



<u>Decision Ref:</u>	2020-0233
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Union Loan
<u>Conduct(s) complained of:</u>	Level of contact or communications re. Arrears Arrears handling Delayed or inadequate communication Level of contact or communications re. Arrears Failure to provide correct information
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to the Complainants' loan account with the Provider.

The Complainant's Case

The First Complainant submits that in or around April 2018, he applied for a loan with the Provider; the loan application was subsequently rejected on the basis that he had arrears on a previous joint loan account with the Provider. The First Complainant further submits that on raising a complaint with the Provider, he was referred to the Loan Appeals Committee for a loan application review whereupon his appeal was rejected.

The First Complainant submits that on foot of the rejected appeal, he made a request from the Provider for all documents/correspondence issued to them over the previous 5 years. The First Complainant states that he was *'shocked to discover that despite updating my address with the provider in 2014 (while applying for an extension on an existing loan), they had been issuing debt collection letters relating to arrears accumulated in 2015 to the address for 3 years.*

The First Complainant states that he and his wife *'contact[ed] the [Provider] on a half yearly basis to ask the balance on our account and although we were informed that there were arrears on the account, we were never informed that they needed to be cleared immediately or that we had any letters issued to us'*.

The First Complainant further states that they *'were not once notified of the intention of legal proceedings, the seriousness of the arrears or the urgency for repayment'*.

The First Complainant submits that they were never informed that correspondence had been issued to their address on foot of the arrears. The First Complainant states *'[n]obody was sent to our address in [Redacted] to establish if we live there or not'*. The First Complainant submits that due to the Provider's failure to follow its own code of conduct, it has resulted in their credit rating being blacklisted until at least 2023.

The First Complainant submits that he was never going to be considered for a personal loan on foot of the arrears on the joint loan account. The First Complainant states that there was *'[m]isinformation given to me over the phone [and] misinformation given to me in person'* in relation to his loan application. The First Complainant also submits that the Provider was unable to furnish him with copies of documentation that he had requested, instead issuing template letters with missing information filled in with pen.

The first complaint is that the Provider failed to adequately notify the Complainants of arrears on their loan account which led to negative reporting by the Provider on their Irish Credit Bureau (ICB) record.

The second complaint is that the Provider treated the First Complainant in an unacceptable manner when he applied for a personal loan in April 2018.

The Complainants want the Provider to *"reverse"* their credit rating to its pre 2015 status, when the arrears started to accumulate. The Complainants also want the Provider to compensate them for the anxiety and stress caused by its errors.

The Provider's Case

The Provider maintains it was entitled to make negative credit reporting in circumstances where the Complainants missed payments on their loan and in circumstances where the account was in arrears for a significant period.

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 Complainants were 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.

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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 17 June 2020, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

Prior to considering the substance of the complaint, it will be useful to set out a chronology of relevant matters:

Chronology

In respect of the following, 'Address A' is the Complainants' current address where they have lived since July 2013 and 'Address B' is the Complainants' former address.

04/04/2014	Loan application made by the Complainants jointly and signed by both listing address A and providing two mobile phone numbers. The application comprised of a request for a top-up loan in the amount of €1,500 to be added to an existing loan balance of €13,397.92. The purpose of the loan was stated to be " <i>Personal Expenses</i> ". The Loan application contains a section entitled 'Irish Credit Bureau Consent' which was signed by the Complainants and which authorised the provision by the Provider to the Irish Credit Bureau of " <i>details of the individual's performance in complying with the terms of the agreement</i> ".
10/04/2014	Loan drawn down by the Complainants from their joint loan account. A credit agreement of the same date signed by both Complainants lists the Complainants' address as Address B.
29/04/2014	A note in the Provider's internal notes reads " <i>Post returned. No longer at this address</i> "
03/07/2014	Statement sent to the Complainants at Address A
10/07/2014	Loan went into arrears for the first time

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30/07/2014	Correspondence from the Provider sent to the Complainants at Address A
29/10/2014	Statement sent to the Complainants at Address A
10/01/2015	Loan arrears letter sent to Address B. This letter advised that arrears and missed payments are reported on a monthly basis to the Irish Credit Bureau.
21/01/2015	Attempt made to contact the Second Complainant on her mobile phone. A voicemail was left requesting a call back.
03/06/2015	Loan arrears letter sent to Address B. This letter advised that arrears and missed payments are reported on a monthly basis to the Irish Credit Bureau.
05/06/2015	Phone call made to the Second Complainant on her mobile phone and precise amount of arrears advised (€989). The Second Complainant indicated that the next regular instalment would be paid and, when asked if anything could be paid off the arrears, the Second Complainant said she would "have a look into it". The Second Complainant undertook to call back having reviewed the position.
15/06/2015	Loan arrears letter sent to Address B. This letter advised that arrears and missed payments are reported on a monthly basis to the Irish Credit Bureau.
02/12/2015	Loan arrears letter sent to Address B. This letter advised that arrears and missed payments are reported on a monthly basis to the Irish Credit Bureau.
16/12/2015	Loan arrears letter sent to Address B. This letter advised that arrears and missed payments are reported on a monthly basis to the Irish Credit Bureau.
13/07/2016	Loan arrears letter sent to Address B. This letter advised that arrears and missed payments are reported on a monthly basis to the Irish Credit Bureau.
21/07/2016	Loan arrears letter sent to Address B. This letter advised that arrears and missed payments are reported on a monthly basis to the Irish Credit Bureau.
28/07/2016	Loan arrears letter sent to Address B demanding full payment of the arrears within 7 days failing which legal proceedings would be issued. This letter advised that arrears and missed payments are reported on a monthly basis to the Irish Credit Bureau.
01/08/2016	First report made to the Irish Credit Bureau
09/08/2016	Letter from Provider's solicitor sent to Address B threatening legal proceedings
09/11/2016	Loan arrears letter sent to Address B. This letter advised that arrears and missed payments are reported on a monthly basis to the Irish Credit Bureau.
16/11/2016	Loan arrears letter sent to Address B demanding full payment of the arrears within 7 days failing which legal proceedings would be issued. This letter advised that arrears and missed payments are reported on a monthly basis to the Irish Credit Bureau.

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13/12/2016	Letter from Provider's solicitor sent to Address B threatening legal proceedings
27/01/2017	District Court legal proceedings issued
31/01/2017	District Court legal proceedings sent by registered post to Address B
14/02/2017	District Court legal proceedings returned "not called for"
21/02/2017	Personal service of District Court legal proceedings attempted at Address B
01/03/2017	Personal service of District Court legal proceedings attempted at Address B. Provider was advised on this occasion that the Complainants had moved out the previous year.
31/05/2017	Attempt made to contact each Complainant on their mobile phones. A single voicemail was left requesting a call back.
07/06/2017	Attempt made to contact each Complainant on their mobile phones. A single voicemail was left requesting a call back.
08/06/2017	Loan arrears letter sent to Address B
05/01/2018	Loan arrears letter sent to Address B
06/03/2018	Attempt made to contact each Complainant on their mobile phones. A single voicemail was left requesting a call back.
07/03/2018	Attempt made to contact the Second Complainant on her mobile phone.
03/04/2018	The First Complainant made a phone call to the Provider enquiring about a proposed application for a new loan account in his own name to fund the purchase of a car, and specifically requesting what documents would be required. The Provider advised that proof of PPS number would be required.
04/04/2018	The First Complainant attended at the Provider's branch but was advised that the application could not proceed in the absence of proof of the First Complainant's PPS number.
07/04/2018	Loan cleared in full
07/04/2018	The First Complainant reattended at the Provider's branch to make application. The First Complainant states that he was assured in this meeting that his history of previous arrears (on the joint loan account) would not affect his new loan application and that same would be assessed solely by reference to his ability to repay.
10/04/2018	Attempt made to contact the First Complainant on his mobile phone. A voicemail was left requesting a call back
10/04/2018	Application for new loan account declined by the Provider owing to arrears that had previously existed on the joint loan account
10/04/2018	The First Complainant raises a complaint by email in which the following points were made: <ol style="list-style-type: none"> 1. The First Complainant was not advised, in advance, of the need to produce proof of his PPS number at a meeting convened to discuss his loan application. This resulted in a "huge waste" of the First Complainant's time.

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	<p>2. The First Complainant was assured, in the course of the second meeting regarding his new loan application, that his history of previous arrears (on the joint loan account) would not affect his new loan application and that same would be assessed solely by reference to his ability to repay. Subsequently, the First Complainant was advised that his new loan application was declined due to his history of arrears.</p> <p>3. Had the First Complainant been advised from the outset that the loan application would be declined due to his previous history of arrears, the First Complainant <i>“could have saved a lot of my time”</i>.</p>
12/04/2018	Complaint re-directed as appeal of the refusal to sanction the car loan.
24/04/2018	<p>Attempt made to contact the First Complainant on his mobile phone. A voicemail was left requesting a call back. A second call ensued in the course of which the First Complainant was advised that the appeal of the refusal to sanction the car loan had been rejected. The First Complainant was advised that one reason for the rejection was the <i>“large arrears”</i> on the Complainants’ joint loan account. The First Complainant stated the following:</p> <p><i>“My credit rating with, that obviously you’ve given information to the Irish Credit Bureau on, is completely crystal clean.</i></p> <p>...</p> <p><i>Yeah I requested a report from, which covers the last three years, and there’s no failed payments to yourselves on it.”</i></p>
24/04/2018	The First Complainant indicated by email that he wished to proceed with his complaint of 10/04/2018. The First Complainant made express reference to <i>“misinformation”</i> .
25/04/2018	<p>Provider responded to the First Complainant by email indicating:</p> <ol style="list-style-type: none">1. Following a review of the phone recording, the position was that the First Complainant was, in fact, advised, in the course of the phone call of 03/04/2018, of the need to produce proof of his PPS number.2. The Provider denied that the First Complainant was assured that his new loan application would be assessed <i>solely</i> by reference to his ability to repay. The Provider advised that it would always also have regard to <i>“credit checks and a members previous history with ourselves”</i>.
26/04/2018	The First Complainant requested by email that his complaint be escalated to the Complaints Committee.

08/05/2018	The First Complainant expanded his complaint by email to include the fact that multiple letters were sent to the Complainants at their old address. This information had only recently come to the attention of the Complainants following the furnishing by the Provider of all correspondence issued by the Provider to the Complainants in respect of the loan account. The Complainants highlighted that no efforts were made to contact them other than at this wrong address.
22/05/2018	Meeting between the First Complainant and the Complaints Committee of the Provider
25/05/2018	Letter from the Complaints Committee of the Provider sent to Address A rejecting the complaint.
24/08/2018	Email from the First Complainant appealing decision of the Complaints Committee to the Board of Directors
31/08/2018	Letter from the Board of Directors sent to Address A rejecting the appeal

Analysis

The Complainants in this complaint take issue with the fact that the Provider issued important correspondence to them at an incorrect address, which they therefore did not receive. The Complainants argue that, as a result of this, they did not take the appropriate action at the time, which has resulted in their credit record being adversely affected. The Complainants argue that, had the information been correctly communicated to them, they would have taken the appropriate action and their credit rating would have remained sound. The Complainants also take issue with the information provided in the course of the First Complainant's application for a car loan in April 2018. I will address each aspect of the complaint in turn.

Arrears Notification

The Complainants in this case state that they informed the Provider of their change of address (which had in fact occurred in July 2013) when the First Complainant was making the application for the loan in April 2014. In his email of 8 May 2018 to the Provider, the First Complainant states as follows:

We also notified [the Provider] of our change of address in 2014, when we topped up our loan (although I admit we did not have proof of address with us at the time).

Indeed, the loan application submitted by the Complainants dated 04 April 2014 listed their new address. Unfortunately however, the loan agreement which the Complainants signed on 10 April 2014 listed their old address.

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Thereafter, it is apparent that the Provider sent correspondence to the Complainants later in April 2014. This post was returned on 29 April 2014 stating that the Complainants were “no longer at this address”. Most unsatisfactorily, the Provider has not furnished this office with a copy of this letter. There seems to be some confusion as to which address this letter was sent.

An email of 21 January 2019 from the Provider’s data protection officer states that it was sent to an address that does not correspond with either Address A or Address B. In the circumstances, I am satisfied to conclude that this letter was sent to Address B, given that the Complainants were indeed no longer at that residence whereas they were at Address A.

In a matter that the Provider has not explained in any fashion, letters were then sent to the Complainants at Address A in July 2014 (two letters) and October 2014 before, inexplicably, in January 2015, the Provider reverted to issuing letters to Address B.

The Provider did this notwithstanding having been advised in April 2014 by the return of post that the Complainants were no longer at this address, notwithstanding that the Complainants having orally advised (albeit without having provided ‘proof’) that they were no longer living at the old address and notwithstanding that several letters in the course of the latter part of 2014 had successfully delivered to Address A. By my count, a minimum of 15 letters issued to the Complainants at the old address from January 2015 up to January 2018. The first correspondence thereafter issued to the correct address that appears in the evidence provided to this office is the letter of 25 May 2018 from the Complaints Committee of the Provider rejecting the Complainants’ complaint.

The Provider has sought to address this anomaly in the following terms in its response to this office:

The address was updated at loan application stage on April 4 2014 then on April 29 2014 we received returned post stating “no longer at this address”. We did not receive an updated address of this account and in 2015 when credit control were pursuing the members for payment the account was updated to the previous address we held on file as this was the only address for which we had proof of address.

This is a wholly inadequate explanation. The Provider is effectively acknowledging that, in 2015, it updated its system to detail an address for the Complainants that it had been advised was not correct and where it knew, as a result of the returned post on 29 April 2014, the Complainants no longer resided. The fact that this may have been the only address on file in respect of which the Provider had (outdated) proof is immaterial. It was wholly improper and unreasonable to revert to an address that was known to be a location at which the Complainants no longer resided. One might have expected, for example, that upon the return of the letter on the 29 April 2014, prompt and appropriate enquiries would have been made to establish the correct address, an address that had in fact already been communicated, if not ‘proven’, in the loan application form. I might repeat that the issue of letters in July and October 2014 to the Complainants at Address A remains entirely unexplained by the Provider.

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Whereas I accept that the Provider is not subject to the provisions of the Consumer Protection Code in this instance, I am satisfied that the conduct amounted to unreasonable and improper conduct and indeed I find it somewhat remarkable that the Provider has failed to acknowledge its error or offer any apology.

I must now turn to the question of compensation. The First Complainant states as follows:

I must admit my own naivety regarding the seriousness of these arrears, as I simply planned to try and chip away at them and ultimately ensure that I had paid the loan in full within the loan term. I was also unaware that [the Provider] were reporting me to the ICB. Had I known, or had I known that [the Provider] were urgently seeking the payment of these arrears, I would certainly have paid them in full, immediately.

In the part of the complaint form to this office wherein complainants are asked how they would like their complaint resolved, the Complainants stated as follows:

I would like my credit rating reversed to 2015 when my arrears started to accumulate, as had I received any of this documentation, I would have cleared the arrears.

It is apparent from the first of the two passages set out immediately above, and from several other submissions made by the Complainants, that the Complainants were at all relevant times aware that their account was in arrears; the Complainants refer to regular (bi-annual) phone calls to check the precise balance of the account. As such, the failure to send the various arrears notification letters to the Complainants did not deprive them of the knowledge that the account was in arrears, a matter of which they would have known in any event on the basis that they had not made the required contractual payments.

It is clear that the Complainants had a contractual obligation to repay the loan in accordance with the terms and conditions. If the Complainants had paid the loan in accordance with the terms and conditions this would, presumably, have avoided the loan repayments going into arrears. Furthermore, the Complainants could have paid the arrears when they were made aware of the balance outstanding as outlined above.

I find it difficult, therefore, to understand the Complainant's contention that if they had known that the Provider "*were urgently seeking the payment of these arrears, I would certainly have paid them in full immediately*".

If the Complainants were in a position to pay the arrears, as they have suggested, I believe it would have been prudent to do so. This would have avoided a negative credit rating.

The Complainants were however unaware of the threat of legal proceedings and the fact that legal proceedings ultimately issued. In addition, the Complainants were not in receipt of the eight letters that expressly warned of reporting to the Irish Credit Bureau prior to such a report eventually being made on 1 August 2016, over two years after the account first went into arrears.

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The provision of details to the Central Credit Register of the Central Bank is compulsory and mandated by the Credit Reporting Act 2013. The provision of details to the Irish Credit Bureau is authorised by the principle of legitimate interests (otherwise the 'legitimate interests condition') as provided for in the Data Protection Act, 2018 and in the General Data Protection Regulation [GDPR] 2016.

The provision of such details to the Irish Credit Bureau is a condition of membership of the Irish Credit Bureau, a membership which includes all the major banking institutions of the State. The significant point regarding credit reporting is that it is automatic; it follows automatically upon the occurrence of missed payments and the generation of arrears.

In the Complainants' complaint, it is common case that payments were missed, and it is also common case that the Complainants were aware that payments had been missed and that arrears were accruing.

The Complainants maintain that they were unaware that the Provider was reporting to the Irish Credit Bureau. Whilst technically this may be so, I believe that the Complainants ought to have been aware that this was a normal ramification of missed payments and the generation of arrears.

I am not satisfied that the fact that the Complainants may not have specifically known that the Provider had made (or proposed to make) a negative report to the ICB entitles the Complainants to the expungement of their poor credit history records.

The Complainants' loan application contained a section signed by them which communicated their consent to "*details of the individual's performance in complying with the terms of the agreement*" being transmitted by the Provider to the Irish Credit Bureau. In addition, the Complainants first raised the issue of the fact that the letters were sent to the wrong address on 08 May 2018. It was in an email of this date that the First Complainant claimed to be unaware that the Provider was "*reporting me to the ICB*". It was claimed that this knowledge had come to his attention only after the Complainants were provided with the full correspondence file following the rejection, on 24 April 2018, of the First Complainant's appeal of the refusal to grant him the car loan. However, a review of the recording of the phone call of 24 April 2018 in the course of which the First Complainant was advised of the loan rejection makes it clear that the First Complainant was already, at that point, aware of the possibility of ICB reporting and had, in fact, sought a report from the ICB. As such, it is clear that the Complainants were aware that missed payments could lead to negative credit reporting.

The Complainants' account first went into arrears in July 2014, exactly three months after the loan was drawn down. The account remained in arrears for a very significant period thereafter. Indeed, the last two loan arrears letters (which were also sent to the wrong address) are dated 08 June 2017 and 05 January 2018 respectively.

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In circumstances where the Complainants' account had been in arrears for over two years at the time at which the first negative report was made to the Irish Credit Bureau on 01 August 2016; in circumstances where the Complainants were aware of the fact of the arrears; in circumstances where the Complainants were aware of the risk of negative credit reporting; and in circumstances where credit reporting is compulsory and provided for within the loan application, I do not believe it would be appropriate for me to make a direction that the Provider amend their credit history.

I believe that the Complainants are however entitled to compensation. I have already recorded my concern regarding the manner in which the Provider reinstated the old incorrect address as well as my view of the Provider's response to the complaint, in particular, its failure to offer any apology for this error. Whereas negative credit reporting may have been inevitable, it is certainly possible, had the various letters been properly brought to the Complainants' attention, they may have avoided the issue of legal proceedings against them.

Alleged Provision of Misinformation

This aspect of the complaint initially comprised of three parts, namely:

1. A claim that the First Complainant was not advised in the phone call of 03/04/2018 of the need to produce proof of his PPS number at a meeting convened to discuss his loan application.
2. A claim that the First Complainant was assured that his history of previous arrears (on the joint loan account) would not affect his new loan application and that the application would be assessed solely by reference to his ability to repay.
3. A claim that the First Complainant was not advised at the outset that his history of previous arrears would preclude him from being sanctioned for the new loan.

The First Complainant withdrew the complaint insofar as it related to number 1 above upon being advised that the relevant information had in fact been communicated. The balance of this aspect of the complaint which falls for me to consider is 2 and 3 which are effectively two sides of the same coin.

I am not satisfied that the Complainant has substantiated this aspect of the complaint. The Complainant has asserted that during his attendance at the branch on 7 April 2018, he was *"told that my previous arrears would not affect my loan application and that the decision would be based on my ability to repay"*. This does not appear to me to be a sustainable argument. The First Complainant may well have been advised that his ability to repay would be the chief determining factor, but it would be extraordinary that a credit institution would entirely ignore previous lending events, particularly recent events.

I might add that, even had the First Complainant been provided with the assurance claimed, it is difficult to see what the Complainants' loss is; the assurance was allegedly provided in the course of the application for the loan on 7 April 2018. The loan application was rejected three days later on 10 April 2018. The First Complainant was not put to any more work or compelled to commit any more time to the application by virtue of the alleged assurance.

With regard to number 3 above, I have no evidence that the Complainant was doomed to be rejected in his loan application by reference to his previous accumulation of arrears. In this regard, I am satisfied that each loan request is considered individually and, on its merits, and the fact that the First Complainant was unsuccessful in his request for credit does not mean that this would necessarily have been obvious and inevitable from the outset.

For the reasons outlined in this Decision, I partially uphold this complaint and direct the Provider to pay the sum of €500 in compensation to the Complainants.

Conclusion

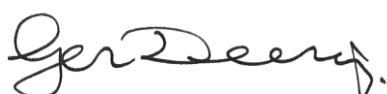
My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2) (b), (e) and (g)**.

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 Complainants in the sum of €500, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

9 July 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.