



<u>Decision Ref:</u>	2020-0188
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Union Loan
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication Dissatisfaction with customer service
<u>Outcome:</u>	Substantially Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

In **June 2012**, the Complainant entered into a loan with the Provider, a credit union. The loan went into arrears.

In **December 2014**, the residual loan balance of €515.67 was “charged off” by the Provider. The Provider had previously applied the value of the Complainant’s shares with it, to the Complainant’s loan. The remaining balance of €416 went unpaid for a number of months.

In **March 2016**, the Complainant states he was able to pay the arrears in full which he stated were €416 and he understood he was fully up-to-date with the Provider. He later discovered that €0.06 remained owing. He argues that he was never informed, either in 2016 or 2017 when he made contact in relation to the erroneous report, that there was any balance remaining on the account and he does not accept that there was a residual balance after he cleared the loan in March 2016.

The Complainant’s Irish Credit Bureau (ICB) report continued to show that the sum of €515.67 was outstanding on the debt which was labelled as ‘written-off’. The Complainant states that he applied for several loan for various purposes in the period after he paid off the loan to the Provider in 2016.

The Complainant asserts that as a result of his ICB record, he was unable to obtain credit from any financial institution. He also asserts that he missed the opportunity to purchase a house in 2016, when prices were low because of this incorrect report.

The Complainant obtained a copy of his ICB credit report. He was told this report highlighted outstanding debt. The Complainant contacted the ICB for more information and states that the ICB informed him that this loan will still showing as being in default and that if the balance had been cleared, it should state this in the report. The balance on the Complainant's ICB report had not been updated since he made a payment in March 2016.

This report was submitted to the Provider by the Complainant on **1 December 2017**. The Complainant contends that the Provider considered that it was not its fault but a system error. The Complainant states that the ICB informed him that it was the Provider's responsibility to keep the report updated. When the Complainant contacted the Provider about the contents of this credit report, the Provider subsequently amended the information with the ICB.

The Provider wrote off the remaining residual sum of €0.06. The ICB, following the submission of the Provider, updated the Complainant's profile in **December 2017**. The Provider stated that this was backdated to **21 March 2016** with the scheduled removal dated 12 December 2019. However, when the Complainant looked at a report sometime later, it showed a scheduled removal date of 2023. The Complainant contacted the Provider requesting that it arrange for this to be rectified. The Provider liaised with the ICB and the scheduled removal date was amended to December 2019.

The Complainant argues that in the 21 month period between March 2016 and December 2017 after he repaid the loan, his ICB report showed in error, that he had a debt in arrears with the Provider. This led, he argues, to his credit rating being fixed on the lowest possible ICB score. He states that he had no other arrears at the time so it was the only entry on the report. He argued that the low score had a serious impact on his ability to gain credit and was the cause of great stress and anxiety as he thought he would not be able to move on with his life. He thought that the bad debt would carry on. He states that he applied for credit various times but had to seek credit from costly high interest rate lenders as a result. He argues that he is not seeking to hold the Provider responsible for another institution's decision on credit but he is holding it responsible for failing to ensure that the report was accurate. He argues that the consequences of the incorrect ICB report are clear and obvious. The Complainant has included examples of how the ICB score is calculated, to highlight how his score should have begun to improve after his final balance was cleared.

The Complainant argues that when he paid off his loan in March 2016, he confirmed at the time with a representative of the Provider that the full balance was paid and the account was up-to-date.

The Complainant states that he applied for a loan from another provider and was successful after the credit report was fixed, but was unsuccessful in gaining a loan the previous month. The Complainant wants the Provider to compensate him for the distress and loss caused to him due to his inability to gain credit in the period of time when there was an erroneous report with the ICB and due to its failure to further audit the Provider's accounts with the ICB, to maintain their accuracy.

The Provider's Case

The Provider states that the Complainant's loan with it was written off or charged-off in December 2014. It argues that the ICB profile 'freezes' the outstanding balance at the date of write-off. In the present case, the amount outstanding was €515.67. It states that the ICB profile will show a written off code, it usually a "W", and the figure of €515.67 will only change when the loan is paid in full (i.e. the balance is nil). The Provider argues that in charging-off the loan, interest charges are suspended with a saving to the Complainant of approximately €300.

The Provider accepts that in **March 2016**, the Complainant made a payment by electronic funds transfer in the amount of €436. It states, however, that the loan on this date was €436.06 so an amount of €0.06 remained outstanding on the loan (i.e. the loan balance was not nil). The Provider argues that details extracted from its system of all borrowers' credit performance in relation to the loans, are transmitted to the ICB at the start of each month. It says that the ICB profile did not change from €515.67 to nil as the loan balance was not nil. It also says that even when the loan is cleared, a written off code will still be displayed on the ICB report as the most recent 24 months displayed. The Provider argues that when contacted by the Complainant in December 2017, regarding the ICB profile, it explained that the balance was not cleared, but it subsequently cleared the balance and contacted the ICB to change the profile to show the balance of nil.

The Provider accepts that it did not contact the Complainant or provide him with any statement after **December 2014** when the loan was charged-off because he was no longer a member and a statement would not be issued for such a nominal amount. The Provider argues that the maximum impact of the presence of an outstanding amount against the nil balance, is 20 score points on the ICB website (though the Complainant has taken issue with that number). The Provider says that the fact that the Complainant's credit report showed a higher balance than was actually outstanding (due to the historic ICB practice) would have constituted a negligible difference to the overall credit profile. Any disadvantage suffered by the Complainant in accessing credit is, the Provider argues, purely due to the 'W' (written off – charged-off) status of his credit record which resulted from the non-performance of the loan repayments.

In that context, the Provider argues that any compensation to him would be wholly unjustifiable. The Provider argues that the scenarios that the Complainant relies on to demonstrate the impact to his ICB record are not valid, as there was not a zero balance on the account following his payment on 21 March 2016. It also argues that the lowest score only remains on the credit record for 2 to 3 months, which has been confirmed by the ICB.

The Provider is adamant that it did not make any mistake in relation to the Complainant's credit profile and has not amended any mistakes. The Provider argues that it was following the initial reporting process required by the ICB. It argues that when the loan was charged off, the standard data required by ICB was supplied to it i.e. the fact that the loan was charged off, date of charge-off and the balance on the date of charge-off. It argues that there was no process for updating the balances on charged off loans, as this was the historical practice of the ICB.

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The Provider states that it has no direct communication with the ICB and transmissions to the ICB in respect of loans are made through its IT Provider. It states that in early April 2016, the IT Provider extracted information from the Provider's system relating to all loans, both live and charged-off loans, including details of the Complainant's repayment in March 2016. It states that the IT Provider subsequently forwarded details to the ICB in respect of live loans only. It states that this transmission of details of live loans only, had been in accordance with the policy of the ICB not to accept details of payments made on any account which bore a code "W" i.e. charged off accounts. As the Complainant's loan was a charged-off loan, the repayment made on that loan in **March 2016** was not transmitted to the ICB by the IT Provider.

The Provider explains that when the loan is charged off, it is removed from the register of live loans and the customer's shares are applied for the amount owed. It states that the balance outstanding after such application remains fully due and owing to the Provider, and charging-off does not signify a decision not to pursue the loan or to forgive the loan. Charged-off loans are not treated as "written off" in the normal sense but instead they remain collectable and are subject to the same rigorous collection procedures as live loans.

The Provider argues that at the date of signing the credit agreement, the Complainant was made aware that loan details would be reported to the ICB. It accepts that the presence of the residual balance of 6 cents after March 2016 would not have been communicated to the Complainant at that point, as the event was considered insignificant and not warranting debt recovery procedures. It states that the 6 cent was forgiven following contact made by the Complainant in December 2017.

The Provider argues that when it became aware in December 2017 that the ICB credit reports were not reflecting payments made on charged off accounts, its IT Provider was instructed to change the system to allow for reporting on reducing charged off balances in conjunction with the ICB. Until December 2017, as far as the Provider was aware, all accounts that were charged off were frozen by the ICB i.e. the ICB was not accepting details of repayments made on the accounts. It states that the ICB has confirmed that its systems were updated in 2014 in relation to freezing charged off loans and that this was communicated to all members. The Provider argues that no such notification was received by it and its IT Provider was unaware of this change.

The Complaint for Adjudication

The complaint is that the Provider wrongfully reported erroneous information to the ICB about the Complainant's liability to the Provider after he had paid off his loan.

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 **11 March 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.

Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

The Irish Credit Bureau (ICB) is a credit reference body owned and financed by its members. They are all financial institutions or local authorities. It was created for the mutual protection of its members. The Bureau retains information supplied by its members on the performance of credit agreements between financial institutions and borrowers. This information may be accessed by its members in order to assist them in assessing the risk of providing credit to borrowers. The Provider is a member of the ICB.

I have examined the credit agreement entered into between the Complainant and the Provider dated June 2012. While I believe that there is a certain lack of clarity in the loan documentation regarding the Complainant's consent for the Provider to report details in relation to his repayment of a loan to the ICB (as opposed to information in relation to a loan application) I am satisfied that the Provider was entitled to report details of his loan to the ICB.

A person's credit rating has a huge impact on their access to credit facilities. It is critically important that where default notifications are sent to credit reference agencies, such as the ICB, that they are correct in all respects.

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In the present case, and through no fault of his own, the Complainant discovered that an incorrect default report was recorded against him in the ICB records between March 2016 and December 2017. It seems that the reason that this was discovered by him, was due to multiple refusals of third party financial service Providers to provide him with credit facilities.

It is not in dispute between the parties that when the Complainant repaid his loan in **March 2016**, his ICB report was not updated to reflect the payment made. His ICB record therefore incorrectly reflected a balance due of €515, when in fact the Complainant had cleared his arrears. I note that the Provider has highlighted that the sum of 6 cents remained on the Complainant's loan account after the payment, but the Complainant has argued that he paid the precise amount of money that he was informed to pay during a call with a representative of the credit union.

The Provider is unable to furnish a recording of the telephone call but notes from the call of **18 March 2016** indicates that the Complainant rang to confirm the final figure owing. He suggested sending €400 and asked if that would be okay to settle the loan in full. The representative told the member that this would be okay and the Complainant asked if the loan would be shown as cleared on his ICB record. The note indicates that the ICB procedure was explained to the Complainant and that the Provider's representative said it could send a letter confirming final settlement. The note records that the Complainant decided he would rather clear the full balance of the account and he promised that he would send the money through by bank transfer.

The next entry by the same representative on **4 April 2016** indicates that €436 was sent by EFT and there was 6 cent remaining on the account. The Provider has accepted that no communication whatever was sent to the Complainant to inform him of the residual 6 cent balance. In circumstances where it was clear that the Complainant sought to clear the full balance of March 2016 and sought to do so to ensure that his ICB record would not reflect an arrears balance, I consider it appropriate to take it that the account was cleared in full in March 2016. The Complainant was either informed that this amount was sufficient to clear the arrears in full, or he should have been informed by the representative in question that the sum paid was insufficient for his credit reference purposes. The Complainant's evidence that he was informed that the sum of €436 was needed to clear the account in full, has not been challenged by any direct evidence by the Provider. The Provider has also indicated that no statement would have issued to the Complainant in respect of the "nominal" amount of 6 cent.

The Provider has sought to explain its failure to update the balance due to it after March 2016, by relying on the historical approach of the ICB whereby loans that were written off were not updated if further payments were made on them. It is important to be clear that the Complainant's loan in the present case was not 'written off' in December 2014 but merely "charged off" which did not in any way affect the Complainant's liability to the Provider. Indeed the Provider appears to have pursued the Complainant aggressively in relation to the debt until March 2016 when it was cleared.

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It appears that the ICB has allowed for reporting of reducing balances on 'charged off' loans from around **2014**, two years before the Complainant cleared his arrears with the Provider. The Provider states that it was unaware of this development and so too was its IT Provider which relays the information in relation to the Provider's customers' loans to the ICB. As a result of this, the Provider has continued to maintain that it has not made any mistake in respect of reporting of the Complainant's loan. I disagree.

It is incumbent on financial service providers which report financial information in respect of their customers to a credit referencing agency, to ensure that the data is accurate and up-to-date. ICB membership is primarily of benefit to the members and credit information is submitted to assist other members in making credit decisions. As a result of the Provider's failure to update the arrears balance on the Complainant's account to the ICB, the ICB record incorrectly showed a balance due and owing of €515 between March 2016 and December 2017.

The Complainant is entitled to accuracy in respect of such a record with the ICB. The Provider is not entitled to hide behind a plea of ignorance in relation to ICB systems, nor is it entitled to pass its responsibility for ensuring the accuracy of the ICB report to a third party service provider which it has decided to engage to undertake such steps on its behalf. The Provider's obligations to its customers remain. It is very disappointing that the Provider has adopted the attitude it has, in response to this complaint and has, in my opinion, quite unreasonably refused to accept responsibility for its omissions, which I accept were inadvertent rather than deliberate. In addition to a breach of its duty of care to the Complainant in this matter and its unreasonable attitude, the Provider has breached its regulatory obligations. Relevant provisions of the Consumer Protection Code 2012 that have been transgressed, include:

"Chapter 2

A regulated entity must ensure that in all its dealings with customers . . . it:

2.2 acts with due skill, care and diligence in the best interests of its customers;

. . .

2.4 has and employs effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with this Code".

In light of the above, I consider it appropriate to uphold the complaint.

When the Complainant discovered the incorrect ICB report and communicated it to the Provider in early December 2017, the Provider acted quickly to correct it. This in itself indicates the Provider's realisation that it was of course responsible for not having updated the arrears balance on the Complainant's account. The Provider wrote to the Complainant to confirm that the latest balance on his ICB profile was €0.00 with a scheduled removal date of 12 December 2019. The Provider apologised for any inconvenience caused as a result of the old balance previously appearing on the ICB report, which it stated was beyond its control.

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The Complainant contacted the Provider by email dated 10 March 2019 indicating another mistake on his ICB report as his previous loan had a scheduled removal date of January 2023. He noted that he had been informed that the scheduled removal date was December 2019. The Provider appears to have acted promptly in contacting the ICB to have the scheduled removal date rectified.

By letter and email dated **15 March 2019**, the Provider explained to the Complainant that because the ICB profile was amended in January 2018 to reflect the nil balance of the account, this had the effect of resetting the scheduled removal date to 2023. The Provider stated that the entry had now been amended by the ICB to reflect the December 2019 removal date. It also set out that scheduled removal dates are part of ICB's process and not the Provider's. Although I can understand the Complainant's frustration in relation to this second error, I have been provided with a copy of an email from the Provider to the ICB dated 8 December 2017 in which the Provider clearly instructed the ICB that the arrears were cleared on 21 March 2016 and that the scheduled removal date should remain as 12 December 2019.

The error in relation to the scheduled removal date was not therefore the Provider's and, as previously noted, it quickly remedied the problem in March 2019 when the error was brought to its attention. Given that the Provider acted correctly in this regard, I do not consider it appropriate to uphold this element of the complaint.

The Complainant has argued that the incorrect profile and its impact on his ability to obtain credit during the relevant period caused him distress and anxiety. In relation to his argument of the effects that the incorrect profile had on his ability to attain credit, the Complainant has submitted an email from the third party credit provider rejecting a loan application in August 2017. The rejection email does not specify the amount of the loan applied for or the reasons for the rejection. The Complainant has also submitted a successful loan application in the sum of €1,000 from another third party credit institution dated 19 December 2017.

There is no further available information regarding the rationale for any decision of a third party institution to reject or offer credit to the Complainant, so it is not possible to determine whether or not he was in fact refused credit facilities as a result of his inaccurate ICB record. The fact that he was approved for credit so quickly after the amendment of his profile does, however, suggest that the inaccurate record may have had some effect on his ability to seek credit. The arguments put forward from the Complainant and the Provider in relation to the various scenarios are not conclusive either way, as they do not seem to be directly applicable.

Furthermore, the best evidence on the effect on the profile is the evidence of the ICB itself, which confirmed that the loan balance would have affected the calculation of the credit score for certain ICB members, between December 2014 and December 2016 and that the extent of the effect would depend upon the opening amount of the loan and the values of other loans taken out by the customer. I therefore accept that the inaccurate record had the potential to affect the Complainant's ability to seek credit from other financial institutions. I am also conscious that his record would have – correctly – reflected the fact that the loan has been in arrears for some time and was written off in December 2014.

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At the time of the Preliminary Decision of this office, the Provider seemed to be completely unaware of the seriousness of its actions in the present case and it had refused to accept the consequences that its error had caused to the Complainant. Whether or not the inaccurate record had a direct causal link to the rejection of his credit applications, it certainly had the potential to affect the Complainant's ability to seek credit elsewhere.

Furthermore, the Complainant was entitled to expect that only accurate and up-to-date information would be transmitted to a third party credit reporting agency by his financial service Provider. The attitude adopted by the Provider in responding to this complaint and its insistence that it had done nothing wrong must in my opinion, have compounded the Complainant's disappointment and distress in the present case. I note that the Provider has more recently acknowledged its wrongdoing, which it explains arose in the context of its efforts to act in the best interests of the Complainant, but against its mistaken belief that balances were frozen on ICB reports.

For the reasons outlined above, this complaint is substantially upheld.

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)(a) & (g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider make a compensatory payment to the Complainant in the sum of €2,000, 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
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

1 May 2020

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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.

