



<u>Decision Ref:</u>	2020-0458
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Personal Loan
<u>Conduct(s) complained of:</u>	Maladministration Incorrect information sent to credit reference agency
<u>Outcome:</u>	Rejected

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

The Complainant entered into two loan agreements with the Provider to assist with funding the cost of her third level education. Loan 1 expired in **October 2017** and Loan 2 expired in **September 2019**. The Complainant did not repay Loan 1 on its expiry. As a result, the Provider demanded repayment of both loans and terminated the Complainant's banking facilities. The Complainant is dissatisfied with the manner in which the Provider handled her loan accounts and with its reporting to the Irish Credit Bureau (ICB) in respect of her loans.

The Complainant's Case

The Complainant explains that she graduated in **June 2017**, and part of her education costs were funded by the Provider in the form of Loan 1 and Loan 2.

In respect of Loan 1, the Complainant states she *"... covered the interest cost over the years which was taken by direct debit from my working current account and continued to be taken until loan was cleared in full implying to me I was not in breach of any contract."* Referring to her *initial contacts* with the Provider, the Complainant *"... sought to place the loan on capital & interest payments over the longest possible period of time at the lowest rate possible."* The Provider advised the Complainant that the longest term it could offer was 5 years, *"... so I sought options elsewhere and obtained sanction of funds over a longer term and at a better interest rate and cleared the loan in May 2018."*

Loan 2 was entered into in **October 2014** and “... was a special loan for my course whereby it remained in place for 5 years interest free with repayment to be made in October 2019.”

The Complainant explained that she contacted the Provider on **26 June 2018** as she had received a job offer abroad and needed a small amount of funding to pursue this opportunity. On speaking with one of the Provider’s staff members, it materialised that an incorrect letter had been issued to the Complainant calling in Loan 2. The staff member investigated the terms of the loan and confirmed that it was not due for repayment until **October 2019**. The Complainant was advised that the staff member would resolve the matter. It was also agreed during this conversation that the Provider would move a credit balance in respect of Loan 1 to the Complainant’s current account. This loan was in credit as it had been cleared in the weeks before the conversation. The Complainant received a further letter calling in Loan 2 the next day and assumed it overlapped with the previous day’s conversation.

The Complainant advises that she travelled abroad assuming everything was in order. However, on **30 August 2018**, she received a letter from the Provider advising that it had closed the Complainant’s working current account “... in which I had funds to meet Direct Debits, had also transferred the credit from loan 1, all into loan 2 and added interest to the loan.” The Complainant also explains that direct debits have since been returned unpaid and the Complainant is in danger of losing her life cover which she may have difficulty reinstating for medical reasons.

The Complainant explains that both loans are showing her in a negative light on the ICB. Loan 1 was cleared in full and the Complainant was never made aware that she was in breach of the terms of this loan, and Loan 2 was not due for repayment until **October 2019**.

The Complainant states that numerous emails were sent to the Provider in respect of these matters, but nothing has been done. Her complaint was not acknowledged and no update letters were issued. The Complainants loans have also been passed to the debt collection company.

The Provider’s Case

The Provider has set out a detailed timeline and account history in respect of the Complainant. Following this, the Provider explains that Loan 1 was entered into on **11 July 2016** in the amount of €55,000. The repayment of this loan consisted of 15 consecutive monthly payments of €343.20 commencing on **8 August 2016** followed by the final payment on **9 October 2017**. The final payment to clear all amounts outstanding in respect of the loan. Loan 2 was entered into on **2 September 2014** with €10,001 being payable in one instalment on **9 September 2019**.

The Provider explains that Loan 2 was not in arrears but Loan 1 was in arrears. In **August, October and November 2017**, the Provider wrote to the Complainant to explain that Loan 1 was in arrears and requested that she contact the Provider to discuss this. On **14 November 2017**, the Complainant emailed the Provider enquiring about interest rates.

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The Complainant also advised the Provider that she had received a quote from another financial services provider. The Provider supplied the Complainant with the requested information the same day.

On **29 November 2017**, the Provider emailed the Complainant for an update in terms of putting a structure in place for Loan 1. No further communication was received from the Complainant and Provider issued a letter to the Complainant advising that she was in breach of her loan agreement. In this letter, the Provider sought a proposal from the Complainant as to how Loan 1 would be cleared. However, no proposals were received. On **13 December 2017**, the Provider wrote to the Complainant explaining that if the arrears on Loan 1 were not addressed within 2 months, all loans would be terminated and the entire balances would become immediately due for payment. As no proposals were received, the Provider demanded payment from the Complainant on **16 February 2018**.

The Provider advises that accounts ending 133, 489 and 562 closed on **30 August 2019** and the credit balances were transferred to Loan 2. Account ending 059 was closed on **6 September 2019**.

Responding to the Complainant's submission that she contacted the Provider in **January/February 2018** to advise it of her intention to lodge €55,000 sourced from another financial services provider, the Provider states that it has found no record of any contact from the Complainant during this period.

The Provider also states that the direct debit continued to present to Loan 1 after its expiry in **October 2017** as the account was in arrears with the debt still outstanding. The Complainant lodged €55,000 to Loan 1 on **11 June 2018**. This was not the total balance outstanding on the account. The balance on the statement of account excluded the interest accrued since **16 March 2018** of €988.31. The balance appearing on the statement was €651.43, meaning there was a shortfall amount of €336.88.

In relation to the Complainant's branch visit on **26 June 2018**, the Provider states it was confirmed that there had been a credit to Loan 1 on **11 June 2018** with a credit balance on the account of €651.43. The Complainant was made aware that the Provider's staff member attempted to contact the Recoveries Team and was assured that an email would be sent to this department outlining the position of the account.

The Recoveries Team wrote to the Complainant on **11 June, 27 June, 30 August** and **17 September 2018**. On **22 August 2018**, the Recoveries Team rang the Complainant to discuss the loan account, however, the call went to voicemail and a message was left for the Complainant.

The Provider advises that it did not alert its Recoveries Team that the Complainant was leaving the country as no specific details were provided by the Complainant nor were updated contact details or change of address information given. It states that the Complainant's contact details were also confirmed during the meeting on **26 June 2018**.

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In terms of the Complainant's ICB records, the Provider states that it issued letters to the Complainant between **2016** and **2018**. The Provider advised that details of her borrowings may be reported to credit reference agencies.

The Provider explains that it considered the matters discussed during the meeting on **26 June 2018** as queries and did not log a formal complaint. The Complainant contacted this Office on **6 January 2019**. A complaint was logged by the Provider on **25 January 2019** and a Final Response letter was issued on **12 February 2019**. The Provider states that it:

"... sincerely apologises that in June 2018 a complaint was not logged for the Complainant. The Provider mistook this conversation as an enquiry rather than an expression of dissatisfaction. ..."

The Complaints for Adjudication

The complaints are that the Provider:

1. Failed to adhere to the repayment terms of the Complainant's loan accounts;
2. Wrongfully demanded repayment of Loan 2 prior to its expiry;
3. Wrongfully and/or unreasonably closed the Complainant's accounts;
4. Reported incorrect information regarding the loans to the Irish Credit Bureau; and
5. Failed to acknowledge and/or respond to the Complainant's correspondence and/or complaints.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict.

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

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

The Complainant entered into Loan 1 on **5 July 2016**. The amount advanced on foot of this loan was €55,000 repayable by way of 15 consecutive payments of €343.20 and a final payment that was to be equal to all amounts that remained outstanding. This loan expired on **9 October 2017**.

The Complainant entered into Loan 2 in **September 2014** in the amount of €10,000. This loan was repayable on expiry in **September 2019**, in the amount of €10,001.

The Provider wrote to the Complainant in respect of Loan 1 on **12 August** and **5 September 2016** advising that it had entered arrears. A further letter was issued on **22 September 2016** which stated, amongst other matters, that:

"...Please note that your arrears may already have been reported to the Irish Credit Bureau. ... Not taking action can have significant consequences:

- ...
- *Continuing arrears may also be reported to the Irish Credit Bureau, which will have a further negative effect on your credit rating.*
- *Non-payment of any amount due on your loan may be an event of default in respect of all other facilities with [the Provider].*
- *..."*

Five further arrears letters were issued to the Complainant between **October 2016** and **August 2017** in respect of Loan 1. The Provider wrote to the Complainant on **31 August 2017** notifying her of the expiry of Loan 1:

"We're writing to remind you that your final loan repayment is due shortly.

You will need to contact us to make specific arrangements to make the final loan repayment on or before the repayment due date. This could involve you completing a new loan application for a further year, which we may, at our discretion, approve or decline.

We may report missed or late repayments to the relevant credit rating agencies. This could negatively affect your credit rating and make it more difficult for you to get credit in the future. There are also other consequences of failing to make this repayment on time and these are set out in your credit agreement. ...”

This was followed by arrears letters in **September, October and November 2017**.

The Complainant wrote to the Provider’s Branch Manager on **14 November 2017** as follows:

“I’d like to put my larger loan on capital interest repayments. What’s the longest term and best rate [the Provider] can do? [Other Financial Services Provider] have offered to do it for me over 10 years at 5%.”

The Branch Manager responded on the same day advising:

“... We have forwarded a separate email with a breakdown of a loan in the sum of €55,100.00 over a number of different terms. The maximum term is 5 years. Please let me know if you would like us to proceed with reapplying for playing (sic) this facility on Capital and interest over that term. ...”

A follow up email was sent by the Branch Manager on **29 November 2017**:

“... I refer to our mails of the 14th last and now request that an update regarding putting a structure in place around this facility or if you will be clearing same from other sources, as indicated in your previous mail.

This agreement has expired and it is really important that a new structure is put in place or cleared. ...”

The Provider wrote to the Complainant on **13 December 2017** in the following terms:

“The above account [Loan 1] currently displays a debit balance in excess of the approved limit and is therefore in breach of the terms of your agreement with the Bank. The Bank has endeavoured to engage constructively with you however, the matter has not been addressed by you.

Therefore, the Bank is left with no option but to notify you that if you do not make a payment to clear the excess amount or present an alternative proposal that is satisfactory to the Bank within two months of the date of this letter, repayment of your facilities will be demanded and all your banking facilities will be terminated.

This will have the following consequences:-

- 1. Your bank accounts and overdraft facilities (if any) will terminate and any overdrawn balances will be immediately due for payment.*

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2. *Your loan accounts (if any) will terminate and the entire balances will be immediately due for payment.*
3. *Any money standing to the credit of any of your accounts held by the Bank will be taken by the Bank and set off against the amount you owe on your other accounts.*
4. *...*
5. *Your standing orders and direct debits (if any) will be cancelled.*
6. *...*
7. *Details about you and your borrowings, including any arrears, may be reported to credit reference agencies, which may include the Central Credit Register ...”*

By letter dated **16 February 2018**, the Provider informed the Complainant that all of her accounts and payment services had terminated, and a formal demand for payment was made.

The Complainant lodged €55,000 towards Loan 1 on **11 June 2018**, leaving a debit balance, according to the relevant account statement, of €651.43. Also on **11 June 2018**, the Provider issued a demand for payment in respect Loan 2. This was followed by a letter dated **27 June 2018** in similar terms to the letter issued on **13 December 2017** in respect of Loan 1. The Complainant was further advised of the termination of her account facilities by letter dated **30 August 2018**. The Complainant was notified of the appointment of a debt collection firm on **17 September 2018** in respect of Loan 2.

Analysis

Loan 1 fell into arrears in **August 2016**, and as can be seen, several letters were sent to the Complainant notifying her of the situation and requesting that it be addressed. The evidence shows that these letters were completely ignored, with no engagement from the Complainant as to how she proposed to bring her loan account up to date. The Provider also wrote to the Complainant in advance of the expiry of Loan 1, reminding her of its expiry and the need to contact the Provider to make the necessary arrangements for the final payment. This did not occur, and further arrears letters were issued.

There was a brief email exchange between the Branch Manager and the Complainant in **November 2017**. However, the Branch Manager's request for an update in respect of the discharge of Loan 1 went unanswered. This was followed by a letter from the Provider in **December 2017**, explaining that it was left with no option but to demand repayment of the loan and terminate the Complainant's banking facilities if a satisfactory proposals to address Loan 1 was not received within 2 months. No proposals were received; and the Provider proceeded to take the actions outlined in its December letter advising the Complainant of this in **February 2018**.

In **June 2018**, €55,000 was lodged to Loan 1's account. However, around the same time, the Complainant received a demand for repayment of Loan 2 despite it not expiring until **September 2019**. A letter in similar terms to the December letter was issued to the Complainant on **27 June 2018** in respect of Loan 2. The Complainant was advised of the termination of her account facilities by letter dated **30 August 2018**.

This letter again sought payment outstanding. It concluded *"if you cannot pay the full amount demanded or if you wish to discuss your debt, please contact us immediately"*.

Pursuant to clause 8(c) of Loan 1's *Credit Agreement*, it was agreed that if repayments were missed on Loan 1, the Provider would be entitled to demand repayment of not only that loan, but any other loan the Complainant had with the Provider. Clause 8(c) states:

"Please remember that if you miss any of your repayments, the following could happen:

...

c) *we may require you to repay your loan early (**and any other credit facility that you have with us**). ..."* [My emphasis]

This was also highlighted to the Complainant in the Provider's letter of **13 December 2017**. Additionally, certain of the Provider's arrears letters, dated for example **22 September 2016**, advised that non-payments of amounts outstanding on one loan may be considered an event of default in respect of other loan facilities. In terms of Loan 2, clause 3 of the *General Terms and Conditions* states:

"Having followed the terms of applicable law and without affecting our right to demand repayment at any time, we may demand repayment if any of the following happen (defaults);

- *If you fail to pay **any money you owe** us on the date it is due and this failure lasts for more than 21 days after we have written to tell you that the amount is overdue; ..."* [My emphasis]

The correspondence issued to the Complainant was sent to the same address as the one recorded by the Complainant on her Complaint Form, and while the Complainant appears to have moved abroad in **July/August 2018**, there is no evidence to demonstrate that she provided updated correspondence or contact details to the Provider. In the circumstances, I accept that it was the Complainant's responsibility to notify the Provider of any changes to her contact details. Further to this, essentially all the correspondence referred to above was issued at a time when the Complainant was in the country and prior to her departure abroad.

The Complainant met with one of the Provider's staff members in or around **26 June 2018**. The demand for payment in respect of Loan 2 and the credit balance on Loan 1 appear to have been discussed at this meeting.

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In respect of the demand for payment, the Complainant submits she was advised that the letter was issued in error and that Loan 2 did not expire until **September 2019**. In respect of this meeting, the Provider stated in its Final Response letter dated **12 February 2019** that:

“... You enquired about the expiry date of [Loan 2] and [the Provider’s staff member] explained that the loan expiry date on the system was October 2019 but that the limit on the loan account had already expired. [The Provider’s staff member] explained that your accounts were managed by our Customer Recoveries department and she was not familiar with their procedures. ... She further explained that if an error had occurred with [Loan 2] that it would be remedied but this could not be done in branch. It was also advised you should contact Customer Recoveries directly ...”

Given the correspondence which issued to the Complainant prior to this meeting and the explanation contained in the Provider’s Final Response letter, I am not satisfied the Complainant was told the demand letter was issued in error.

The Complainant is also likely to have been advised to contact the Provider’s Recoveries Department, however, as noted above, there was no engagement on the part of the Complainant.

It is not disputed that the Provider’s staff member confirmed she would contact the Recoveries Department to enquire whether the credit balance on Loan 1 could be transferred to the Complainant’s current account. However, in the Final Response letter, it is stated the Complainant was also advised to directly contact the Recoveries Department in respect of the transfer. The Provider’s staff member sent an internal email on **27 June 2018** requesting that the credit balance on Loan 1 be transferred to the Complainant’s current account. A follow up email appears to have been sent on **6 July 2018**. The Provider explains the credit balance which displayed on Loan 1’s account after the €55,000 lodgement was subject to accrued interest and when this posted to the account, left a debit balance of €336.88.

Although the Complainant does not appear to have contacted the Recoveries Department regarding the transfer, the Recoveries Department does not appear to have responded to the staff member’s emails either nor was the Complainant notified of the reason for the transfer not taking place. While the Provider’s remarks that correspondence issued to the Complainant outlined that any credit balances on the Complainant’s account could be used to discharge her outstanding loan balances, I do not accept that this is sufficient reason not to respond to the request for the transfer and it is reasonable to have expected the Provider to make the Complainant aware as to why it did not occur.

Further to this, it suggested that the Complainant was making a formal complaint during the **June 2018** meeting. A number of matters were discussed during this meeting, for example, a loan application, loan repayments, the credit balance on Loan 1, and the demand for payment in respect of Loan 2. However, having considered the evidence in respect of this meeting, I am not satisfied that a formal complaint was being made by the Complainant.

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Taking the foregoing into consideration, I accept that the Complainant was aware or ought reasonably to have been aware of the arrears on Loan 1 and the need to repay this loan on its expiry. Equally, I accept that the Complainant was aware or ought reasonably to have been aware of the consequences should she fail to meet her repayment obligations. The evidence shows the Complainant did not respond to the Provider's correspondence and failed to engage with the Provider. Further to this, the Complainant did not address the arrears on Loan 1 nor did she repay this loan when it fell due. The consequences of this were clearly outlined to the Complainant. One such consequence was an early demand for the repayment of Loan 2. In light of the contractual clauses outlined above, the correspondence issued to the Complainant and the Complainant's failure to engage with the Provider, I accept that the Provider was entitled to demand repayment of Loan 2 in **June 2018** despite it not expiring until **September 2019**. I also accept that the Provider was entitled to terminate the Complainant's banking facilities. Furthermore, I do not accept the lodgement of €55,000 resolved matters or made up for the Complainant's lack of engagement prior to the date of the lodgement nor did it affect the Provider's entitlement to demand repayment of Loan 2 or its decision to terminate the Complainant's banking facilities.

In terms of the Provider's credit reporting, the various loan documentation and correspondence issued to the Complainant clearly identified the Provider's credit reporting obligations. While the Complainant asserts the Provider has reported incorrect information to the ICB regarding her loans, she has not identified precisely what this incorrect reporting consists of, and neither has a copy of the Complainant's ICB credit report been furnished. It appears that the Complainant's dissatisfaction with the Provider's credit reporting emanates from the manner in which it treated Loan 1 and Loan 2. However, I have been provided with no evidence that there was anything wrong or unreasonable with the Provider's conduct in this regard. The Complainant has not established that the Provider reported incorrect information to the ICB regarding her loans.

Finally, the Complainant wrote to the Branch Manager on **6 September 2018**, detailing that her accounts had been closed and the credit balances used to offset an outstanding loan balance. The Complainant also recounted the meeting in **June 2018** where she was reassured that Loan 2 was not due for repayment until **October 2019**. The Complainant expressed her dissatisfaction at the situation and requested a *quick response*. Follow up emails were sent on **6** and **10 September 2018**. The Branch Manager responded on **11 September 2018** explaining the management of the Complainant's accounts were dealt with in Dublin and not at branch level. The Complainant was also advised that her email was forwarded to the relevant department and the Branch Manager would follow up that day highlighting the urgency of the issues raised. Having considered the Complainant's email, I am satisfied this should have been treated as a complaint by the Provider. This does not appear to have occurred and the email was not responded to. It was quite clear that a formal complaint was being made, this should have triggered the Provider's complaints process and, for some unexplained reason, this did not occur with the result that the Complainant's complaint was completed overlooked. This is very disappointing.

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Goodwill Gesture

The Provider has offered an apology for the fact that a complaint was not recorded in **June 2018**. In respect of this, the Provider states:

“The Bank would now like to increase its offer to €1,000 in full and final settlement of this dispute for its service failing in no logging a complaint in June 2018 and recognising the length of time this matter has been outstanding.”

I consider this goodwill gesture offered by the Provider to be a reasonable sum of compensation for the customer service failings identified in this complaint. In these circumstances, on the basis that this offer remains available to the Complainant, 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**

15 December 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.

