



<u>Decision Ref:</u>	2020-0209
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Personal Loan
<u>Conduct(s) complained of:</u>	Incorrect information sent to credit reference agency Arrears handling Level of contact or communications re. Arrears Dissatisfaction with customer service
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Provider's administration of a mortgage loan account held by the Complainant.

The Complainant's Case

The Complainant submits that he applied for a loan with a third party provider and was refused because the Provider had reported to the Irish Credit Bureau that he was in "arrears". The Complainant contends that "one or two times, unknown to [him], repayments were returned unpaid" and the Provider "did not reapply to take the money" as the repayments were agreed to be made on a weekly basis.

The Complainant states he was "never informed of this rule when [he] agreed to restructure the loan", and he is unhappy that his credit rating will now be negatively affected for five years. He also believes that the payments must have been sought earlier than agreed, at some point.

The Complaint is that the Provider incorrectly reported the Complainant's missed loan repayments to the ICB/CCR, resulting in his loan application with a third party provider being refused and his credit rating being negatively affected.

The Complainant wants to be compensated for the errors that the Provider has made, and for his ICB/CCR record to be amended to restore his previously held credit rating.

The Provider's Case

In its Final Response Letter dated 6 December 2018, the Provider submits that the Complainant's loan facility was restructured in December 2014, and that the agreed weekly repayments were to be paid every Wednesday from a current account held by the Complainant.

The Provider contends that a number of loan repayments were returned unpaid in May, July, and September 2018, and that the Provider wrote to the Complainant in June and August 2018 to *"draw his attention to the arrears and offer support if [he was] experiencing difficulty meeting his loan repayments"*.

The Provider states that it reported the missed repayments to the Central Credit Register, and acknowledges that the third party provider declined the Complainant's loan application on the basis of the report. The Provider further states that it does not *"monitor customer's funding accounts to check for available funds to meet loan repayments"*, that *"responsibility to fund loan repayments rests with the borrower"*, and that *"where repayments are scheduled weekly [the Provider] does not re-present the loan payment direct debit once it has been unpaid"*.

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 **10 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

/Cont'd...

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.

In **August 2009** the Complainant drew down a loan of €10,000 from the Provider. Agreed repayments were €206.77 monthly for a period of 5 years – to be repaid by 20 August 2014.

This loan underwent a number of restructures:

- during **2011**, the Provider agreed to accept interest only repayments for a period of 6 months;
- beginning **August 2011**, capital and interest repayments were re-commenced, spread over a renewed 5 year period;
- in **May 2013**, the Provider agreed to accept interest only repayments for a period of 12 months;
- from **June 2014** the Provider agreed to accept interest only repayments for a further 6 month period.

Ultimately, in **December 2014** the Complainant and the Provider agreed a restructure whereby the Complainant would pay €31.38 per week for 5 years (up to December 2019). This agreement (credit agreement no. xxxx54 xxxxxx26, in respect of loan account ending 424) was the agreement which was in place between the parties, when the issues raised in this complaint, arose.

This loan agreement signed by the Complainant on **15 December 2014**, contained the following provisions:

“1. Repayment

You agree to repay the loan with interest as specified in this agreement...

If you do not pay the full amount of each scheduled repayment instalment when due, this is a breach of the terms of the Loan and may result in [...] a negative report to a relevant licensed credit reference agency, damage to your credit rating...

WARNING: If you do not meet the repayments on your credit agreement, your account will go into arrears. This may affect your credit rating which may limit your ability to access credit in the future.

”

/Cont’d...

Just above where the Complainant signed his acceptance of these terms, his Declaration included the following:-

“I/we authorise you to register this agreement with the Irish Credit Bureau, to provide credit references and to disclose information in relation to this agreement to any company within the [Provider] Group.”

The loan was specified to be repayable:

“by 257 consecutively Weekly Instalment(s) of EUR 31.38 starting on 14 January 2015.”

I note in that regard that the relevant commencement date for repayment, was a Wednesday.

The Complainant signed a direct debit mandate to implement this agreement. The direct debit was to be drawn from a current account the Complainant also held with the Provider. I note that this current account terms and conditions contain the following provisions:

“You should ensure that at all times the available cleared balance on your Account is sufficient to meet all payments...”

“In the case of... Direct Debit, where the available cleared balance on your Account is insufficient... on the due date for repayment, we may attempt to make the payment on one or more subsequent Business Days but shall not be obliged to do so.”

It appears that this arrangement proceeded without notable incident until **2018**. Statements submitted to this Office show that the following direct debits were applied for but returned unpaid – 7 February 2018; 7 March 2018; 9 May 2018; 16 May 2018; 23 May 2018; 25 July 2018; 29 August 2018; 19 December 2018; 16 January 2019; 23 January 2019.

The Complainant has queried whether or not payments were applied for earlier than agreed. I note however, that all of the foregoing missed payments were applied for on a Wednesday, as per the loan agreement. The Provider has explained that where a weekly direct debit is being used, it does not re-apply for the payment if it is missed. It explains that if it were to do so, due to the time lag between presentation and rejection of a direct debit payment instruction, the re-presented direct debit would be sought on or very close to the due date of the next repayment.

I am satisfied that this is a reasonable manner in which to operate a weekly direct debit instruction – there is no obligation on the payee bank, to re-present a direct debit instruction where it has been rejected. I also note that, on examination of the Complainant’s current account statements, if the Provider had attempted to re-present the direct debit instructions for repayment after rejection, the Complainant’s current account might not have had sufficient funds on the representation dates, in any event. The Provider wrote to the Complainant on **4 June 2018**, advising of arrears having accrued on the account since 21

/Cont’d...

May 2018. It wrote again in similar terms on **21 June 2018**. The Complainant contacted the Provider on **25 June 2018** about these letters, and was told he had missed two repayments. He explained that his pension is paid every Friday. He was told that the repayment was taken every Wednesday. He instructed the Provider's agent to take the €58.73 from his account there and then, and the agent explained that it would go through the following day. The Complainant ended the call confirming that the payment could be taken from his account.

A further arrears letter issued on **20 August 2018**, advising of arrears having accrued on the account since 21 May 2018. From this letter, and from an examination of the account statements provided, it does not appear to me that the payment of €58.73 that the Complainant instructed the Provider's agent to effect during the telephone call of 25 June 2018, was in fact effected.

On **26 November 2018**, the Complainant submitted his complaint to the Provider using its online portal, stating that he had applied for a loan with a third party and been refused on the grounds that his loan with the Provider was in arrears, which he contended was not the case.

By letter dated **18 December 2018**, the Provider confirmed that the arrears on the account had been cleared.

Analysis

The Complaint is that the Provider wrongfully furnished information regarding the Complainant's repayments, to credit reference agencies – the ICB and/or the Central Credit Register (CCR). The CCR was established by the Central Bank of Ireland under the ***Credit Reporting Act, 2013***. Since June 2017, lenders who provide consumer loans, have submitted information to the CCR.

The crux of this complaint is that the Complainant states he was not in arrears on this loan account, and was also never told that he was in arrears. The Complainant however is not correct. As set out above, the account missed numerous repayments during 2018 and the Complainant was notified of arrears on his account by letter dated 4 June 2018, advising him of arrears beginning 21 May 2018, and again on 21 June 2018.

The Complainant states that he was in hospital at the time some of these arrears arose. This is unfortunate, and perhaps this situation contributed to the arrears, but I have no evidence that the Provider was advised of the Complainant's hospitalisation in advance or at that time, such that the possibility of a forbearance arrangement could have been explored – I note that the Provider agreed multiple restructures with the Complainant over the course of this loan, in order to assist the Complainant in adapting to changing financial circumstances.

The Complainant believes that the Provider should have re-presented direct debits when missed, and should also have ensured there were sufficient funds in the Complainant's current account such that direct debits would not be returned unpaid. I don't accept that the Provider was obliged to do so and, in any event, it is important to note that the

/Cont'd...

responsibility to ensure that funds were available to meet agreed direct debits, lay with the Complainant himself.

A provider is under a duty to furnish correct information to credit reference agencies, and accordingly, missed payments are reported to the CCR. There is no evidence before me to suggest that the Provider reported repayments as being missed, other than on occasions that they were, in fact, missed.

The Complainant's Irish Credit Bureau (ICB) report dated 26 June 2019 contained adverse information regarding a credit card held with another financial institution, and numerous searches have been conducted on behalf of third party credit institutions. I also note the Provider's records made available when assessing credit applications from the Complainant in 2013 and 2014 noted a Credit Bureau history at those times, which included a revoked credit card as well as missed payments to a credit union.

Accordingly, the evidence before me is not sufficient to suggest that another provider refused credit to the Complainant solely on the basis of the missed payments at issue on this account during 2018, and even if such a provider did so, I am satisfied that it was in order for the Provider to report the missed payments in question, in accordance with its usual procedure, as the payments had indeed been returned unpaid from the Complainant's current account. Such reports by the Provider to the ICB or CCR were therefore not wrong.

However, I am satisfied that the Provider failed to process the Complainant's telephone instruction on 25 June 2018 to apply €58.73 to his loan account from his current account. He was told that this would take place the following day, but it appears that it did not. If the Provider was unable to make that transfer without the Complainant taking some action himself, it should have made that clear to him, rather than leading him to believe that it would effect the transfer on his behalf. In my opinion, the Provider has a case to answer to the Complainant in that regard, and I consider it appropriate to partially uphold this complaint.

I note that after making his complaint to this office in **January 2019**, setting out the basis for his grievance, the Complainant wrote 8 months later on **18 September 2019** to advise that:

"A few weeks ago [the provider] informed that I had paid too much and gave me a refund of 170e app. because they overcharged on this loan, yet they put my name in the ICB for 56e and damaged my name in the process"

Since the Preliminary Decision was issued to the parties, the Provider has made available a copy of the letter which the Complainant referred to, which was dated **24 July 2019**, and advised him as follows:-

"I am writing to let you know that we made a mistake on your loan account [ending 484] when you topped it up in the past.

We are sorry for this.

What actually happened?

/Cont'd...

When you topped up your loan, we didn't include the interest you owed on the old loan, in your new credit agreement. This meant your new credit agreement was not correct. The amount we included on the credit agreement as the cost of credit for your new loan and the number of repayments you need to make to clear the loan was incorrect.

As we made a mistake and did not include the interest you owed on your previous loan in your new credit agreement, you do not have to repay us this amount.

How are we putting this right for you?

To correct this, we are reducing the amount you owe on your loan account by €218.07. This is the interest amount incorrectly omitted from your credit agreement.

You will see this adjustment on your loan account statement as 'T267 Correction' and the amount outstanding on your loan has been corrected.

We have added some Frequently Asked Questions (FAQ's) to [\[specified Provider website\].ie/loans](#) which can provide you with further information.

We apologise again for this mistake and we would like you to know that we are here to help."

For that reason I wrote to the Provider on 20 April 2020 pointing out that it was not clear from the contents of the letter in question, as to precisely the date upon which the mistake had been made by the Provider as the Complainant had undertaken a number of restructures to his borrowings. As a result, the precise circumstances of the error referred to in the Provider's letter of 24 July 2019 were not in fact clear.

I raised a number of queries with the Provider regarding the correct cost for the credit of the new loan as it ought to have been at the relevant time and the number of repayments which should have been required. I also asked the Provider to confirm the position, if the error in question had not been made, as to how many repayments would have been necessary to clear the loan and the precise amount of the weekly repayment in that event.

I also asked the Provider to specifically address the Complainant's belief that if the Provider's error in question had not been made at the relevant time, ultimately the figures would have been such that he would not have fallen into arrears on the occasions which have given rise to this complaint.

The Provider's response was received on 6 May 2020 and at that point the Provider confirmed that the error in question had been made by the Provider on **29 August 2011**.

The Provider explained that if the error had not been made, the Complainant's repayments should have amounted to €39.63 whereas in fact they had amounted to €38.90. In essence, the Provider confirmed that the loan repayments should have been higher, if the Provider's error had not been made as the error had given rise to a contractual underpayment, rather than any overpayment. In rectifying the error, the Provider confirmed that to avoid any

/Cont'd...

shortfall at the end of the loan, a credit had been made to the account in the sum of €218.07, as previously advised.

Having considered this matter in detail, I am satisfied that the Provider's error in 2011 was not the cause of the Complainant's arrears. In fact, the repayments due by the Complainant were set at a reduced amount as a result of the Provider's error at that time, but the lower repayments in question were not met.

Neither do I accept the Complainant's submission on 11 May 2020, that the borrowing is "null and void", as a result of the Provider's error, in setting up the loan incorrectly, by under-calculating the interest due.

Accordingly, having considered the matter at length, I consider it appropriate to uphold the complaint, but only to the limited extent outlined above, as a result of the Provider's failure to process the Complainant's telephone instruction on 25 June 2018 to apply €58.73 to his loan account from his current account. The other elements of the Complainant's grievances are not upheld.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially 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 €250, 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

11 June 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.

