



<b><u>Decision Ref:</u></b>	2020-0426
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Current Account
<b><u>Conduct(s) complained of:</u></b>	Handling of fraudulent transactions
<b><u>Outcome:</u></b>	Rejected

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

This complaint concerns the Complainant's loan with the Provider, a credit union.

The complaint is that the Provider gave the Complainant a loan without his knowledge; the Provider opened a current account in the Complainant's name without his knowledge; the Provider failed to comply with the Complainant's request for copies of his loan agreement and the loan, which the Complainant submits he was unaware of, has negatively affected his Irish Credit Bureau (ICB) credit rating. The Complainant further complains that he was mis-sold a payment protection insurance policy ("the Policy").

**The Complainant's Case**

In **December 2015**, the Complainant applied for a loan of €8,000 which was approved and drawn down. The Complainant made repayments of €83.64 every second week. The Complainant also purchased a payment protection insurance policy at a cost of €6.68 every second week. In **January 2017**, the Complainant stopped making loan repayments. After some months, a temporary loan re-schedule was determined as the next appropriate step.

The term of the Complainant's loan was re-adjusted by means of an extension of time to reduce the Complainant's monthly repayments to a more affordable repayment of €25 per month. In **July 2017**, the Complainant received the rescheduled paperwork from the Provider. The Complainant contacted the Provider by telephone to inform it that he did not agree to the loan reschedule and that he would not be signing the form.

The Complainant states that he did not sign up to a loan restructure. The Complainant states that the Provider was holding him to this loan. The Complainant states that his loan taken out in **December 2015** was put to zero after the reschedule. The Complainant states that this made it look to the ICB that the “first loan” was not paid, that this was now a bad debt and a new loan was taken out.

The Complainant states that this “new loan” is now a bad debt and was referred to the ICB on **14 May 2018**.

The Complainant states that a “second current account” has been set up with the Provider in the Complainant’s name without his knowledge. The Complainant states that:

*“another current account has also been opened with the Provider in his name that he has no knowledge of”*

The Complainant states that the rescheduled loan has caused difficulties for him with the Irish Credit Bureau.

Furthermore, the Complainant is dissatisfied that despite requesting copies of his loan agreement from the Provider, he has not been furnished with these.

The Complainant states that he was mis-sold a payment protection insurance policy. In **February 2017**, the Complainant submitted a policy claim to the Provider which was underwritten by a third-party insurance provider.

In order to take out a policy, it is a requirement that a person must work 18 hours per week. At the time the Complainant purchased the policy, he confirmed that he was working 18 hours per week. The third party provider rejected the Complainant’s claim under the policy on the basis that he was on a zero hours’ contract and did not work 18 hours per week.

The Complainant is seeking for the bad debts to be cancelled and the “first loan” to be reactivated and paid off at a reduced rate as previously agreed. The Complainant states that he does not want to have any bad debts or bad credit history against his name and that he is willing to pay the “first loan” as agreed.

### **The Provider’s Case**

The Provider states that in **December 2015** a loan of €8,000 was issued to the Complainant with agreed repayments of €83.64 every second week. The Provider further states that the Complainant also opted for a payment protection insurance policy at a cost of €6.68 every second week. At this time, the Complainant confirmed that he worked in excess of 18 hours per week which is a requirement to be covered by this policy.

The Provider states that in **January 2017** payments against this loan ceased. In **February 2017**, the Complainant claimed under his policy. The Provider states that this claim was rejected as the Complainant was on a zero hours' contract and that his employer had confirmed that he did not work 18 hours per week. However, as a gesture of goodwill the policy was cancelled and the premiums paid were refunded to the Complainant.

The Provider states that throughout **May 2017** it continued to contact the Complainant to assist him to put in place a payment schedule on his account.

The Provider states that in **June 2017**, the Complainant attended its offices to discuss his account. The Provider states that at this meeting the Complainant was given the following documents

*"A copy of the transcript from the call when the loan application was made; a copy of the letter sent to the member in April 2017; a copy of all the PPI documents; the complaints form; a journal to transfer €207 off the outstanding interest and an audio version of the call was also given to the member".*

The Provider states that the Complainant signed a document to confirm that he received these items. The Provider states that at this meeting a temporary loan reschedule was determined as the next appropriate course of action. The Provider states that

*"This adjustment would extend the term of the loan by reducing the repayments to a more affordable repayment for the Complainant, in this case €25 per week. The outstanding balance on the loan at this time was €7,284.61".*

The Provider states that in **June 2017** this reschedule was approved by its credit committee and the amendment was made to the Complainant's account. The Provider states that this amendment appears on the Complainant's statement as

*"Loan of €0 issued on 30-Jun-2017"*

The Provider states that this is how its system processes a reschedule.

In **July 2017** the Provider states that the Complainant contacted its offices to say that he never agreed to the reschedule and that he wouldn't be signing the form.

The Provider states that

*"as no payments had been received since January 2017, they were left with no option other than to write off this account. Following receipt of this letter, you contacted this office to dispute this write off. The write off was reversed until this matter has been resolved and credit control have been instructed to hold off on any action until they receive further instruction".*

/Cont'd...

The Provider further states that

*"..there have been no payments made to this account between January 2017 and May 2018. A payment of €5 was received into this account on 9 May 2018 following your promise the previous week to make a weekly payment of €5. To date, this is the only payment received on this account following this promise".*

The Provider states that the balances on the Complainant's account are as follows:

*"Shares €363.03  
Loan: €7,279.61  
Loan Interest Due €926.83  
Arrears now total €2,716.01*

The Provider states that it is happy to reverse the reschedule to this account but the Complainant must be aware that this may cause the arrears figure stated above to increase.

The Provider further states that if the Complainant is not in a position to make a regular payment against the loan outstanding, the Provider would recommend writing off this account to prevent any further interest accruing on the account. This means that the loan of €7,279.61 would still be outstanding, but no further interest would accrue on the account.

As a gesture of goodwill, the Provider will clear the outstanding interest due should the Complainant be willing to move on from this and engage with its credit control department. The Provider states that this would mean that the Complainant would have to repay his loan of €7,279.61 and not the interest accrued to date of €926.83.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider gave the Complainant a loan without his knowledge; the Provider opened a current account in the Complainant's name without his knowledge; the Provider failed to comply with the Complainant's request for copies of his loan agreement and the loan, which the Complainant submits he was unaware of, has negatively affected his Irish Credit Bureau (ICB) credit rating. The Complainant further complains that he was mis-sold a payment protection insurance policy.

### **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

/Cont'd...

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.

I note that the Complainant, in his post Preliminary Decision submission, indicated that he would be willing to attend an Oral Hearing. However, I do not believe an Oral Hearing is necessary to determine 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 13 November 2019, 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, and various extensions of time afforded to the Complainant to assist him in making his further submission, the Complainant made a submission under cover of his letter to this Office dated 24 February 2020, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

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

In my Preliminary Decision I had detailed that:

*"The Complainant states that a "second current account" has been set up with the Provider in the Complainant's name without his knowledge. The Complainant states that:*

*"another current account has also been opened with the Provider in his name that he has no knowledge of"*

The Complainant has, in his post Preliminary Decision submission, expressed that he wishes to:

*“Make it quiet (sic) clear that when joining with the [Provider], I did **Not** open a **Current Account**, **I opened a Shares Account**. If there is any Current Account in my name it was made without my knowledge and permission”*

[Emphasis added by Complainant]

In the present case the term ‘current account’ does not refer to a day to day banking current account. The Provider has, in its submission to this Office, detailed that:

*“In relation to your complaint about a current account being set up on your account, this is a (sic) not a current account in a banking sense, but a receiving sub account on all members accounts to enable us to receive EFT payments into members accounts should they wish to make any, which are then disbursed to the intended account. This account was only used to hold the PPI refund until it was moved”.*

The Complainant took out a loan with the Provider in **December 2015**. At this time, he also purchased a payment protection insurance policy. The Complainant stopped making loan repayments in **January 2017** and made a claim under his insurance policy.

I note from the documentary evidence before me that the claim was rejected on the basis that the Complainant was not working a minimum of eighteen hours, which is a requirement under the Policy. I further note that as a gesture of goodwill the Provider cancelled the policy and refunded the Complainant.

I can see no basis for the Complainant’s complaint that the policy was mis-sold to him. The Complainant was advised at the time of purchasing the policy it was a requirement under the policy that he must work a minimum of eighteen hours per week.

A recording and a transcript of a call between the Complainant and the Provider on 12 November 2015 have been provided in evidence.

I note, among other things, that this call included the following exchange:

**Provider’s Agent**      *“This credit union currently offers Payment Protection Insurance. PPI is an optional extra and the purchase of this Insurance is not compulsory in order to access a loan from This Credit Union.*

*This insurance covers your loan repayments in the event of Accident or illness causing you to be out of work for in excess of 30 days, pre-existing conditions excluded. There is also cover for involuntary redundancy.*

*Are you interested in this?”*

**Complainant**      *“Yes how much is it?”*

**Provider’s Agent**      *“It’s an extra €12.84 on top of your loan repayments”.*

/Cont’d...



**Complainant** "Yeah okay".

**Provider's Agent** "I need to go through a questionnaire with you is that okay [Complainant]. Just answer yes or no to these questions.

*I am over 18 years of age and will be under 70 years during part of my loan term".*

**Complainant** "Yes".

**Provider's Agent** "I am resident in the Republic of Ireland".

**Complainant** "Yes".

**Provider's Agent** "I work at least 18 hours per week and have done so for at least the last 6 months".

**Complainant** "Yes".

**Provider's Agent** "Do you have alternative disability and/or involuntary unemployment insurance in place to cover your regular loan repayments if you are unable to work for more than 30 days due to accident, sickness or voluntary unemployment?"

**Complainant** "No".

**Provider's Agent** "Do you receive sick pay if you are out of work due to an accident or illness?"

**Complainant** "I receive my disability allowance, that's it. I get that cos I'm [details of medical condition redacted]".

**Provider's Agent** "Okay but if you are out of work sick on a normal day do you receive sick pay?"

**Complainant** "No".

**Provider's Agent** "Do you have savings that you could use to cover your loan?"

**Complainant** "No just what I have with you".

**Provider's Agent** "Are you in good health and fit to follow your normal occupation or duties?"

/Cont'd...

**Complainant** "Yes".

**Provider's Agent** "Are you receiving an illness or injury related benefit for more than 3 months?"

**Complainant** "No, just my disability allowance for my [details of medical condition redacted]".

**Provider's Agent** "If the loan is granted and the Payment Protection goes through you will receive the following

- Member Information Document
- Complete Policy Document
- Terms of Business [third party provider]
- Terms of Business

You will read these documents and you have a 30 day cooling off period if you wish to cancel the policy – is that okay?"

**Complainant** "Yes".

**Provider's Agent** "So over 5 years your repayment will be €173.54 pf".

**Complainant** "Okay".

**Provider's Agent** "Your payment protection insurance is €12.84 and €160.70 from your loan and interest, a total of €173.54 – is that okay

**Complainant** "That's grand".

**Provider's Agent** "Have you been referred to or seen by a specialist or consultant at a hospital clinic in the last 12 months with the exception of routine antenatal check up's or routine orthopaedic treatments?"

**Complainant** "No".

**Provider's Agent** "Would you be popping into one of the offices to sign the paperwork or do you want me to post it to you?"

**Complainant** "I'll pop into [branch location]".

/Cont'd...



**Provider's Agent**      *"The Credit Union is a member of the Irish Credit Bureau (ICB). We require your permission to undertake a search and to share your credit history with ICB.*

*A record of our search will be held by ICB for 12 months while the information we provide them can be held for 5 years following the full payment of your loan. Do you consent to this?"*

**Complainant**      *"Yes".*

The Complainant has in his post Preliminary Decision submission, questioned the relevance of this call. The Complainant has stated in his submission that:

*"I noted in your preliminary decision you state that the provider supplied a number of items in evidence. I concur that they handed some evidence but not all. They withheld crucial evidence such as the **Telephone [conversation] applying for the loan and PPI**. The telephone [conversation] they supplied was from a **previous loan application and PPI, this was for €16,000. Plus PPI. Which was refused.***

***If you listened to the telephone [conversation] of the evidence that the [Provider] supplied to you, you would notice that the recording was for a loan of €16,000.plus PPI. This loan was refused.***

***The actual loan that I applied for after been refused the €16,000. Plus PPI loan, was €8,000. Plus PPI, which was approved. This call was not supplied and this is were (sic) I was mis-sold PPI.***

[Emphasis added by Complainant]

From my review of the file and from my consideration of the recordings of the calls furnished in evidence, it is clear that the call in question was for a loan in the amount of €16,000.

However, based on the documentation submitted by the Provider in its submissions to this Office and its Company File, it demonstrates that the Provider refused this loan amount. The Complainant was notified of his right to appeal the Provider's decision and subsequent to this appeal it would appear that the Provider authorised the loan application but at a maximum amount of €8,000.

The transcript from the call above demonstrates that the Complainant had been notified of the requirements regarding the Payment Protection Insurance, specifically the requirement that he had been working for at least 18 hours per week and had done so for at least the previous 6 months.

/Cont'd...

The Complainant further argues in his post Preliminary Decision submission that:

*"[the Provider] was fully aware of my working situation, that I was on a zero hour contract and also on Disability Allowance.*

*I was not informed at the time I applied for the loan of €8,000 that I needed to be working minimum of eighteen hours to be entitled to PPI"*

The Provider has, in its response to this Office, submitted documentation which details the eligibility criteria for the optional Payment Protection Insurance policy.

A document included in the Provider's submission is titled 'Payment Protection Insurance Application Form', and details under 'section A – Personal Eligibility' of a borrower. This section asks four yes or no questions of the borrower.

The questions asked are:

1. *I am over 18 years of age and will be under 70 years during part of my loan*
2. *I am resident in the Republic of Ireland*
3. *I work at least 18 hours per week and have done so for at least the last 6 months (not including seasonal or temporary work)*
4. *I am a member of, and the first-named borrower on a loan agreement with [the Provider]*

The yes box on the form is ticked for all four questions.

On the same application form, under 'section F-Declaration' it details the following:

*"Important:*

*Please ensure that you have read and understood the Member Information Document before completing this section. For full terms and conditions please read the Group Policy Document. Please read the [Provider's] Terms of Business to decide if their insurance services are right for you.*

*I confirm that I have been provided with a copy of the Member Information Document, the Group Policy Document and a copy of my [Provider's] Terms of business".*

Under the above statement the 'yes' box was ticked to indicate that the Complainant had received and considered these documents.

At the bottom of the same page below the statement “*with my signature, I confirm that the statements above are true. I understand that incorrect information may affect the cover I receive and may affect any claims that I may make*”, the Complainant signed the application form.

It appears from the documentary evidence provided that the Complainant was, or ought to reasonably have been aware, of the requirements to be eligible for the optional Payment Protection Insurance.

When the claim was made, the Complainant was on a zero hour contract. I note the Provider contacted the third party insurer on behalf of the Complainant to see if anything further could be done.

Notwithstanding that the Complainant was on a zero hours’ contract, the insurer contacted the Complainant’s employer to see if he had been working more than 18 hours per week. The employer confirmed that he had not worked more than 18 hours per week in the previous 6 months. I note that as a result, the Provider cancelled the policy and refunded the premiums paid by the Complainant to him. Though it was not obliged to do this in the circumstances, I welcome the fact that it did.

In relation to the Complainant’s loan, I note that the Complainant makes reference to “*loan 1, 2 and 3*”. There is only one loan involved in this complaint and that is the loan in the sum of €8,000 drawn down by the Complainant in **December 2015**. The Complainant must understand that when he stopped making repayments in January 2017, the Provider sought to engage with him to agree a repayment arrangement agreeable to both parties.

In my Preliminary Decision I had stated that:

*“I note that it was decided that the best option would be for the Provider to re-schedule the Complainant’s loan account. This meant that the Complainant would re-pay a more affordable amount to the Provider each month. The Complainant attended a meeting with the Provider and agreed to this loan re-scheduling. There is documentary evidence before me which evidences that the Complainant signed documents to confirm he received this documentation at the meeting in **June 2017**”*

The Complainant, in his post Preliminary Decision submission, states that the above statement is:

*“untrue, as I signed no documentation to re-schedule a loan. If there is such documentation in your [possession] I wish to see it. If it’s the case that there is a document that I was supposed to have signed agreeing to a re-schedule I want Gardaí called in to investigate”.*

It would appear that this statement, by me, has caused confusion. For the avoidance of doubt, no signed document regarding the loan re- schedule has been received by my Office.

/Cont’d...

What I intended to express, is that evidence has been supplied which shows a meeting did take place between the parties and that this would evidence that at a meeting in June 2017 the Complainant met with two named representatives of the Provider at its office to discuss the account.

The Provider submits that at this meeting *“the member was given the following documents”*:

- A copy of the transcript from the call when the loan application was made
- A copy of the letter sent to the member in April 2017
- A copy of all the PPI documents
- The Complaints form
- A journal to transfer €207 off the outstanding interest
  
- An audio version of the call was also given to the member

The Provider goes on to state that:

*“The member signed a document to confirm he received these items. Following a discussion to try to achieve a repayment plan to suit the member’s needs a temporary loan reschedule was determined as the next appropriate course of action”.*

The Provider has, in its Company File, submitted a copy of this signed document, which confirms the receipt of the above list, and serves as evidence to show a meeting occurred.

Following on from the above meeting a loan re-schedule was approved by the Provider’s credit committee in June 2017. At this time, the Complainant contacted its offices to say that he never agreed to the loan reschedule.

I note that the balances on the Complainant’s account were as follows:

*“Shares €363.03  
Loan: €7,279.61  
Loan Interest Due €926.83  
Arrears now total €2,716.01”*

It is clear that at all times, the Provider has made every effort to assist the Complainant with the loan. It has engaged with the Complainant, set up meetings for the Complainant to attend with the Provider and had told the Complainant that if he is not happy with the loan re-schedule, it is happy to reverse the re-schedule but that this may cause the arrears figure on his account balance to increase.

Furthermore, the Provider is willing to clear the Complainant’s outstanding interest due if he is willing to move on from this and engage with its credit control department.

/Cont’d...

In light of the above, I have not been provided with any evidence that the Provider has acted in any way improperly or unreasonably in its dealings with the Complainant, and there is no evidence of mis-selling of a payment protection insurance policy.

In relation to the Complainant's ICB record, I note he was informed by the Provider in a telephone conversation of 12 November 2015, as transcribed earlier, that a record of the loan would be notified to the ICB. He was asked for his agreement to this and he agreed. The Complainant stopped paying the loan and it is therefore inevitable that he will incur a negative ICB record. I have been provided with no evidence that the Complainant's ICB record has been incorrectly reported.

For the reasons set out in this Decision, I do not uphold this complaint.

### **Conclusion**

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

**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**

24 November 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**

/Cont'd...

**(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.**

