Decision Ref:	2020-0357
Sector:	Banking
Product / Service:	Repayment Mortgage
Conduct(s) complained of:	Incorrect information sent to credit reference agency Dissatisfaction with customer service
Outcome:	Upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants held a mortgage loan account with a third party bank since 2005. The Complainants' mortgage loan account was acquired by the Provider, against which this complaint is made, on 20 February 2015.

The Complainants' Case

The First Complainant states that her Irish Credit Bureau (**ICB**) report showed a "P" label from January 2017 which has adversely affected her ability to obtain finance and her job prospects. She argues that she paid the Provider by direct debit in December 2016, in January 2017, and in February 2017 on the 10th to 12th of the month as normal. She argues that she had a moratorium in place at the time which was working well and that she came to a permanent restructure with the Provider sometime later. She states that she instructed a third party to help her with the home loan restructure and to ensure they retained their tracker interest rate. She argues that documents were submitted in November 2016 to extend the moratorium as the Provider wanted to continue the moratorium before offering a permanent restructure. She states that due to the Christmas period, the Provider's offices were closed and this led to a delay in the issue of the moratorium letter dated 11 January 2017.

The First Complainant states that the Provider indicated by letter dated 12 January 2012 that a direct debit was returned for the full amount of the mortgage. She states that it is clear from her bank statements that this direct debit was not presented as she does not have any unpaid charges.

She argues that she would have been charged €12.50 on her account if a direct debit was presented that could not be paid and further she would have been advised by text by her third party bank if the full mortgage debit amount had been presented to her account to allow an opportunity to lodge funds on the same day. She states that there was money in the account at the time to meet the agreed moratorium amount. She states that when the Provider advised her that the payment not gone through, she paid the agreed amount through the post office until a new direct debit was set up by the Provider for February 2017.

The First Complainant states that the Provider has not shown that her ability and intention to repay the mortgage by placing a "P" label on her ICB record. She states that this record has caused her to be refused credit and undue stress. She states that she was not notified by the Provider that the account was "*pending litigation*" and she has no communication from the Provider to express this. She further argues that at no time did the Provider issue legal proceedings or preliminary legal letters to her. She states her belief that the "*pending litigation*" label is being used widely but incorrectly by the Provider to ensure that no other credit options are available to its mortgage holders, which would impede their ability to transfer to another mortgage Provider should the individual wish to do so. She argues that if the Provider has not issued preliminary legal proceedings, she is of the belief that they should not be allowed to use this "P" label for the ICB.

The First Complainant states that she wants her ICB record and the Central Credit Register rectified immediately by the Provider.

<u>The Provider's Case</u>

The Provider states that the Complainants originally entered arrears in March 2012 and remained in arrears until August 2017. The Provider states that it attempted to update a Standard Financial Statement (**SFS**) over the phone with the First Complainant on 15 July 2015 in accordance with the Mortgage Arrears Resolution Process (**MARP**). It states that it attempted to contact the First Complainant to seek further information to assess the SFS in August 2015 and that in September 2015, the First Complainant contacted it to advise that she had received a job offer and was appointing a third party representative to assist with completing the SFS. The Provider discussed the SFS with the third party representative in October 2015 after receiving the appropriate authorisation form. The Provider states that it attempted to contact the third party representative on a number of occasions in November 2015, December 2015 and January 2016. The Provider states that on 22 January 2016, the third party representative instructed the Provider that it was assisting the Complainants to complete a new SFS which would replace the SFS opened in July 2015.

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The Provider states that on 10 May 2016, a completed SFS was received from the Complainants' third party representative requesting a reduced payment arrangement of €1,000 per month. The Provider states that on 17 May 2016, a copy of the SFS was sent to the third party representative requesting the representative to contact the Provider if any information on the SFS was incorrect.

Having assessed the Complainants' SFS and their full circumstances, the Provider states that it determined on 27 May 2016 that the alternative repayment arrangement (**ARA**) proposed on behalf of the third party representative was a suitable ARA for the Complainants. It therefore offered the Complainants a reduced payment arrangement of €1,000 per month for a period of six months. The Provider argues that this was offered with a view to assessing the Complainants for a permanent ARA, namely a capitalisation of arrears and term extension of 17 years, which was subject to the successful performance of the reduced payment arrangement over the six-month period. The reduced payment arrangement was due to expire on the 31 December 2016.

The Provider states that on 14 November 2016, a Provision 43 ARA expiry letter issued to the Complainants with an SFS and requested the completion and return of the SFS by 30 November 2016 to allow sufficient time for the Complainants' circumstances to be assessed ahead of the expiry of the reduced payment arrangement. The Provider states that on 13 December 2016, an SFS was received from the Complainants' third party representative with a request for a further reduced repayment arrangement of €1,200 per month and a term extension of 13 years. The Provider states that on 21 December 2016, a copy of the SFS was sent to the Complainants' third party representative requesting the representative to contact the Provider if any information on the SFS was incorrect, with a time limit of 3 January 2017 to respond. The Provider states that in accordance with the letter issued to the Complainants on 14 November 2016, the reduced repayment arrangement expired on 31 December 2016. The Provider states that the third party representative did not request any changes to the SFS and having assessed the Complainants' SFS and their full circumstances, the Provider determined on 12 January 2017 that the ARA proposed by the third party representative on behalf of the Complainants was a suitable ARA and offered the Complainants a reduced repayment arrangement of €1,200 per month for a period of six months. This was offered with a view to assessing the Complainants for a permanent ARA, namely a capitalisation of arrears and term extension of 13 years, subject to successful performance of the reduced repayment arrangement over a six-month period. This reduced repayment arrangement was due to expire on 31 July 2017.

The Provider rejects the Complainants' contention that the delay in offering them a moratorium in January 2017 resulted from the closure of the Provider's offices during the Christmas period. The Provider argues that it wrote to the Complainants on 14 November 2016 to advise that the ARA was due to expire on 31 December 2016 and asked that they return the completed FSS by 30 November 2016 to ensure that an up-to-date assessment could be completed prior to expiry. The Provider states that the letter confirmed that following the expiry of the reduced payment arrangement on 31 December 2016, the Complainants' repayment would revert to their contractual monthly repayment of €3,081.67.

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The Provider states that no documents were submitted by or on behalf of the Complainants in November 2016 and the SFS was not returned to the Provider until 13 December 2016 by letter dated 6 December 2016. The Provider argues that the SFS was received on 13 December and assessed and a copy issued to the Complainant's third party representative for confirmation of accuracy on 21 December that is, within six working days of receipt.

The Provider states that the Complainants were given a period of five working days to review the SFS and asked to contact it if there was any inaccurate information. The Provider states that it received no communication from the Complainants during the period so it was obliged to await the expiry of the period to 3 January 2017 before proceeding to rely on the SFS for the purposes of an ARA assessment. The Provider states that an ARA was offered to the Complainant on 12 January 2007, that is, within seven working days. The Provider argues therefore that it is clear that its Christmas office closing arrangements did not have any bearing on the assessment of the Complainants' SFS.

The Provider states that the Complainants' ARA expired on 31 December 2016 and a new ARA had not been implemented on the account. The Provider states that the Complainants' monthly repayment amount reverted to full contractual monthly repayment of €3,081.67. The Provider states that the direct debit attempted to collect €3,081.67 from the Complainants' account on 10 January 2017 but this direct debit was returned unpaid due to "*insufficient funds*" on 12 January 2017.

The Provider states that as set out in the alternative repayment arrangement offer letter of 11 January 2017, the new ARA for €1,200 per month commenced on 1 February 2017 for a period of six months. The letter provided for payment of €1,200 by 31 January 2017 and then €1,200 per month for six months beginning on first of February 2017. The Provider accepts that a payment of €1,200 was received by the Provider from the Complainant on 16 January 2017. The Provider states that as there was no formal arrangement in place in January 2017, and as the account was being managed by the Provider's litigation department, an ICB profile indicator of "P" was reported to the ICB for January 2017. The Provider states that the Complainants made a payment of €1,200 on 16 January 2017 and formally accepted the offer of a reduced repayment arrangement and 24 January 2017. The Provider states that upon such acceptance, it put in place the reduced payment arrangement effective from 1 February 2017. Accordingly, it argues, that the reduced repayment arrangement was not in place in January 2017 and the ICB report in January 2017 (which was submitted in February 2017) correctly reported a "P" designation for the account.

The Provider states that prior to February 2015, the account was managed by the third party bank loan assignor. The Provider states that when the account transferred from the third party bank to the Provider, it was informed by the third party bank that the Complainants' account was already being managed by the third party bank's litigation department. Accordingly, the Provider states that when the account transferred to the Provider on 20 December 2015, it was managed by the Provider's litigation department.

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In the first reporting month following the transfer of the Complainant account to the Provider, the Provider states that the account was reported with an ICB indicator of "P" for "*pending litigation*". The Provider states that this is in accordance with the guidance published by the ICB for credit subjects seeking understanding of their credit report. The Provider argues that it is open to a credit subject access their credit report through the ICB website. The Provider argues that by letter dated 1 March 2015, it drew attention to its obligations to report to the ICB in respect of the Complainants' account.

The Provider accepts that the account was reported with an ICB indicator of "P" for the period April 2015 to June 2016 inclusive. It argues that no temporary ARA was proposed or in place during the period referred to in the absence of information regarding the Complainants' circumstances sufficient to enable appropriate assessment by the Provider. The Provider argues that it sought to engage with the Complainant and the third party representative on a number of occasions during this period to progress an assessment and to determine what, if any, ARA's might be available.

The Provider disagrees with the Complainants' submission that where the Provider has not issued preliminary legal proceedings, it should not be allowed to use the "P" status on the ICB. The Provider argues that the "*pending litigation*" designation is an ICB designation and is used when the credit subject is in arrears, is not in an ARA and the account is being managed by the Provider's litigation department. It reiterates that there was no ARA in place on the Complainants' mortgage account on 10 January 2017 when the direct debit was attempted in the sum of €3,081.67. It argues that the account was being managed by its litigation department, and therefore an ICB profile indicator of "P" was appropriate.

The Provider disagrees that it ought to have reported a partial payment of €1,200 in relation to the Complainants' account for January 2017. It argues that the designations used for ICB reporting are 0 to 9 (referencing the number of months in arrears), M (meaning moratorium and used when the credit subject is an ARA), and P (pending litigation, as explained). It argues that a partial payment does not impact a "P" ICB profile indicator. It argues that an improved indicator will only arise when the credit subject enters an ARA or makes a sufficient payment to exit the reporting entity's litigation department. Following the Complainants' ARA being put in place with effect from 1 February 2017, the Provider states that the next ICB report by the Provider designated the Complainant's account as "M". The Provider states that had the Complainants made a full contractual monthly repayment of €3,081.67 in January 2017, an ICB indicator of "P" would still have been reported as the mortgage account was being managed by the Provider's litigation department, was carrying substantial arrears, and was not in a formal ARA.

The Provider states that an SFS was submitted to the Provider on behalf of the Complainants on 26 June 2017. Following an assessment of the SFS, a permanent ARA consisting of capitalisation of arrears and a term extension of 13 years was offered to the Complainants on 18 July 2017. The Provider states that the Complainants' acceptance was received on 2 August 2017, and subsequently implemented. The Provider states that the permanent ARA resulted in the Complainants' contractual monthly repayment reducing to €1,160.18.

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The Provider accepts that the Complainants adhered to both reduced repayment arrangements which were provided to them in May 2016 and January 2017 respectively. It states that the Complainants continue to adhere to the permanent ARA put in place in August 2017.

The Complaint for Adjudication

The complaint is that the Provider wrongfully reported the Complainants' mortgage loan account as "pending litigation" to the Irish Credit Bureau in respect of January 2017 and from April 2015 to June 2016. It is further argued that the Provider wrongfully failed to take into account a period of time when the Provider's office was closed, preventing the commencement of an alternative repayment arrangement.

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.

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 18 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.

Following the issue of my Preliminary Decision, the parties made the following submissions:

1. Letter from the Provider to this Office dated 9 July 2020, together with attachments.

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2. Letter from the Complainants to this Office, together with attachments, under cover of three emails dated 13 July 2020.

3. Letter from the Provider to this Office dated 28 July 2020.

Copies of the above submissions were exchanged between the parties.

Having considered the above additional submissions and all of the submissions and evidence furnished by both parties to this Office, I set out below my final determination.

The crux of this dispute is whether the Provider was entitled to report the designation "P" meaning "*pending litigation*" or "*litigation pending*" to the ICB in respect of the Complainants' mortgage account during the period April 2015 to June 2016 inclusive, and again in January 2017. The Provider argues that it was entitled to report this designation on the basis that for the duration of the relevant months, the account was in arrears, there was no ARA in place, and the account was being managed by the Provider's litigation department. The First Complainant argues that as the Provider had not issued preliminary legal proceedings or sent any letters in relation to legal proceedings that, therefore, the Provider should not have used this status in respect of the ICB report. A second issue arises in relation to the Provider calling for a sum of €3,081.60 in respect of the mortgage in January 2017.

The Complainants have not disputed the Provider's contention that the mortgage account was in arrears when the mortgage account was transferred to the Provider in February 2015. Between February 2016 and May 2016, irregular payments in the sum of €350 were being paid to the account at intervals of between two weeks and one month. From May 2016, the sum of €1,000 was paid every month and from January 2017, the sum of €1,200 paid every month until September 2017 when a regular monthly repayment of €1,160.18 was commenced.

In my Preliminary Decision I noted that:

> "A copy of an SFS form which was started on 15 July 2015 and completed on 22 January 2016 has been provided in evidence. The SFS indicates a substantial deficit in the monthly income and indicates that no ARA options were approved. On page 17 of the SFS, there is a reference to "*date ref to litigation*" and the annotation "*N/A*" appears beside it. Beside a reference to "*litigation step*", there is a blank space. On page 20, the option of "*repossession*" was deemed "*not appropriate*". On page 22 in relation to decision details, the option of "*repossession*" is listed with an indication that this had not been approved by the committee. This SFS appears to have been withdrawn by the Complainants before it was formally assessed".

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The Provider, in its post Preliminary Decision submission, notes that *"the SFS was withdrawn by the Complainants before it was formally assessed"*. The Provider details that *"as the various data fields were not completed as the SFS was withdrawn"* it submits that *"it was not appropriate for the Preliminary Decision to consider the various notes included in the SFS form dated 22 January 2016"*.

The Provider goes on to state that it *"respectfully submits that the Preliminary Decision made an **error of fact** in deciding otherwise and submits that the SFS Form dated 22 January 2016 should be disregarded"*.

[Provider's emphasis]

I do not agree with the Provider's submission. It is open to me to consider all submissions and evidence which, in my view, is relevant or is of assistance to me, in my adjudication of the complaint.

Following on from the above in my Preliminary Decision I had made the statement that:

> *"A copy of the second SFS dated 17 May 2016 has also been provided in evidence. It proposed a monthly repayment of €1,000. On page 17 of the SFS, there is a reference to "date ref to litigation" and the annotation "N/A" appears beside it. Beside a reference to "litigation step", there is a blank space. On page 22 in relation to the assessment, the SFS indicates that a reduced repayment was deemed appropriate and affordable in the sum of €1,000. The option of "repossession" was deemed "not appropriate" on the basis of "other options available".*

The Provider in response to the above, has made the following statement in its post Preliminary Decision submission:

> *"… you refer to "Repossession" being deemed as "Not appropriate". Please note that at all times the Provider endeavours to engage with its borrowers to come to a long term sustainable solution on their account. The Provider will only deem "Repossession" as "Appropriate" when all other options have been explored and found to be unsustainable".*

The Provider suggests that "*your Preliminary Decision seems to infer that in not finding repossession appropriate for the Complainants, that "P" for Pending Litigation was not a suitable designation for the account".*

The Provider also makes the statement that:

> *"In reading your finding it appears that in seeking to grant the Complainants forbearance, the Provider is being disadvantaged by your Office.*
>
> *The SFS dated 17 May 2016 was an internal underwriting document and the Provider respectfully submits that the Preliminary Decision made an **error of fact** in deciding that this reflected the Provider's view as to Litigation".*

[Provider's emphasis]

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I would first highlight that I both expect and welcome that a financial service provider would seek to resolve disputes or find solutions for customers in arrears.

I therefore welcome the fact that the Provider states that it, "*at all times…endeavours to engage with its borrowers to come to a long term sustainable solution on their accounts*". I would at all times encourage financial service providers to engage with their customers to resolve difficulties. I completely disagree with the suggestion of the Provider that, in this complaint, by seeking to grant the Complainants forbearance, the Provider is somehow being disadvantaged by me. This is not the case.

I note the Provider's statement that *"The SFS dated 17 May 2016 was an internal underwriting document and the Provider respectfully submits that the Preliminary Decision made an **error of fact** in deciding that this reflected the Provider's view as to Litigation".*

I would reiterate that it is appropriate for me to consider any submissions or evidence which, in my view, is of relevance or is of assistance to me, in my adjudication of the complaint.

The committee decision was to approve the reduced repayment arrangement for six months, with a term extension of 17 years and capitalisation of arrears preapproved once the reduced repayment arrangement performed. The Provider wrote to the Complainants dated 17 June 2016 indicating its acceptance of mortgage payments in the sum of €1,000 per month from 1 July 2017 for a period of six months.

The letter set out an end date of 31 December 2016. For the arrangement, these dates were mirrored in the alternative repayment arrangement offer dated 27 May 2016. The offer was accepted by the Complainants on 6 June 2016.

By letter dated 14 November 2016, the Provider wrote to the Complainants reminding them that the term of their reduced monthly arrangement would expire on 31 December 2016 and indicating that the normal capital and interest repayment is €3,081.67. The letter requested that they complete the enclosed SFS and return it before 30 November 2016 so that the Provider could carry out an up-to-date assessment. The letter was also sent to the Complainants' third party representative.

By cover letter dated 6 December 2016, the Complainants' third party representative enclosed a completed SFS, together with the required supporting documentation, requesting a long-term restructure based on a monthly repayment of €1,200. This letter also requested that the Provider review the First Complainant's 'query' in relation to her ICB record in an enclosed email. There is no date stamp on the letter of 6 December 2016, indicating when it was received by the Provider, though the Provider has indicated that it was not received until 13 December 2016. In any event, it was certainly not sent prior to 30 November 2016 as requested in the Provider's letter of 14 November 2016. The contents of the SFS assessment dated 21 December 2016 are substantially similar to that of the SFS of May 2016, with a decrease in monthly expenditure and a proposal to increase monthly payments to €1,200 per month.

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On page 20 of the SFS, the Provider indicates "*Account is in Litigation – Step 3 (Pre-Court: ATP)*". In terms of the assessment, reduced repayment of €1,000 per month for six months was deemed "*appropriate*" with a repayment of €1,200 by 31 January 2017. As before, the option of "*repossession*" was deemed "*not appropriate*" on the basis of "*other options available*".

The reduced repayment arrangement was approved on 11 January 2017 with a term extension of 13 years and capital arrears preapproved once the reduced payment arrangement performs.

By email from the First Complainant to her third party representative dated 29 November 2016, and enclosed with the letter to the Provider dated 6 December 2016, the First Complainant raised the issue that she "*was not issued with any proceedings*" by the Provider and "*therefore Litigation is an incorrect status*". There does not appear to have been any response to this query which was flagged to the Provider in the letter dated 6 December 2016 and no complaint was opened by the Provider in relation to it.

By letter dated 21 December 2016, the Provider stated it would assess the SFS and requested that the SFS be reviewed to ensure the information is accurate before 3 January 2017. By letter dated 11 January 2017, the Provider wrote to the Complainants indicating it had completed its assessment of the case and enclosed an offer for an alternative repayment arrangement. The offer was as follows:

> "*A payment of €1,200 by 31 January 2017 then €1,200 per month for six months beginning 1 February 2017.*"

The enclosed alternative repayment arrangement offer indicated that the arrangement would end on 31 July 2017. The offer was accepted by the Complainants on 20 January 2017.

By letter dated 8 June 2017, the Provider wrote to the Complainants indicating that the reduced monthly arrangement on their account would expire on 31 July 2017 and requested that they return an SFS before 26 June 2017 for an up-to-date assessment. By letter dated 23 June 2017, the Complainants' third party representative enclosed a completed SFS and supporting documentation seeking a long-term restructure of the mortgage based on monthly repayment of €1,200. The letter indicated that the writer had not received a response to the ICB query raised in his letters of 6 December 2016 and 30 May 2017. The letter of 30 May 2017 enclosed an email from the First Complainant to the third party representative in relation to her ICB record which again expressed concern with the fact that she had not received any notice from the Provider with regard to issuing court proceedings and arguing that the "*pending litigation status was incorrect and that the Provider needed to advise the ICB to correct this*". The email also indicated that she had not received a communication from a solicitor on behalf of the Provider or any type of issuance of court proceedings. Her email further indicated that she was required to pass fitness and probity tests for her job and the ICB is one of the screening checks so the report was affecting her career progression.

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A further SFS dated 6 July 2017 under which a term extension of 13 years and arrears capitalisation was deemed appropriate was approved as of 17 July 2017. On page 19, the assessment indicated that the account was in "*Litigation Step 3. Pre-Court: ATP*".

By letter dated 18 July 2017, the Provider made an alternative repayment arrangement offer to the Complainants to extend their mortgage term by 13 years and capitalise their arrears. In the enclosed offer dated 18 July 2017 with an expiry date of 1 August 2017, a revised monthly repayment of €1,155.65 was indicated with the variation start date of 1 September 2017. This offer was signed and accepted by the Complainants dated 19 July 2017. By letter dated 17 August 2017, the Provider stated that the terms of the amendment had been accepted and would be effective from 1 September 2017. It further stated that it had capitalised the outstanding arrears.

A copy of the Complainants' ICB report shows that the ICB indicator associated with the account between February 2015 and June 2016 was "P". An "M" was reported between July and December 2016 with a "P" reported in January 2017. From February 2017 to July 2017, an "M" was reported. From August 2017 onward, the designated "0" appears. In this context, "P" stands for "*pending litigation*", "M" stands for "*moratorium*", and "0" stands for no payments in arrears (as opposed to "√" which means "*payments up-to-date*").

The ICB website does not contain a definition section in relation to its designations. Instead it provides a sample credit report which gives examples of different accounts with different designations and gives an explanation for its use of those designations. In relation to sample account 22222222, the following designation examples are given for the previous 24 months "√-1-2-1-2-3-1-1-1-√-√-√-1-2-3-4-5-P-P-P-P-P-P-L".

The explanation provided by the ICB is as follows:

> *"The profile shows the repayments on the account were patchy and erratic, rising to five monthly payments in arrears, giving rise to litigation ("P" denotes Litigation Pending). The account was ultimately settled for less than the full amount (as indicated by code letter "L")."*

This explanation by the ICB clearly indicates that the "P" for "*Litigation Pending*" was used in its example where the arrears situation had given rise to litigation. In its frequently asked questions section, the ICB indicates that in terms of credit score, a value of 50 is returned for an account holder with an account that is in arrears for three months or more, where it is written-off ("W") or if the account is pending litigation. There is no further assistance provided in respect of the correct utilisation or meaning of designations.

The Provider has stated that it makes use of the designation "P" ("*pending litigation*" or "*litigation pending*") when an account is in arrears, there is no ARA in place, and the account is being managed by its litigation department. The Provider has indicated that its use of "P" in this context is in keeping with ICB guidance but it has not provided any documentation to support this.

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The only indication of the appropriate use of the designation “P” that is available to me is from the ICB website as set out above where the ICB sample used the designation “P” in the context of mounting arrears which had given rise to litigation.

In my Preliminary Decision, I stated that the Complainant had, in my view, made the following reasonable point:

> *“the reasonable point made by the First Complainant that no letters were ever received by the Complainants indicating that legal proceedings were contemplated, were imminent or had been issued. Certainly no legal proceedings have ever been issued by the Provider against the Complainants. In that context, it is difficult to understand how the Provider can consider it to be appropriate or reasonable to use the designation “litigation pending” in respect of borrowers in the position of the Complainants when there is no litigation “pending” in any normal sense of that word. The term “pending” suggests a situation awaiting a decision or something that is about to happen. If litigation had issued but a decision of the courts in the case was awaited, it would seem to me to be justifiable for the Provider to use the designation “P”.”*

The Provider has, in its post Preliminary Decision submissions, made the statement that it:

> *“dispute*[s] *the contention that the Complainants were not notified that legal proceedings were contemplated with relation to their account. Please find enclosed the demand letter dated the 15 July 2013 which issued from [The previous financial provider] in respect of the Complainants’ account. The letter drew the Complainants’ attention to the fact that the levels of arrears of their account had caused an Event of Default and that the Complainants were required to discharge the amount of €254,274.61 within 10 days of the date of the letter”.*

The Provider, in its post Preliminary Decision submission, goes on to detail the content of the letters previously issued to the Complainants by the previous owner of the loan.

It submits that:

> *“in this letter from the 15 July 2013, the Complainants were notified that legal proceedings were contemplated. This letter, which was previously shared as part of this complaint, is evidence that the Complainants were notified that the legal proceedings were contemplated. Therefore, the Provider respectfully submits that the finding that:*
>
> > *‘…the reasonable point made by the first Complainant that no letters were ever received by the Complainants indicating that legal proceedings were contemplated, were imminent or had been issued…*

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> *in this context, it is difficult to understand how the Provider can consider it to be appropriate or reasonable to use the designation 'litigation pending' in respect of the borrowers' position when there is no litigation pending in any normal sense of that word' was an **error of fact".***

The Provider continues its post Preliminary Decision submission by making reference to a meeting held with the First named Complainant and the previous financial service provider.

It submits that:

> *"On 16 October 2013, the First Complainant met with the lender to discuss possible solutions to the arrears position. At this meeting, the First Complainant expressed her understanding that legal proceedings were contemplated by the Lender. Notes of that meeting include the following:*
>
> > *'[name redacted] [the First Complainant] fully aware that if...not successful in securing a signature from [name redacted] [the Second Complainant] there is a risk that the debt could be called in and matter sent to legal for OFP [Order for Possession]'.*
>
> *The Provider includes notes of the meeting held on 16 October 2013 as an **additional point of fact.** This is further evidence that the Complainants knew that legal proceedings were contemplated".*

The Provider further wishes it to be noted that:

> *"On 20 January 2014, a letter issued to the Complainants to inform them that solicitor had been instructed to '…recover the debt due and recover possession of the secured property.' This once again notified the Complainants that legal proceedings were contemplated and steps were being taken to progress matters".*

The Provider's post Preliminary Decision submission continues to reference letters issued by the previous financial service provider and its solicitor. The Provider submits that these letters demonstrate that '*litigation was pending'* prior to the Provider taking ownership of the loan. It submits that:

> *"in light of the above, it is clear that the account was pending litigation and the Provider refutes that the Complainants were unaware of the imminent legal proceedings. A "P" designation for Pending Litigation commenced being reported to the Irish Credit Bureau (ICB) in relation to the account following the issuance of the letter referred to above and commencing in February 2014."*

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The Provider then submits that:

> *"The Preliminary Decision makes no reference to these letters and it is possible these may have been overlooked or the Preliminary Decision may have failed to realise their relevance to the Complaint and/or the designation of a "P" to the ICB in relation to the Complainants' account. The Provider is therefore resubmitting these letters in evidence as to why a "P" for Pending Litigation designation was applied to the Complainants' account commencing in February 2014".*

The Provider seeks to rely on the letters and communications issued by the previous financial service provider as it states:

> *"On the transfer of the Complainants' account to the Provider on 20 February 2015, all of the* [Previous financial service provider] *rights and obligations were transferred to the Provider and all relevant details relating to the loan were also transferred. These details were used for the continued management and administration of the account and for related legal and regulatory purposes.*
>
> *As such, relying on the documentation issued from the previous provider and the status of the account at its transfer, the first reporting month following the transfer of the Complainants' account to the Provider, the account was reported with a designation of "P" to the ICB. In light of the fact that the factual situation did not change, the Provider continued to report the Complainants' account as P after acquisition. However, in tandem with such reporting, the Provider sought to engage with the Complainants, review their file and only take further action to repossess the Complainants' secured property as a very last resort".*

The First Complainant has responded to the Provider's statement in her post Preliminary Decision submission dated **13 July 2020.**

Notably the Complainant submits that:

> *At no time did* [previous financial service provider] *register a 'p' on the ICB, or progress with any litigation. I supply evidence c) of the status of my account on the ICB as at May 2017* [date of report from ICB] *where [previous financial provider] clearly upheld the '9' status until closure of the account and transfer to [the Provider]".*

The ICB report submitted by the Complainant clearly evidences that the previous financial service provider, did not in fact report pending litigation to the ICB. It is clear that "P" is not listed, instead it shows that after a number of months it reports the maximum number of payment in arrears "9" until it reports is as "C".

In response to this, the Provider *"…notes that the First Complainant has provided new evidence that the lender recorded the Complainants' account as '9' and not 'P' as the Provider previously understood".*

/Cont'd…

The Provider accepts that its understanding of what the lender recorded was incorrect. However, this does not change the right of the Provider to record the Complainants' account as 'P' when the account was transferred to the Provider".

I find it both unreasonable and careless that the Provider would have an "incorrect understanding" of such a crucial matter and would then seek to justify its own conduct based on this false premise. It is most unacceptable and unreasonable that the Provider did not check the factual situation before making such assertions. Furthermore, it is, in my view, an unreasonable approach by the Provider to rely solely on the letters or conversations which occurred between the Complainant and the previous financial provider or its solicitor as a justification for its initial and persistent reporting to the ICB that ligation was pending on the account.

It is clear that the previous financial service provider was reporting to the ICB that the Complainant was at the maximum of "9" payments in arrears, and not reporting it as "P" pending litigation as previously suggested by the Provider. This office has not been presented with evidence that the Provider notified the Complainant that it was, itself, considering commencing litigation against the Complainant.

The Provider submits in its post Preliminary Decision submission dated **9 July 2020** that:

> *"In the absence of specific guidance from the ICB, the Provider submits that it is appropriate to look at the definition of what is 'pending litigation'. The Provider submits the following as an **additional point of fact.***
>
> *The Cambridge dictionary defines 'pending' as: "about to happen or waiting to happen". The Merrian-Webster dictionary defines pending as "while awaiting", "not yet decided: being in continuance", and "imminent, impending". The Maccmillan dictionary defines pending as: "waiting to be dealt with, settled, or completed" and "likely to happen soon".*
>
> [Provider's Emphasis]

The Provider goes on to state that:

> *"In light of letters previously issued to the Complainants and the next steps if an agreement could not be reached, it is true to say that litigation was about or waiting to happen, especially since a solicitor had been appointed to initiate proceedings against the Complainants. In that respect, the litigation was pending. The Provider therefore respectfully submits that the finding* [in the Preliminary Decision] *that (in relation to the use of the "P" designation):*
>
> > *'the use of this designation is, to my mind, unreasonable in the extreme in the context as it does not provide a fair view of the Complainants' account. While the Provider is contractually entitled to report the status of the Complainants' account to the ICB, this comes with an obligation to ensure that the report is accurate and to amend it if not'.*

/Cont'd…

> *Amounts to an **error of fact**. Litigation was waiting to be dealt with, likely to happen soon and impending. Therefore, it was accurate to report the account as pending litigation. For this reason, the Provider believes that your Office has erred in fact in concluding that the Provider has not complied with its obligation under the ICB and that the designation of "P" was "misleading, inappropriate and unreasonable".*

The Provider further argues in its post Preliminary Decision submission that its use of the designation "P" was correct. The Provider submits the *"Guidance on the Central Credit Register for Credit Information Providers Version 2.1 June 2019…as an **Additional point of fact"***

[Provider's emphasis]

The Provider details that:

> *"The Central Bank of Ireland's guidance document notes that "informal restructures put in place without modification to the credit agreement are not reportable, e.g. a verbal agreement to accept increased payments over a period of time to clear an arrears position." "While the Provider acknowledged the differences between the ICB and the Central Credit Register, the Provider submits that the requirements of the Central Credit Register are evidence that the approach taken by the Provider was not unreasonable".*

The Provider continues its submission and details:

> *"Under the Central Credit Register, an informal restructure is not reportable. Rather, an entity should continue to report on the account as it is until a formal restructure is agreed. This is relevant to both April 2015 to June 2016 and January 2017. The Provider submits that it is open to the Provider to use the 'P-pending litigation' designation when the credit subject is in arrears , is not in an ARA, and steps had been taken in the litigation process including multiple notifications to the Complainants that litigation was the next step.*
>
> *In these circumstances, it was appropriate to continue to report the Complainants' account as it was until a development occurred i.e. as P where litigation was pending, particularly in light of the fact that the Complainants' account was being managed by the Provider's litigation department at the time. The Provider respectfully submits that the Preliminary Decision made an **error of fact** in deciding otherwise".*

[Provider's emphasis]

The Provider then details "*the Central bank of Ireland's Central Credit Register guidance document notes".*

The Complainant responded to the comments of the Provider in her post Preliminary Decision submission dated **13 July 2020.**

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The Complainant submits that: *"Management by the litigation department at [the Provider] does not constitute pending litigation"* and that the *"Absence of guidance from ICB should not leave the mortgage provider open to use of this designation. Quotations from the dictionary are still open to interpretation, and in my view do not add to the providers facts".*

I do not find the arguments raised by the Provider to be convincing. The Provider is attempting to rely on the previous correspondence and actions of the former financial service provider.

I remain of the view that the Provider's use of the designation of "P" with the ICB in relation to the Complainants' account was misleading, inappropriate and unreasonable. The Provider did not itself indicate or inform the Complainants that it, not the former loan owner, was in the process of, or exploring the option to commence litigation regarding the arrears present on the account. There does not appear to have been any formal assessment by the Provider at any time since the transfer of the Complainants' mortgage account that concluded that the account was an appropriate one for the issue of proceedings. In its own submissions, the Provider states that the account was sent for management in its litigation department merely on the basis that the account had previously been with the litigation department of the third party bank assignor prior to transfer. As is clear from the individual SFS assessments that I have set out in detail above, at no time was a decision made by the Provider to issue proceedings against the Complainants. In fact the assessments indicate that the Provider was at all times of the view that the issue of repossession proceedings was not appropriate in the case of the Complainants' mortgage loan account. Further, the assessments refer to the account in a "*Pre-Court*" stage.

It may be that there could possibly have been a scenario where it might be considered reasonable to use "P" where the issue of proceedings against a particular borrower had been approved by the Provider and an instruction sent to a solicitor's firm to issue those proceedings promptly and those proceedings had been flagged to the borrower but had not yet been formally issued. The simple management of an individual account by a mortgagor's litigation department does not mean that any litigation is pending as I understand that word, even if the account is in arrears without an ARA in place.

I am therefore of the view that it is extremely misleading, inappropriate and most unreasonable for the Provider to utilise the designation "*litigation pending*" in the circumstances. The use of this designation is, to my mind, unreasonable in the extreme in the context as it does not provide a fair view of the Complainants' account. While the Provider is contractually entitled to report the status of the Complainants' account to the ICB, this comes with an obligation to ensure that the report is accurate and to amend it if not. It is further, in my view, unreasonable for the Provider to use the designation "P" merely when an account in arrears in being managed by a litigation department and not in the ARA. This conclusion was drawn in respect of the use of the designation "*litigation pending*" at all times between 2015 and 2016, and again in January 2017.

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It has been suggested that this is a widespread practice by the Provider and while I have no evidence to substantiate the claim made by the Complainants that the designation is used by the Provider in order to make it more difficult for mortgage holders to change providers, I do think it is appropriate in circumstances where the Provider has tried to justify this practice, and seems to believe it is an acceptable practice, to make the Central Bank of Ireland aware of this Decision due to the possible implications for other borrowers.

I have an additional concern regarding the Provider's use of "P" on the account in January 2017. I understand the Provider's argument that the formal commencement date of the new ARA was 1 February 2017 due to the fact that the assessment had not been completed in time to put the ARA in place before January 2017. I accept the Provider's submission that the Complainants did not submit their updated SFS and supporting documents by 30 November 2016 as had been requested in the Provider's letter of 14 November 2016. I note that the updated documents were provided under cover letter dated a few days later - 6 December 2016. This letter is not date stamped as received but the Provider has argued it was not received until 13 December 2016. There is no need for me to reach any conclusion on this point as I do not accept that the Complainants have made out a complaint that the Christmas holiday period substantially interfered with the assessment of the new SFS. I accept that on either date, the SFS was assessed and a new ARA approved promptly. Where I have an issue, however, is that the Provider was aware for the entire month of January 2017 that a new application for an ARA had been made which proposed increased repayments, and it approved a new ARA on 11 January 2017 with a formal start date of 1 February 2017, subject to a payment of €1,200 being made in January 2017 (which was in fact made) but chose in February 2017 to report the account for January to the ICB with a "*litigation pending*" designation. I do not accept the Provider's argument that because there was no ARA formally in place until the designated start date of 1 February 2017 that there was no agreement in place between the parties in January 2017.

There was clearly an arrangement in place between the parties for a payment €1,200 to be made in January 2017 and this sum of money was paid by the Complainants. I find the Provider's approach to be both inflexible and unreasonable.

Furthermore, the approach adopted by the Provider in respect of the ICB report for January 2017 is not in accordance with the approach adopted by it in relation to its report to the ICB for August 2017. If the Provider's logic held through, then the second ARA expired on the 31 July 2017 and the new permanent restructure was not put in place until September 2017. If the designation "*litigation pending*" was correct for January 2017 (which I do not believe it was) as the Provider claims it was, then I do not see how any distinction can be drawn in August 2017 when, in accordance with the Provider's arguments, there was also no formal arrangement in place. Yet I note from the ICB report for August 2017, the Provider has given the Complainants the credit of having agreed the restructure by using a designation showing no monthly arrears.

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In my view, and entirely apart from the fact that I do not accept that the Provider's general use of the "P" designation is appropriate when an account that is in arrears is being managed by its litigation department and is outside a formal ARA, I am of the view that it was completely unfair, unreasonable and incorrect for the Provider to use a "*litigation pending*" designation for January 2017 when there was an agreement (albeit an informal one) for the Complainants to make a payment of €1,200 a month rather than the normal contractual repayment of over €3,000.

In respect of the second aspect of the complaint that the Provider wrongly indicated that it called for the sum of over €3,000 in January 2017 but that the request was returned unpaid, there are two conflicting statements of what is said to have happened before me. The First Complainant's statement of account shows that no such sum was called for in January 2017 from that particular account.

A mortgage statement dated 5 November 2019 submitted in evidence by the Provider indicates that a direct debit in the sum of €3,081.67 was called for from an unidentified account on 10 January 2017 and returned on 12 January 2017 with no indication of the reason why it was returned. As I do not believe that anything particularly turns on this point in the context of the overall complaint, I do not propose to make a decision on this. The essential point is that a payment of €1,200 was requested and made in January 2017, quite apart from the indication in the letter dated 14 November 2016 that the full monthly contractual payment would be called for in the absence of a new ARA. As this agreed sum was paid to the Provider, and there was no litigation actually pending at the time, it was neither appropriate nor reasonable for the Provider to report the designation "*litigation pending*" in respect of the account.

I indicated in my Preliminary Decision that I proposed to uphold this complaint in full and direct the Provider to correct the ICB record of the Complainants in respect of the months where a "P" designation was incorrectly and/or unfairly and unreasonably reported to the ICB. While there is no evidence before me that a similar designation was reported in respect of the Central Credit Register but if any such report was made, I indicated that I would also expect the Provider to rectify it also. I also indicated my view that it is appropriate for me to direct that a sum of compensation be paid to the Complainants.

The Provider, in its post Preliminary Decision submission dated **9 July 2020,** submits that it:

> *"notes that the Complainant has indicated that the designation of a "P" on her account affected her ability to secure further credit and also impacted on her career".*

It submits:

> *"The Provider would respectfully challenge the contention that the Complainants' ability to secure credit or any negative impact on their career was directly the result of the reporting of a "P" on their account and instead counter that this was a result of the undisputed level of arrears on the account. The Provider submits that an **error of fact** was made in deciding otherwise".*

/Cont'd…

The Complainant submits in her post Preliminary Decision dated **13 July 2020** that:

> *"I am submitting my ICB report as evidence which clearly shows two searches by [named financial service provider], where I had attempted to change my car with two different garages.*
>
> *I have been refused credit by:*
>
> *[named financial service provider] - twice / [second named financial provider] - twice / [third named financial provider]*
>
> *All of these refusals have been verbal, and it has been advised to me it is because of the 'p' designation on my credit reports, not because of the [previous financial provider] ICB status or because of my salary or my available expenditure".*

The Complainant further submits that:

> *"The Central Bank Questionnaire for PCF roles: section 5, Applicant Reputation and Character requires declarations around financial standing. The designation of 'p' against my credit standing clearly makes a statement that the provider was about to bring me to court (which we know is not the case). The designation '9' as assigned by [the previous Provider], is absolutely explainable due to our marriage separation and my estranged husband's loss of his business. The 'p' is not explainable and therefore I have had no choice in applying for opportunities for progression to PCF roles, thus impacting my career and ability to earn additional income".*

The Provider has responded in its post Preliminary Decision submission of **28 July 2020** as follows:

> *"The Provider notes that when the enquiries were run by [named financial provider] in late august 2016, the Complainants were on a moratorium and the account was being reported as 'M', and not as 'P'.*
>
> *While the Provider cannot speak to why [named financial provider] refused credit as this is not a matter within the Provider's knowledge, the Provider notes that the First Complainant was on a moratorium and was being reported as ' M'. This was the most recent report and the Provider submits that it believes a lender is most likely to place increased weight on the most recent reports.*
>
> *Even to the extent that [second named financial provider] and [third named financial service provider] may have conducted ICB searches against the Complainants (noting that no evidence has been provided that this occurred) and refused credit on the basis of such searches, the Provider would respectfully challenge the contention that the Complainants' ability to secure credit was directly the result of the reporting of a "P" on their account and instead counter that this was a result of the undisputed level of arrears on the account".*

/Cont'd…

The Provider goes on to state that it:

> *"Disagrees with the first Complainant's assertion. The Provider respectfully submits that the same explanation applies for a '9' and 'P' report. Both of these designations are caused by the same fact i.e. the failure to make required repayments. Both designations show that the account was significantly in arrears. To the extent relevant, the Provider submits that this is also 'explainable' due to the Complainants' marriage separation and the second Complainant's loss of his business".*

The Provider further details part of the Central Bank of Ireland's Fitness and Probity Standards questionnaire following which it submits:

> *"the Provider is of the opinion that the First Complainant was not required to make additional or alternative disclosures regarding her financial soundness due to the fact that her ICB credit report showed 'P' as opposed to '9'. As outlined above, both of these designations are caused by the same fact i.e. the failure to make required repayments. Both designations show that the account was significantly in arrears".*

The Provider "*notes that the First Complainant has not provided any evidence that she was ever refused a PCF role or career progression as a result of her ICB record".*

The First Complainant has indicated firstly that she has been denied credit on the basis of her ICB record and secondly that her ICB record affects her fitness and probity checks from the perspective of her employment. The First Complainant has not provided sufficient evidence to support her assertions. That said, I accept as a general proposition that an incorrect credit report can affect one's ability to access credit and it further appears from the ICB's website that the designation "P" leads to the lowest possible credit score. Such a scenario has very serious implications. Due to the frequency of the Provider's use of the designation "P" in respect of the Complainants' ICB report, and in particular its completely unjustifiable use of the designation as recent as January 2017, combined with its refusal to accept that the designation was inappropriate or incorrect throughout the course of the investigation of the complaint, I am of the view that it is appropriate to direct compensation in the sum of €15,000 to the Complainants to compensate them for the inconvenience associated with the incorrect and unreasonable designation and the Provider's refusal to accept that it has acted wrongly and correct the record.

On a final note, it appears from the documentation that the Provider did not register a complaint from the First Complainant in relation to the ICB until June 2017. By letter dated 14 June 2017, the Provider referred to the First Complainant's complaint dated 12 June 2017 regarding information reported to the ICB. This complaint was responded to promptly by 7 July 2017, dismissing the complaint and expressing the Provider's view that it had reported the correct designation, mirroring the approach it took to its response to the complaint to this office. My concern in relation to this is the date that the complaint was logged.

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As set out above in the correspondence, the First Complainant raised the issue of the ICB designation in an email to her third party representative which was sent to the Provider by cover letter dated 6 December 2016. The matter was raised by the third party representative again by letter dated 30 May 2017.

In its final response letter dated 7 July 2017, the Provider appears to have received the complaint on 2 June 2017 (not 12 June) which suggests, perhaps, that the enclosure to the third party representative's letter of 30 June 2017 was what was logged as the complaint. It would appear to me that a complaint should have been logged in December 2016 when the issue was first brought to the attention of the Provider.

The Provider has, in its post Preliminary Decision submission dated **9 July 2020,** argued that I made an error in law by finding that the conduct complained of was 'contrary to law' in line with Section 60(2)(a) of the *FSPO Act 2017 .*

The Provider:

> "notes that section 60(2)(a)of the Financial Services and Pensions Ombudsman Act 2017 notes that a complaint can be upheld on the ground that that the conduct complained of was contrary to law. The Provider submits that no evidence has been entered that any breach of law has occurred, nor does that Preliminary Decision reference what law was breached. Reporting to the ICB is not based on any statute or legal requirements. Rather, it is based on a private contractual arrangement. In the absence of any indication of how the Provider acted contrary to law, the Provider submits that the Preliminary decision made an **error of law.**

The Provider appears to rely on its contract with the Complainants as a basis for its reporting to the ICB. In a letter to the Complainants dated 1 March 2015 the Provider stated:

> *"All members of the Irish Credit Bureau (ICB) including [the Provider] are obliged to report the status of all loan accounts to the ICB at the end of every month. Any credit bureau reporting will be subject to and in accordance with the relevant requirements as may be varied from time to time where permitted by contract or required by law. Please note that the existence of an adverse payment profile on your account could impair your access to future credit from other institutions". See Appendix 4.*

The Provider has a limited legal entitlement, deriving from its contract with the Complainants. In my view this does not extend to reporting incorrect information. It is for this reason that I found the conduct complained of was contrary to law under Section 60 (2) (a) of the ***Financial Services and Pensions Ombudsman Act 2017*** (the Act). However for the avoidance of doubt, I have been very clear that I also find that the conduct of the Provider was unreasonable and unjust under 60 (2) (b) of the Act. It is also evident from the post Preliminary Decision submissions that the conduct complained of was based on a mistake of fact, on the Provider's part, as provided for by 60 (2) (e) of the Act. Furthermore, I find that an explanation for the conduct complained of was not given when it should have been given as provided for under 60 (2) (f) of the Act."

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In my Preliminary Decision, I indicated my intention to direct the Provider to pay a sum of €15,000 to the Complainants. The Provider has argued that that I erred in law by directing this level of compensation.

The Provider goes on to submit that:

> *"the Preliminary Decision does not establish how the €15,000 was calculated… no evidence has been submitted to show that the Complainants suffered any loss or damage concerning the reporting. Considering the level of arrears on the Complainants' account, even if a 'P' had not been reported, and a '9' had been reported from April 2015 to June 2016 and 'M' or '9' reported for January 2017, the level of arrears would have been evidenced on the ICB record".*

The Provider further argues that:

> *"The Complainants have not shown how any loss was caused. No evidence has been submitted that credit was denied or evidence submitted to show that the First Complainant's career was impacted. In these circumstances, the Provider submits that compensation of €15,000 is an **error of law."***

I do not propose to direct compensation for a specific loss but rather for the inconvenience associated with the incorrect and unreasonable designation and the Provider's refusal to accept that it has acted wrongly and correct the matter thereby causing further inconvenience to the Complainants. I believe the Provider's arguments in relation to the level of compensation indicates a lack of understanding of the effect of its conduct on the Complainants and the inconvenience caused to the Complainants by having their credit rating incorrectly reported and the lengths they have had to go to in order to have the matter rectified.

Because of the unreasonable conduct and actions of the Provider as outlined in my Decision, I uphold this complaint and direct the Provider to pay a sum of €15,000 to the Complainants.

I also direct the Provider to correct the Complainants' record with the ICB and, if necessary, with the Central Credit Register. I further direct the Provider to furnish the Complainants with a letter setting out that it incorrectly reported their credit record.

Because I am concerned that the manner in which the Provider reports to the ICB may have adverse implications for other customers, I propose to bring this matter to the attention of the Central Bank of Ireland for any action it may wish to take.

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) (a), (b), (e) and (f).***

/Cont'd…

Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to rectify the conduct complained of by (i) making a compensatory payment to the Complainants in the sum of €15,000, 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, (ii) by correcting the Complainants' record with the ICB and, if necessary, with the Central Credit Register and (iii) by furnishing the Complainants with a letter setting out that it incorrectly reported their credit record.

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

15 October 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.