Provider who has held a number of loans with the Provider and has one existing loan. The complaint concerns the manner in which these loans were issued.

The Complainant's Case

The Complainant has been a customer of the Provider for over ten years. He states that he has held a number of loans with the Provider and has one existing loan remaining, with a balance of €560.

The Complainant submits that the loans were never “given” at the residential address stated by the Provider and instead were issued at other locations. In support of this he states that “loans were given in car parks and public areas” and submits that he has not lived at the residential address stated by the Provider since **2010**. In support of this he has submitted a handwritten letter, purportedly from his father, confirming this.

The Complainant further submits that when he was applying for finance he was never asked to disclose the source of his income. Furthermore, he states that loans were issued to him when other previous loans were still outstanding and states that this placed him under financial pressure.

The Complainant also states that the Provider frequently used an address held on file even though he no longer resided at that address. Furthermore, he alleges that when he applied for finance he was never informed of any "cooling-off" periods associated with the loans.

The Complainant states that, contrary to the submissions of the Provider, he was unemployed at the time he received loans from the Provider and that this can be verified by Social Welfare. He states that he was never employed as a taxi driver nor was he ever employed by a specified taxi company referenced by the Provider. The Complainant also asserts that the Provider "got" the Complainant's wife to forge his signature on a previous loan.

Ultimately, the Complainant wants the Provider to write off the remainder of the existing loan of €560. He also seeks compensation for the Provider's alleged irresponsible lending to him.

The Provider's Case

The Provider submits that only loans issued to the Complainant within a six year period from the date of the complaint are within the jurisdiction of this Office. The Provider has furnished to this Office copies of the signed loan agreements entered into between the Complainant and the Provider within this six year period along with all associated terms and conditions and the running payment history of these loans.

In respect of the allegations about entering into loan agreements outside of the Complainant's residential address, the Provider submits that there is no evidence that this took place. The Provider submits that the loan agreements furnished to this Office state the residential address of the Complainant and that the Complainant signed each of these agreements thereby confirming that he was residing at that address. The Provider also stated that at the time of its response to the complaint, its local office stated that repayments on the existing loan were still being made from the residential address and that an agent of the Provider collected these repayments from the address from the father of the Complainant. In any event, the Provider submits that it is not against any law or Central Bank rule to issue credit outside of a consumer's home nor is it prohibited by the Consumer Credit Act 1995, the European Communities (Consumer Credit Agreements) Regulations 2010 or the Moneylenders' Code 2009.

In respect of the verification process used by the Provider to check the income of the Complainant, the Provider has submitted evidence to this Office that in the majority of occasions, the Complainant's payslips or other evidence supporting income was checked and verified by an agent of the Provider. The Provider stated that the loan purpose was stated on the loan agreements and the Complainant declared ample disposable weekly income on each occasion to afford the repayments. Therefore, the Provider states that it does not agree that the Complainant was placed under financial pressure as a result of/or at the time he entered into the loan agreements.

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The Provider states that it relies on the Complainant to provide factual and accurate income and expenditure information when making an application for credit and on each occasion the Complainant signed to confirm and agree that the information provided and noted by the Provider was accurate.

In relation to the Complainant's complaint that he was placed under financial pressure due to new loans being issued while existing loans were still outstanding, the Provider states that a consumer is able to apply for a loan whilst another loan is running. The Provider states that it has policy rules around the number of weeks which must pass first, with consecutive payments made, before additional lending can be offered, but providing the affordability assessment is met, the customer can have concurrent loans running. The Provider states that on each of the occasions where the Complainant took out a loan, he declared ample disposable income to afford the weekly repayment rate and the Provider conducted checks to ensure that the repayments were affordable, suitable and sustainable. Furthermore, the Provider states that if the Complainant was struggling financially, it would have reasonably expected him to raise this when the lending was agreed, within the cooling off period, during contact the Complainant made with the Provider in **2010** or over the course of the complaint registered by the Complainant for being declined for lending with the Provider in **2015**.

The Provider submits that the Complainant declared he was employed full time as a [occupation redacted] and/or [occupation redacted] on several of the loans issued by the Provider in **2009** and **2010**. For a loan issued in **2011**, the Provider states that the Complainant stated that he was unemployed and for a loan issued in **2012**, the Provider states that the Complainant stated that he was self-employed. For loans in **2013-2015**, the Provider states that the Complainant again stated that he was employed full-time for a specified [occupation redacted] and that he submitted payslips as proof of same.

The Provider denies getting the wife of the Complainant to forge his signature on a loan. The Provider states that none of the signatures on the loan agreements change to a big degree over time but undertakes to fully investigate the Complainant's allegation through its fraud department if the Complainant can provide a legal document with his signature.

In respect of the Complainant's complaint that he was not aware of the cooling off period for loans, the Provider submits that each time a loan is issued, the customer is provided with pre-contract information and left with a copy of the loan agreement, which contains this cooling-off information. The Provider also states that the Provider's agent would, before issuing a loan, make a customer aware verbally of their right to withdraw from the loan. The Provider states that it would reasonably expect the Complainant to use the cooling-off period or contact it sooner if he had concerns over the affordability of loans or the location where loans were issued.

The Complaints for Adjudication

There are three primary complaints for adjudication in this instance.

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The first complaint is that the Provider issued loans to the Complainant at locations other than his stipulated residence. The second complaint is that when the Complainant applied for finance, the Provider employed a flawed loan application process. The third complaint is that the Provider extended loans to the Complainant when other loans were still in being, causing the Complainant to suffer added financial pressure.

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 on 12 February 2020, 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 the interests of completeness, it is important to note at this point that complaints raised by the Complainant relating to loans which fall outside the six year period from the date of the complaint to this Office until the date of issue are outside the jurisdiction of this Office and have not been investigated and do not form part of this Decision. In relation to any such complaints by the Complainant, I am mindful of the provisions of Section 51(1) of the Financial Services and Pensions Ombudsman Act 2017, which provides as follows:

"51. (1) A complaint in relation to conduct referred to in section 44 (1)(a) that does not relate to a long-term financial service shall be made to the Ombudsman not later than 6 years from the date of the conduct giving rise to the complaint."

In relation to the Complainant's allegation that his signature was forged, I must point out that this Office does not investigate criminal activity. This is a matter more appropriately directed to the Gardaí and the courts. Therefore, this allegation has not been investigated by this Office and will not form part of this Decision.

In relation to the first complaint that the Provider issued loans to the Complainant at locations other than his stipulated residence, no evidence has been submitted by the Complainant to this Office to support this complaint.

Furthermore, I accept that the Complainant signed the loan agreements furnished to this Office which state the residential address of the Complainant, thereby indicating that he confirmed that he was residing at that address. In any event, I accept that it is not against any laws, codes or regulations for a Provider to issue credit outside of a consumer's home.

In relation to the second complaint that when the Complainant applied for finance, the Provider employed a flawed loan application process, again I note that no evidence has been submitted to this Office in support of this contention. I accept that the loan purpose was stated on the loan agreements and that the Complainant declared ample disposable weekly income on each occasion to afford the required repayments. I also accept the submission of the Provider that it relies on the Complainant to provide factual and accurate income and expenditure information when making an application for credit and note that on each occasion the Complainant signed to confirm and agree that the information he had provided and that was noted by the Provider was accurate.

In relation to the third complaint that the Provider extended loans to the Complainant when other loans were still in being, causing him added financial pressure, I accept that it is not in breach of any regulation or law for a customer of the Provider to have concurrent loans running. I further accept that the documentation submitted to this Office by the Provider discloses that on each of the occasions where the Complainant took out a loan, he declared ample disposable income to afford the weekly repayment rate and the Provider conducted checks to ensure that the repayments were affordable, suitable and sustainable. Furthermore, I accept the submission of the Provider that if the Complainant was struggling financially, he would have reasonably been expected to raise this when the lending was agreed, within the cooling off period, during contact the Complainant made with the Provider in **2010** or over the course of the complaint registered by the Complainant for being declined for lending with the Provider in **2015**.

Finally, in respect of the Complainant's complaint that he was not aware of the cooling-off period for loans, I accept that each time the Complainant entered into a loan agreement with the Provider, he was provided with pre-contract information and left with a copy of the loan agreement, which contained information pertaining to the cooling-off period. There is not sufficient evidence before this Office to determine whether a verbal notification concerning the cooling-off period was given to the Complainant by the Provider.

For the reasons set out above, I do not uphold 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 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**

6 March 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.