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| <b><u>Decision Ref:</u></b>             | 2020-0176  |
| <b><u>Sector:</u></b>                   | Banking  |
| <b><u>Product / Service:</u></b>        | Personal Loan  |
| <b><u>Conduct(s) complained of:</u></b> | Incorrect information sent to credit reference agency<br>Delayed or inadequate communication |
| <b><u>Outcome:</u></b>                  | Upheld   |

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

#### **Background**

The Complainant entered into a retail loan agreement with the Provider in **May 2006**. The loan fell into arrears and was subsequently settled for a lesser amount in **January 2008**. The Provider reported the Complainant's arrears to the Irish Credit Bureau (**ICB**). Following a complaint to this Office in **2008**, the Provider agreed to remove any adverse information contained on the ICB register in respect of the Complainant.

In **April 2018**, the Complainant unsuccessfully applied for a car loan. The Complainant was advised that his application was declined because there were arrears showing on the ICB register. The Complainant states that his loan with the Provider was reported to the ICB from **April 2012** to **May 2018** as having been in continuous arrears for that period.

#### **The Complainant's Case**

The Complainant advises that he made a complaint to this Office in **2008** in respect of the conduct of the Provider regarding the information reported by the Provider to the ICB in respect of a retail loan. The Complainant explains that *"[f]ollowing your representations, the Bank contacted me and agreed to remove their adverse rating with ICB."*

The Complainant states that in **April 2018**, he applied for a car loan but his application was declined due to his credit rating as reported by the ICB. The Complainant contacted the ICB and

*"... was shocked to note that my old [loan with the Provider] appeared on Page 6 of my Credit Rating Report."*

The Complainant further explains that

*"... I paid the full closing balance of this account in January 2008 and the Bank advised in July 2008 that the adverse rating would be removed from ICB, I was extremely annoyed to note that the ICB report stated that there was an 'element written off' and that there were numerous 'payments in arrears'."*

The Complainant submits that the transaction history in respect of the loan

*"... seems to have reappeared as an adverse credit rating with ICB on 2<sup>nd</sup> April 2012."*

The Complainant is also

*"... unsure why there is no record data from December 2017 to 30<sup>th</sup> May 2018, when [the Provider] instructed the ICB to remove (sic) account from their database."*

The Complainant states that he has found the Provider to be unhelpful in resolving this issue and feels

*"... the treatment and response I received from [the Provider] in 2008 and ... in 2018 is not fair and initially very dismissive and hurtful."*

Describing the consequences of the Provider's conduct, the Complainants states that

*"[a]part from not being able to purchase the much needed car for my wife in April, this whole incident with [the Provider] has been extremely stressful, embarrassing and has caused me reputational damage and potentially far reaching financial credit rating issues for me."*

In resolution of this complaint, the Complainant would like financial compensation and submits that

*"[w]hile [the Provider] increased their compensation figure to €1,500, I still felt that my figure of €5,000 was both fair and reasonable bearing in mind my car loan application was for €8,000."*

### **The Provider's Case**

The Provider states that the Complainant entered into a retail loan agreement on **26 May 2006** in the amount of €934.37. The Provider advises that the loan account was updated on **1 August 2008** to reflect the account close date of **30 January 2008**.

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The Provider states that the Complainant's account history indicated that the loan was with its Collections Department between **31 May 2007** and **12 August 2008** and during this time letters were regularly sent to the Complainant and numerous phone calls were made. The Provider refers to the dates these letters were issued, but advises that due to the passage of time, it no longer has copies of the actual letters sent to the Complainant but has provided copies of the template wording that would have been contained in those letters.

While the Provider acknowledges that

*"... data reappeared with the ICB from 17 December 2017.  
We cannot locate any instances where [the Provider] triggered this record."*

The Provider confirms that the loan was originally in arrears and the balance outstanding was €1,356.12. The Provider advises that an arrangement was made to accept a payment of €970 in order to "*short settle the account.*" The remaining balance of €386.12 was written off and the Complainant was advised by letter dated **10 April 2008** that the Provider would not amend his credit file.

The Provider states that the Complainant's loan account was not in its Collections Department between **13 August 2008** and **20 August 2018** and no correspondence issued during this period, as the account was closed.

The Provider advised, at the time of its submission to this Office dated **12 September 2019**,

*"... we are experiencing an internal problem with accessing ICB data.  
This has been flagged to our IT team and ICB themselves, and we are working together to fix this issue."*

### **The Complaint for Adjudication**

The complaint is that the Provider wrongfully and/or unreasonably caused and/or permitted and/or contributed to the reporting of an arrears balance to the Irish Credit Rating Bureau between **2 April 2012** and **30 May 2018** in respect of the Complainant's loan account.

### **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.

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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 **28 April 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 substantive submissions from the parties, within the period permitted, the final determination of this office is set out below.

### ***The Loan Agreement***

The Complainant entered into a retail loan agreement with the Provider some 14 years ago, in or around **May 2006**. The loan was to be repaid over 48 monthly repayments. The loan subsequently fell into arrears.

By letter dated "**123 July 2008**", the Provider wrote to the Complainant advising that a *short settlement payment* of €970 was received in full and final settlement of the loan on **30 January 2008**. The Provider further advised that it would remove any adverse information recorded on the ICB register, forthwith.

An excerpt from one of the Provider's internal systems indicates that the Complainant's loan balance was zero from around **30 January 2008**. Furthermore, the profile indicator in an *ICB Update Payment Profile for Account* dated **14 March 2008** in respect of the Complainant for the months of **January 2008** and **February 2008** is *W* which denotes a written off account.

The ICB retains such records for a period of 5 years, so in the normal course, such records would not have been expected to continue after March 2013.

### ***Car Loan Application***

More than 10 years however, after the *short settlement payment* of the balance, the Complainant applied for a car loan with another financial services provider in **April 2018**. This loan was declined for the reasons set out in the following correspondence.

In a letter dated **11 April 2018**, the financial service provider stated:

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*"We're sorry to tell you that your application [number] has not been successful on this occasion.*

*We considered your application carefully and used an automated system to help us make the decision. The reason behind our decision is that we do not see clear evidence that you will be able to repay the amount over its duration.*

*Separately, we've checked your record on the Irish Credit Bureau (ICB) which collects information about how borrowers repay credit. Based on that record we are not prepared to offer you additional credit. You can contact the ICB to request a copy of your credit report ..."*

[my underlining for emphasis]

By further letter dated **17 June 2019**, from that other financial service provider, it stated:

*"You applied for lending with us on 11 April 2018 and this was an online application. You explained the letter you received from us in relation to the application, does not clearly explain the reason the application was unsuccessful.*

*Your application at that time 11 April 2018 was unsuccessful due to arrears on an account showing on the Irish Credit Bureau."*

[my underlining for emphasis]

### ***Correspondence between the Parties***

In the Provider's Final Response letter dated **7 June 2018**, the Provider stated:

*"I have reviewed your complaint and can confirm your account was closed on 30 January 2008. You were informed of this in our letter dated 23 July 2008. You were also advised the adverse information recorded with the ICB will be removed. However, after reviewing a recent copy of your Credit File it appears [the Provider] are still reporting to the ICB.*

*During our call you confirmed in 2009 you have successfully been accepted for loans, without any issues. It was not until your application for a car loan in April 2018, was declined, you discovered [the Provider] were still reporting to the ICB.*

*After an extensive search of our systems I was unable to locate any records of [the Provider] informing the ICB to amend your Credit File to reflect the date of 1 December 2017. Our Customer Account Sharing (CAIS) Team have also confirmed no amendments were actioned by them or any notification sent to the ICB.*

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*It is therefore, unclear how or why the above date (sic) was reported on your Credit File. I would like to offer my sincere apologies for any inconvenience this matter has caused you and your family.*

*As advised our CAIS Team have sent notification to the ICB to remove your account from their data base. I can confirm this has now been actioned.*

...

*I acknowledge your comments the adverse information is affecting your credit rating and as a result your recent loan application was declined. I am unable to comment if [the Provider] reporting to the ICB had a direct impact on your application. However, please accept my apologies for any inconvenience caused.*

*That said I am prepared to offer you €500.00 for the inconvenience caused to you and your family. ...”*

[my underlining for emphasis]

The Complainant wrote to the Provider on **3 August 2018**. The Complainant states in respect of the harm caused by the information recorded by the ICB:

*“... I am also at a loss to know how you feel that I was not financially disadvantaged, when I clearly informed you that my car loan application was declined ... because of my ICB ratings. My wife required a car as her new work location was some distance from our home. Apart from the stress and inconvenience this caused to our family, your adverse rating on the ICB also affected my credit rating and reputation with my Bank. ...”*

On **11 September 2018**, the Provider wrote to the Complainant as follows:

*“I refer to the financial data you enclosed with your letter dated 3 August. This data shows your balance was zero as of 30 January 2008. From 2 April 2012 to 30 May 2018, [the Provider] were reporting an arrears balance of €386.12 to the Irish Credit Bureau (ICB). Yet during our call on 5 June, you advised from December 2004 to December 2014, you were successfully accepted for loans.*

*Whilst I appreciate your concerns I am unable to comment on why your recent loan was declined.*

*Nevertheless, as a result of the inconvenience and stress caused, I am prepared to offer you €1,500.00. However, you declined this offer during our call on 10 September.”*

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### **ICB Record**

The Complaint received a credit report from the ICB under cover of letter dated **12 April 2018**. Page 3 of the report contains a section called *Historical Enquiries made by Financial Institutions* and records each time a copy of the Complainant's credit report was requested by a financial institution in the previous twelve months. This section identifies one such institution as having made such a request – it was the financial services provider to which the Complainant applied for a car loan, which requested a copy of the Complainant's credit report on **11 April 2018**.

Page 4 of the report shows that the Complainant received a loan in the sum of €3,500 from the same financial services provider on **3 September 2014** which has a *Scheduled Removal Date* of **27 February 2020**. Details of the loan received from the Provider are set out in page 6. The *Scheduled Removal Date* for this loan is recorded as **1 December 2022**. It is not clear why the scheduled removal date is 2022 because, as noted above, this loan was to be repaid over a 48 month period.

The Complainant received details of his ICB record from the ICB under cover of letter dated **25 July 2018**. On the *Transaction History* section in respect of the Provider, the profile indicator for **27 April 2012** is C000000000000000000000, with C denoting *Completed account*. The *Balance Date* for this entry is **30 January 2008** with a balance amount of .00 Eur. The *Payment Frequency* is described as M denoting moratorium.

The profile indicator on **1 May 2012** is 9999999999999999999999. The number 9 denotes that there are at least nine payments in arrears on the loan account. The *Balance Date* for this entry is **2 April 2012** with a balance amount of 386.12 Eur. The *Payment Frequency* is described as U. However, this indicator is not defined in the Profile Indicator table supplied to the Complainant. This entry recurred every month until **14 December 2017**.

The account was written off and removed from the ICB on **30 May 2018**.

### **The Provider's Contact with the ICB**

The Provider contacted the ICB on **5 June 2018** by telephone. The note maintained by the Provider in respect of this call states:

*"cldd ICB who confirmed no longer reporting but advised [the Provider] send automatic notifications and would have done so in Dec 17 and that's why we are still reporting. they also advised that they have no control over customer's credit file it is the banks/companies who send notifications. ..."*

The Provider's internal system also notes that a notification was supplied to the ICB on **29 May 2018**, to remove the Complainant's account from their database.

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## Analysis

From mid-**2008** to mid-**2012**, the Complainant's credit rating was up to date.

However, from **1 May 2012** to **17 December 2017**, the Complainant's credit report indicated that he was in continuous arrears in respect of a loan advanced by the Provider despite the fact that this loan had been settled in **2008**. The Complainant became aware of this when he unsuccessfully applied for a car loan in **April 2018**. The Complainant's credit rating was rectified by the Provider on **30 May 2018**.

The Provider acknowledges that

*"[i]t is evident the service the customer has received has not been adequate as we have been unable to evidence why this error occurred. I believe our offer of €1,500.00 adequately recognises this."*

The evidence made available to the FSPO did not disclose how or why the credit reporting error had come about, and neither party supplied any correspondence from the ICB as to the likely cause of this error. Accordingly this office wrote to the ICB on **10 March 2020**, seeking clarity of information, in accordance with **Section 47(3)** of the **Financial Services and Pensions Ombudsman Act 2017** which prescribes:-

*"In conducting an investigation, the Ombudsman may-*

*(a) Require any person, who in the opinion of the Ombudsman, is in possession of information, or has a document or thing in his or her power or control, that is relevant to the investigation, to-*

- (i) provide to him or her that information, either orally or in writing,*
- (ii) produce to him or her that document or a copy of the document, and*

*(b) Require any person to attend before him or her, either voluntarily or by way of summons, and be examined on oath in relation to any matter, including to produce a document or copy of a document referred to in Paragraph (a) (ii) that appears to the Ombudsman to be relevant to the investigation."*

This office had noted that the Complainant's credit rating was incorrectly recorded for a number of years, but there was no evidence to suggest that the Provider subsequently began to report to the ICB in **May 2012** in respect of the Complainant's loan. Furthermore, it was not clear why this suddenly ceased in **December 2017**.

I asked the Irish Credit Bureau to confirm the understanding of the FSPO that the Complainant's profile indicators as of 27 April 2012 showed no negative indicators and a loan which was complete, whereas the profile indicator on 1 May 2012 disclosed all of the entries as "*Digit 9*" with a balance amount of €386.12. It was the understanding of this office that this entry reoccurred every month until 14 December 2017 and that the account was subsequently written off and removed from the ICB as of 30 May 2018. This office also asked the ICB to furnish confirmation as to what occurred between 27 April 2012 and 1 May 2012 which altered the Complainant's history.

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The ICB was also asked to specifically address whether it was possible that an internal error had occurred at the ICB or whether, alternatively, the ICB holds any record that a notification was received from the Provider which had triggered the amendment of the Complainant's profile.

The Irish Credit Bureau replied by letter dated **16 March 2020** confirming that the FSPO's understanding of the profile indicators was correct and explaining as follows:-

*"As ICB are "Librarians" in relation to its records it is up to ICB members to ensure the accuracy of the data they provide to ICB in relation to its borrowers.*

*We confirm that our member [Provider] provided the payment profile transactional data as supplied to [the Complainant] on the 25 July 2018 and confirm that this transactional data is the only audit trail of the matter.*

*ICB confirms that no internal error to its knowledge occurred to alter the Complainant's payment profile history as given in the audit trail."*

A copy of this additional evidence was made available to the Provider, by way of letter dated **24 March 2020**. The Provider was asked for any observations it wished to make within a period of 10 working days (or if that period for some reason was inadequate for the Provider's purposes, the Provider was asked to request an extension of time, within that period). I note that the Provider elected to make no further comments regarding these issues or regarding the contents of the letter from the Irish Credit Bureau, dated 16 March 2020.

In those circumstances, I take the view that the balance of the evidence before this office confirms that owing to an error on the part of the Provider, the incorrect profile indicators for the Complainant's borrowing were recorded with the Irish Credit Bureau. One can well understand the frustration of the Complainant in 2018, when he sought facilities to purchase a car, to be advised by a different financial service provider that based on his ICB record, it could not offer him the facilities in question.

I take the view that the error on the Provider's part in this instance was of considerable seriousness. The credit profile of a customer is of huge significance and can seriously affect a customer's ability to access credit in times of need. The inability to access credit which should otherwise be available to a customer is considered very serious by this office given the potential consequences.

Accordingly, I take the view that the goodwill gesture of €1,500 offered by the Provider to the Complainant regarding these issues is significantly below the appropriate compensatory figure for an error of the type which has given rise to this complaint.

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On the basis of the evidence before me, I consider it appropriate to uphold the complaint against the Provider that it wrongfully and/or unreasonably caused and/or permitted and/or contributed to the reporting of an incorrect arrears balance regarding the Complainant, on his ICB record between 2012 and 2018.

### **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2)(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 Complainant in the sum of €7,500, 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. 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.



MARYROSE MCGOVERN  
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

21 May 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.