An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0207
Sector:	Banking
Product / Service:	Store Cards
Conduct(s) complained of:	Failure to provide accurate account/balance information Incorrect information sent to credit reference agency
Outcome:	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the Complainant's credit rating, which she submits has been negatively affected by the Provider's wrongful reporting of her loan status.

The Complainant's Case

The Complainant submits that on **31 May 2007,** she made a purchase through a retailer in Dublin, *"using in-store credit"*. She states that the repayment period was *"9 months on a total of €1,488"*. The Complainant contends that repayments that were not made through direct debit and had to be made by cheque, as electronic payment was not an option at the time. She states that at the end of the repayment period, she requested a *"settlement figure"* and sent a payment to the Provider in that amount, either by cheque or draft. The Complainant submits that she subsequently did not hear *"anything further"*.

The Complainant states that she was *"refused a small loan"* in **2018**, and that she was advised to check her credit report *"for an item from 2007"*. Shortly thereafter, she contends that she received her credit report and contacted the Provider by telephone on **16 November 2018**. The Provider stated that it would revert when it had looked into the matter.

The Complainant submits that she spent *"the next several weeks phoning and attempting to get updates/explaining the situation and getting nowhere"*. The Complainant states that she made 6 international phone calls to the Provider on **16 November 2018**, **19 November 2018**, **21 November 2018**, **22 November 2018**, **26 November 2018** and **1 December 2018** costing her €37.08.

The Complainant states that she also sent two emails to the Provider's contact website. She states that she was told that she would receive a letter acknowledging her concerns and that there was a timeframe of around 45 working days to respond to her query. At the date of submitting her complaint to this Office (**12 March 2019**), the Complainant had still not received any contact back from the Provider.

In her initial complaint form, the Complainant stated that her credit report *"still contains an adverse report that a loan in* [her] *name was written off"* and that the scheduled removal date for same was **13 July 2022**. The Complainant contends that she had never been *"given an opportunity to address the issue"* and that she had *"tried to engage with the* [Provider] *to no avail"*. She stated that if she had been given an opportunity to dispute the amount the Provider states she owed, she would have done so.

In her further submissions to this Office dated **15 January 2020**, the Complainant stated that the first Final Response Letter from the Provider dated **9 January 2019** confirmed that no correspondence was ever sent to her by the Provider in relation to an outstanding balance and she therefore believed in good faith that the loan was settled. She states that this letter also confirmed that an adverse report was recorded against her and the letter advised her to contact the ICB herself, to remedy this, despite the fact that individuals cannot amend or remove unfavourable entries from their credit report.

On **25 February 2020**, the Complainant made further submissions to this Office stating that she wanted to re-iterate that she had no communication of any outstanding amount on the loan taken out in **2007** before the Provider registered the loan as a default with the ICB. She states that it took until **August 2019** to have the entry on her ICB record updated and unfortunately a search with an unfavourable credit score related to the incorrect entry, remains on her record. She states that this will persist for some years.

Ultimately, the Complainant wants the Provider to:

- *"restore"* her credit report and remove *"the adverse report"*; and
- pay her *"substantial compensation"* in the amount of *"€10,000"* to not only compensate the Complainant as a consumer but also to punish the Provider.

The Provider's Case

In its first Final Response Letter dated **9 January 2019**, the Provider stated that it was *"pleased to uphold"* the Complainant's complaint due to the *"poor service"* the Complainant had received. As a result of the *"distress and inconvenience"* the Complainant suffered, the Provider stated that it would pay the Complainant €425.00 by bank transfer.

The Provider further explained this amount by stating that €100.00 was *"for the call back requests not being actioned"*, €300.00 was due to the information on the Complainant's *"credit file"* along with the way the Provider had handled her account. The Provider also stated that €25.00 was *"to cover the cost of* [the Complainant's] *phone calls to* [the Provider].

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In the said letter dated 9 January 2019, the Provider submitted that as a result of a credit agreement entered into by the Complainant in 2007, she was required to pay €1,488 over a 9-month period. The Provider states that its reports indicated it received only *"€1,334.24 in repayments, with the last payment received in July 2008"*. The Provider further submits that it applied *"late payment charges of €45.00 which are in line with the terms and conditions of* [the Complainant's] *credit agreement, leaving* [her] *liable for €198.76"*.

The Provider also addressed the Complainant's credit rating in this letter, contending that although it did record the loan on the Complainant's credit file, it did not *"apply a default"*. The Provider contends that it has amended this information *"to show the loan as settled"*. The Provider further contends that the ICB will not permit the Provider to remove the record from her credit file as requested, but that the account has been marked as *"settled"*. The Provider encloses the address for the ICB so that the Complainant *"can request this information to be removed from* [her] *credit file"*.

In its second Final Response Letter dated **20 June 2019**, the Provider acknowledged its failure to re-issue the previous Final Response Letter, as requested by the Complainant. The Provider offered the Complainant a further €100 for the *"distress and inconvenience"* she experienced as a result. The Provider also acknowledged in this letter that it did not pass on an email dated **19 February 2019** from the Complainant to the complaint handler.

In its third Final Response Letter dated **6 August 2019**, the Provider stated that it had received confirmation that the Complainant's credit file had been marked as *"settled"* as of **12 July 2010** and *"should no longer be reporting"* on her credit file. The Provider further stated that such an amendment *"usually takes 30 days to update"*.

In its submissions to this Office dated **11 February 2020**, the Provider acknowledged that due to the length of time which has elapsed, its *"information is limited"* in respect of the Complainant's account. It states that it no longer retains the letters from its collections department, the credit agreement and accompanying terms and conditions as entered into by the Complainant and call recordings, apart from those submitted.

In these submissions, the Provider states that the Complainant's account was in arrears between **1 July 2007** and **December 2007** and that a notice of default was sent to the Complainant in **October 2007**. The Provider has stated that a copy of this notice of default is not available, due to the length of time elapsed.

The Provider states in these submissions that due to the outstanding arrears, the Complainant's account was not sold, but rather it was placed with a third party in **October 2009** and then subsequently transferred to another third party in **April 2010**. Thereafter, the loan was sold to another third party in **December 2011** before being subsequently bought back by the Provider in **August 2012**. The Provider states that the Complainant should have been written to, and advised that the account had been transferred/sold/re-bought by the Provider and that *"the passage of time has meant that this correspondence is no longer available"*.

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The Provider maintains that the debt was not settled in full by the natural expiry date of the loan, and it fell into increasing arrears from the outset and therefore should have defaulted *"some time ago"*. In these submissions, the Provider again acknowledges that the service it provided was poor in respect of call-backs to the Complainant.

Furthermore, the Provider does

> *"not deny that whilst the account should have been marked as defaulted, this should have been over 6 years ago and should therefore have since elapsed from the customer's credit file."*

The Provider states that when it was contacted by the Complainant in **2018**, it contacted the three credit reference agencies in the UK to which it reports and was able to amend the 'account settled' date in respect of the Complainant's account to **12 July 2010**. Therefore, the Provider states that the three credit reference agencies in the UK have recognised that this 'account settled' date is more than 6 years ago and has therefore allowed the Provider to 'delete' the credit report from the three UK credit reference agencies.

In these submissions, the Provider states that it has limited access when it comes to amending the data on the ICB system. It states that it has the ability to add the account settlement date but no option to formally delete the account and therefore, it recommends that the Complainant contact the ICB with a view to requesting that it remove the account given that it is now marked as having a settlement date of circa 10 years ago. The Provider states in a 'note' to its submissions that upon checking the ICB system on **11 February 2020**, the account was no longer present on the ICB system.

The Provider stated in February 2020, that it is willing to offer compensation of €600.00 to the Complainant in respect of this matter and is willing to send a letter to the Complainant that the account was settled in **2010** to assist her going forward. The Provider states that there is no evidence that *"any finance was declined solely as a result of any information recorded"* by the Provider or that any financial detriment was suffered by the Complainant.

The Complaint for Adjudication

The complaint is that the Provider:

1. Wrongfully reported that the Complainant was in *"arrears"* with her loan, resulting in her credit rating being affected;

2. Offered poor communication, customer service and complaints handling to the Complainant throughout.

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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 27 May 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, the final determination of this office is set out below.

It should be noted from the outset that a Provider is under an obligation to furnish accurate and fair information to the ICB. This serves to protect both provider and customer. The Provider holds a weighty responsibility in that respect because the credit profile of an individual has very significant implications, and if not accurately recorded, it can severely affect that person's ability to access other credit facilities, when required. The ICB in that respect is merely the "librarian" in relation to the records made available to it by its members, each of which is responsible for the accuracy of the data supplied to the ICB in relation to borrowers.

I note that the credit agreement was originally entered into by the parties in Dublin in **2007** and therefore the Consumer Protection Code 2006 placed an obligation on the Provider, as follows:

> *"49 A regulated entity must maintain up-to-date records containing at least the following:*
> *a) a copy of all documents required for consumer identification and profile;*
> *b) the consumer's contact details;*
> *c) all information and documents prepared in compliance with this Code;*

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> *d) details of products and services provided to the consumer;*
> *e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;*
> *f) all documents or applications completed or signed by the consumer;*
> *g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and*
> *h) all other relevant information and documentation concerning the consumer.*

Details of individual transactions must be retained for 6 years after the date of the transaction. All other records required under a) to h), above, ***must be retained for 6 years from the date the relationship ends…****"*

[my emphasis]

Whilst subsequent amendments were applied to CPC obligations, the essence of the regulatory requirements referred to above, have remained the same. The Provider, therefore, under the CPC was required to keep a copy of the original credit agreement for a period of 6 years after the relationship ended. Given that the Provider owned the loan until December 2011, and indeed, it bought it back from a third party in **August 2012,** when according to the Provider, it still had outstanding arrears, the failure by the Provider to retain a copy of the credit agreement prior to the account being terminated, is disappointing.

The Provider has submitted system notes to this Office, which outline communications with the Complainant and the history of the account, going back to **31 May 2007**. It is clear from these system notes that there were issues with arrears on the Complainant's account and further issues regarding the transfer of money and payment methods, due to the Complainant being based in the Republic of Ireland and the Provider's bank account being located in the United Kingdom. Most pertinently, there is a system note dated **20 May 2010** which states:

> *"email from* [UK credit reference agency] *advising cust said acc was settled adv this is not case"*

Clearly, it was apparent to the Provider as long ago as on **20 May 2010** that the Complainant was of the view that there were no outstanding arrears on the account and the account had been settled. The further difficulties that subsequently arose between the parties could very possibly have been avoided at this point, if the Provider had communicated promptly with the Complainant and informed her of the Provider's belief that arrears were still outstanding. Instead, shortly thereafter, the Provider passed the account to a third party provider to act on its behalf and the opportunity to resolve the confusion between the parties, was diluted.

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The passage of time has meant that there is insufficient evidence before this Office to establish whether the Complainant's account was actually in arrears in May 2010, and in that event, in what amount. However, it is clear that if the account was in arrears, the Complainant should have been afforded an opportunity to either settle these arrears or dispute/challenge the arrears as she saw fit. This would naturally have brought certainty as to the status of the account and in all likelihood, would have alleviated many of the credit rating difficulties for the Complainant that subsequently arose in respect of what was a relatively minor amount.

Furthermore, although it is not clear from the evidence before me as to the exact point in time, when the Provider decided that the account had *"defaulted"* and that it was writing off the balance which it believed was owing by the Complainant, it is nevertheless clear that the Provider did not report this intention to write off the suggested balance promptly to the ICB. In circumstances where a financial service provider ascertains that a debt has *"defaulted"* and/or decides to no longer pursue a borrower for a debt, any such report to the ICB to reflect this, is one to be made at that point in time.

I note that in its submissions to this Office dated **11 February 2019**, the Provider accepts that it should have marked the account as *"defaulted"* and reported same to the ICB more than 6 years ago. Had it done so, such an event whether it was correct or otherwise, would in any event have remained on the Complainant's ICB profile for a period of five years from that date and this complaint would never have come to pass. The Provider has a case to answer in that regard.

The foregoing has clearly had a negative effect on the Complainant's credit rating. Most particularly, the Complainant has stated that she was *"refused a small loan"* in **2018**, as a result of her credit rating. I note that as of **11 February 2020**, the account is no longer present on the ICB system and therefore, the Complainant will not now suffer any further detriment to her credit rating, as a result of the account.

Finally, there is ample evidence before this Office to suggest that the Provider provided poor customer service throughout the Complainant's interactions with the Provider. In this regard, I note that the Provider has acknowledged and apologised that it did not return numerous requests for a call-back from the Complainant and also did not pass on an email dated **19 February 2019**. While I note that the Provider has offered the Complainant compensation in the sum of €600.00 in respect of the poor customer service received, I am of the view that this is insufficient compensation for the significant lapses in service by the Provider.

Reports to the ICB are very important as they can have significant impacts for the person concerned. Therefore it is essential that the information is accurate and that the consumer is aware of what information will be reported. I would expect a financial service provider to take more care than is evident in this matter, in its reporting and in the information it supplies in this regard.

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To mark the Provider's failure to clarify the position to the Complainant regarding arrears on her account over a continuing period, its failure to accurately report information to the ICB regarding the Complainant's credit profile and the effect the Provider's ongoing failures had on the Complainant's ability to access credit facilities in 2018, and communications throughout its interactions with the Complainant, I consider it appropriate to uphold this complaint. To mark that decision, I direct the Provider to make a compensatory payment to the Complainant in the sum of €7,000.

It is important to note that this compensatory payment which I consider it appropriate to direct, is by way of compensation to the Complainant only. It is not, as requested by the Complainant to "punish" the Provider. It would not be appropriate for the FSPO to make a direction to any financial service provider to make a compensatory payment, for such a purpose.

Conclusion

- My Decision is that this complaint is upheld, pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, 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 Complainant in the sum of €7,000, 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
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

19 June 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.