



<b><u>Decision Ref:</u></b>	2020-0335
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Credit Union Loan
<b><u>Conduct(s) complained of:</u></b>	Incorrect information sent to credit reference agency Level of contact or communications re. Arrears Maladministration
<b><u>Outcome:</u></b>	Upheld

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

This complaint concerns a Credit Union Loan Agreement.

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

The Complainant submits that in **February 2018** she was approved for a credit facility with the Provider. The Complainant states that at the time she advised the Provider of her new address by way of the address provided on her application.

The Complainant states that in **February 2019** she and her partner applied for a mortgage with another provider having saved the deposit to purchase a property. She states that her mortgage application was declined, and that on further investigation, via an Irish Credit Bureau (ICB) report, she discovered that her loan with the Provider was in substantial arrears.

The Complainant submits that she requested, by email on **2 March 2019**, that the Provider investigate the matter and have her ICB record amended. She further submits that on **9 March 2019** the Provider replied, by email, advising that following investigation the Provider was satisfied that the ICB record accurately reflected the status of the account.

The Complainant submits that at the time of completion of the Credit Agreement the standing order to effect the repayments agreed, was filled out by the Provider and signed by the Complainant, and the Provider then undertook to ensure it was implemented.

The Complainant states that on realisation of the arrears on the account, she cleared the outstanding balance in full on **3 March 2019** from the savings account that was securing the loan.

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

The Provider acknowledges that at the time of the loan application, it failed to observe that there was a change of address for the Complainant and it did not update its records accordingly.

The Provider details in its Final response Letter dated **10 May 2019** that it wrote to the Complainant on **24 April 2018** advising that the loan account had gone into arrears, and again on **27 July 2018** advising her of the arrears on the account. The Provider acknowledges that these letters were sent an incorrect address but states that as the letters were not returned to the Provider, it was unaware of the error at that time.

The Provider notes that it is the Complainant's responsibility to abide to the contract in the form of the terms of the Credit Agreement she signed, which specified that she was to pay back her loan at €50 fortnightly, per her own stipulation.

The Provider states that a standing order form was not filled out by it, or otherwise "pre-filled" by it, for the Complainant's signature. Rather it says that the Complainant had an existing standing order in place. The Provider states that the Complainant is responsible for the standing order agreement set up with her bank, and it should have been set up to pay fortnightly.

The Provider also stated in its Final Response Letter dated **10 May 2019** that the correct address had now been applied to the Complainant's account and ICB record and it also stated:

*"The Credit Union are also willing to provide an explanatory letter to any Financial Institution you require".*

### **The Complaint for Adjudication**

The Complainant's complaint is that the Provider failed to advise her that her loan account had fallen into arrears which resulted in her credit history being negatively impacted.

The Complainant wants her credit history to *"show a true reflection of her details"*.

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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 on **17 August 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 documentary evidence discloses the following:

**15 February 2018 – General Credit Union Application Form**

I note that on this date, the Complainant signed a “**Credit Union Loan Application Form**” dated 13 February 2018, for the loan which is at the heart of this complaint. This form did not contain the Provider’s details, but noted the Complainant’s personal details including her address (“Number 32”), home telephone number, and the following entries, whereby it seems that the Complainant herself selected fortnightly repayments as her preference:

I hereby apply for a loan of € <u>1000</u> ..... for a period of <u>32</u> weeks/years (delete whichever does not apply) for the following purpose: <u>Car Insurance</u>
I propose to repay this loan by instalments of not less than € <u>50</u> plus interest/including interest (delete whichever does not apply) in the following manner, by instalments that are <u>fortnightly</u> (please specify <u>50 SHARES</u> ) with my shares and deposits held as security and any other agreed security.
Name and address of proposed guarantor (if any): .....
Security: .....

In the "Housing Details" section of the form, an entry for "Previous Address" ("Number 21") was filled out, thereby indicating that the Complainant had moved to her current address (Number 32 as described at the beginning of the form) within the last 3 years. This "Housing Details" portion of the form indicated that the Complainant was "living with Parents" and she confirmed that she had been at that address for the previous 11 month period, paying rent of €100 per month.

A Data Consent Section signed by the Complainant affirmed her consent to sharing of her data for the purpose of assessing the application. Separately, it requested (and the Complainant provided) the Complainant's email and mobile number with the following explanation:

*"For convenience, it may be necessary for the credit union to contact the Member(s) via email or text message. The credit union maintains the right to contact the Member(s) by such means as best available to it in relation to a non-performing loan or outstanding debt to the credit union."*

#### **20 February 2018 – Provider Application Form**

It seems that the Provider, having received this earlier form, then input the application details into its system, and produced a printed application form bearing the identity of the Provider, for signature by the Complainant. I note that in the address column, Number 21 was entered (which the Complainant had indicated as her previous address).

The printed Application Form also contained a note as follows:

***Accommodation Type***  
*Living with Parents 9.5 years"*

No explanation has been offered as to how these details came to be entered on the printed form, given that such details do not match the information which the Complainant made available on the original application completed, some days earlier.

The repayment arrangement was specified as follows:

Repayment	23 Fortnightly Payments of €50.00 Including Interest but excludes savings of €6.00
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This Provider specific Application Form contained a number of declarations, to which the Complainant confirmed her acceptance by signature dated **20 February 2018** including:

- Consent to data being shared with the ICB;
- Acknowledgement that data would be shared, as required by law, with the Central Credit Register;
- *“The statements herein are made for the purposes of obtaining the loan and are true to the best of my knowledge”*

### 23 February 2018 – Credit Agreement

I note that a formal Credit agreement bearing the Provider’s name and dated 23 February 2018, was then signed by the Complainant, containing the following details:

<b>IMPORTANT INFORMATION as at February 23, 2018</b>			
1.	Amount of Loan	€	1,089.01
	(comprising, in part, refinancing of the sum of € 89.01 already due and owing to the Credit Union.)		
	<b>TOTAL LOAN</b>	€	<b>1,089.01</b>
2.	Period of Agreement		0.88 Year(s)
3.	Number of Repayment Instalments		23 Payment(s)
4.	Total Amount Repayable	€	1,142.41
	(comprising, in part, the sum of € 0.34 accrued interest due and owing to the Credit Union.)		
5.	Cost of Loan (4 minus 1)	€	53.40

I note that the schedule to this agreement described the repayment schedule as follows:-

5.	Interest rate per annum : 10.50 % Variable	
6.	The Loan is payable by : 22 Fortnightly instalment(s) of €50.00 inclusive of interest commencing on 09/03/2018 and each subsequent instalment on the same day of each succeeding repayment period, followed by a final instalment of €42.07 inclusive of interest to be paid on 11/01/2019	<i>+6 = €56</i>

This handwritten repayment schedule (22 x €56 plus €42.07 at the end) gives a higher repayment total than the Total Amount Repayable of €1,142.41, noted on the face of the Credit Agreement under the **IMPORTANT INFORMATION**. In fact, it seems that the parties understood that the Complainant would pay €50 per fortnight. The Credit Agreement contained a number of declarations, to which the Complainant confirmed her acceptance by signatures dated **23 February 2018**, including:

- *“I/we warrant that the information supplied to[the Credit Union] as part of my/our application is not confirmed and accurate”;*
- *“I/we authorise [the Credit Union]*

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*(ii) to implement the necessary procedures to make the Loan available and put the appropriate repayment schedule in place”*

### **Statement of Account**

The Member Statement made available to this office shows that payments were made by the Complainant to the Credit Union towards her loan at a figure of €100, periodically - €50 to the loan account and €50 to her savings account. It seems clear however, from the information within the Member Statement of Account, that the frequency of the payments was in no way predictable and it is unclear whether such payments were in fact by Standing Order.

The payments after drawdown of the loan in early 2018 are confirmed on the Statement of Account, disclosing that each payment was made in the total amount of €100, with €50 to the savings account and €50 to the loan, on each occasion as follows:-

March 2018	On the 5 <sup>th</sup> and 29 <sup>th</sup> of the month
April 2018	<b>Nil.</b>
May 2018	On the 3 <sup>rd</sup> and 29 <sup>th</sup> of the month
June 2018	On the 29 <sup>th</sup> of the month
July 2018	On the 31 <sup>st</sup> of the month
August 2018	On the 30 <sup>th</sup> of the month
September 2018	<b>Nil</b>
October 2018	On the 1 <sup>st</sup> of the month
November 2018	The 1 <sup>st</sup> and 29 <sup>th</sup> of the month
December 2018	<b>Nil</b>
January 2019	The 3 <sup>rd</sup> and 29 <sup>th</sup> of the month
February 2019	<b>Nil</b>
March 2019	Payment of the outstanding balance of the loan

I note that the Complainant says that an agent of the Provider filled out the standing order instruction form for her and that she just signed it. The Provider maintains that it did not fill out any standing order form on behalf of the Complainant. Quite apart from the method used by the Complainant to instruct her payments, it is clear to me from the evidence, that only the initial payments during March were successful, before an issue arose. From the following month, the payments by the Complainant to the loan account did not meet the fortnightly frequency which she herself had specified in her application and which had been confirmed on the face of the credit agreement which she signed in February 2018.

The Provider says that it wrote to the Complainant on 24 April 2018 and did so again 3 months later on 27 July 2018. These are the 2 occasions on which the provider says that the Complainant's account fell within the criteria of its credit control policy, warranting a communication.

It is clear that such correspondence can only have been sent to the address at Number 21, where the Complainant had previously resided with her parents before it seems they moved in early 2017. For that reason, the Complainant did not receive the Provider's correspondence.

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It is surprising that having been given details of an email address for the Complainant, and a mobile telephone number, on the face of the general Credit Union Application Form, the Provider took no action however, to communicate with the Complainant by email or to send her a text regarding the missed repayments during April or indeed, the increasing arrears on her account. This is disappointing particularly as the details were requested on the general Credit Union Application Form, in the context of an explanation that such details were required as being potentially the best method available for communication, in relation to a *“non-performing loan or outstanding debt to the credit union”*.

I note in that respect that the Provider says that members are not routinely contacted by email or telephone, until such time as the account is *“in significant arrears”*. This practice is something which the Provider may wish to consider further, to ensure that arrears notifications are delivered in the most effective manner.

The arrears issue was compounded by the fact that the arrears warning letters (on **24 April 2018** and **27 July 2018**) were issued by the Provider to the Complainant’s previous address (Number 21) rather than to the address she had entered on her initial application form (Number 32). It appears that, as a result, the situation regarding the arrears only came to light for the Complainant in **February 2019**, albeit that during the majority of the previous 11 months, the payments she had committed to make to the Provider, had not been transmitting from her payment account.

An email dated **2 March 2019** from the Complainant’s father states that the matter became apparent, only when the Complainant had attempted to “open an account” with another financial institution but was refused. A memo created by the Provider on foot of a meeting (25 February 2019) with the Complainant’s father states that the Complainant had attempted to open a credit card account. At that point it seems that the action taken by the Complainant was swift, and by **2 March 2019** the loan (including all arrears) had been cleared in full.

I am satisfied that the primary responsibility for maintaining loan repayments to the Credit Union in the amount and within the frequency which the Complainant had requested and which had been agreed, lay with the Complainant herself. It is clear from the evidence however, that she failed to do so within a very short period of the loan being drawn down.

I am also satisfied however, that the Provider has a case to answer to the Complainant arising from its administrative errors in failing to accurately record details of her postal address and, in addition, in failing to utilise the data which it had available, in order to make contact with her by email, by text or by phone, at the earliest possible stage, once the loan strayed into the category of non performing, within the terms which had been agreed between the parties.

Given the swift action taken by the Complainant when these issues came to light in early 2019, I take the view that if the Complainant had been advised in April 2018, that the profile of the payments was not meeting the arrangements which had been agreed and that this

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failure was triggering the loan account to display as being in arrears, it seems likely that she would have acted much earlier to rectify the situation.

In that event, she would have been in a position to address her failures at a much earlier time, before the credit profile showing mounting arrears was permitted to continue for a full year.

I am satisfied that the Credit Union failed in its duty to the Complainant in that regard, as a direct result of the administrative error for which it is responsible. The Provider in response to the preliminary decision of this Office, maintains that a direction for payment to the Complainant of monetary compensation, is not appropriate because the Complainant suffered no monetary loss. This is however to overlook the very significant consequences to an individual when credit profile indicators registered with the Irish Credit Bureau or the Central Credit Register, indicate a poor payment history. Such consequences can last for a number of years, thereby limiting an individual's future options in the context of any requirement to access credit.

The Complainant must take responsibility for failing to make the payments which fell due periodically to the Provider. I am nevertheless very mindful of her ability to correct this situation in a timely manner, which was seriously affected by the Provider using an incorrect contact address, and not utilising options available for email or mobile contact. As a result, the Complainant failed to receive any arrears correspondence, and remained unaware of the arrears situation, until her attempt to open a credit card account, demonstrated the impact.

In those circumstances, I consider it appropriate to uphold the complaint against the Provider that it failed to advise the Complainant that her loan account had fallen into arrears, as a result of which, her credit history was negatively impacted. In marking this decision, I note that the Complainant seeks for her credit history "*to show a true reflection of her details*". Neither of the parties has submitted a copy of the ICB report showing details of the profile indicators registered by the Credit Union in respect of the loan over the 12 month period in question.

If the indicators accurately reflect the payments made by the Complainant which are documented in the Member Statement, it appears to me that no correction will be required, as the Complainant has not suggested that she made other payments which have not been shown. If however, the credit profile indicators made available by the Provider to the Irish Credit Bureau do not align with the payments made by the Complainant during that period, such indicators should be corrected without delay.

I take the view in all of those circumstances, that a compensatory payment to the Complainant is appropriate bearing in mind the Provider's failure to communicate appropriately with her at an early stage when payments were not being made in accordance with the frequency which had been agreed, which might have avoided the situation which subsequently arose. Accordingly, to bring this matter to finality, I consider it appropriate to direct the Provider to make a compensatory payment to the Complainant in the sum of €3,500.

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Bearing in mind the Complainant's credit history in respect of which she bears the primary responsibility, it seems likely that it may be difficult for her to secure credit facilities in the immediate future, whether for a mortgage or otherwise. It may be possible for her however to use the compensatory figure directed to establish an appropriate savings habit, which may ultimately assist her in her overall credit profile. It is also to be hoped that the Provider may look favourably on any future loan application by the Complainant, over the next 3 year period, if she considers that it may be helpful for her to drawdown a further borrowing, for the purpose of illustrating regular repayments to that borrowing over a period which, again, may assist in improving her overall credit worthiness. I accept however that the Provider must act in accordance with its own internal lending criteria, in the event of any such loan application from the Complainant.

### **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €3,500, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

**The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.**



**MARYROSE MCGOVERN  
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

6 October 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.

