



<b><u>Decision Ref:</u></b>	2020-0468
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Incorrect information sent to credit reference agency
<b><u>Outcome:</u></b>	Partially upheld

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

This complaint concerns the information furnished to the Irish Credit Bureau (ICB) by the Provider in relation to a mortgage loan account held by the Complainant.

**The Complainant's Case**

The Complainant took out a loan with the Provider in **2002** in the sum of €330,000.00 to be repaid over a period of 25 years.

By letter dated **3 August 2016** the Provider informed the Complainant that it had maintained an inaccurate record of his account with the ICB. It advised that a profile code of "R" (meaning "Repossession of Goods") was submitted to the ICB by it in respect of this account, when the code should in fact have been "T" (meaning "Terms Revised"). The Provider advised that historical information held by the ICB in relation to the account had been removed and replaced with an accurate profile for the account.

The Complainant immediately contacted the Provider on foot of this letter to make a complaint and seeking further information. He received a number of holding letters until the Provider issued a response to him on **7 October 2016**, which advised him that the incorrect information was on his ICB record from **27 August 2012** to **early July 2016** – a period of nearly four years.

The Complainant states that he contacted the Provider again by telephone, but then heard nothing from the Provider for a period of 11 months. After he contacted the Provider on this occasion he received correspondence dated **21 November 2017** in the form of a holding letter.

He continued to receive holding letters until a more substantive response issued by the Provider on **29 June 2018** – which advised that if the Complainant could show he was negatively affected by the error the Provider would *“be happy to review this matter”*, but in the absence of such information its consideration of the matter was complete.

The Complainant referred this matter to this Office on **1 October 2018**.

The Complainant states that he is a member of two golf clubs and many of his co-members are business people who would have access to ICB records. He does not believe that the Provider took his complaint seriously, and notes that it took two years for the complaint to be responded to by the Provider. He contends that the Provider refused to seriously engage with him from August 2016 to June 2018. He takes issue with the fact that each holding letter (he counts 11) simply repeat the same wording.

In submissions to this office the Complainant states that he sought finance from another provider for a building project in 2016 but that provider offered him considerably less than the sum he was seeking.

The Complainant's complaint is that the Provider acted negligently in reporting an incorrect identifier code (“R”) to the ICB for a period of 4 years (August 2012 to July 2016); and that the Provider has proffered poor customer service and failed to correspond/engage with the Complainant in its handling of his complaint.

The Complainant seeks *“an amicable agreement which is fair to both sides”*.

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

The Provider accepts that it furnished incorrect information to the ICB regarding this account. It was the Provider who discovered the issue and brought it to the Complainant's attention. The Provider has explained that the property that formed the security for this loan was sold in **2012** and sale proceeds were applied to the loan in October 2012, leaving a residual balance (or shortfall).

The shortfall status of the account was reported to the ICB as a repossession, which is not in fact what occurred.

The Provider states that the possibility of an issue in relation to its reporting to the ICB of certain accounts (shortfall accounts being reported as repossessions) came to light in **November 2015**, and a remediation project (or “lookback”) began. The issue was identified in **February 2016**, was rectified in relation to this specific account on **8 July 2016**, and notified to the Complainant one month later.

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The Provider apologised for this error when it advised the Complainant of the error, in August 2016.

The Provider contends that the issue was remedied without any delay, once discovered.

The Provider's position is that, in the absence of evidence of the Complainant being negatively affected by this error, it does not believe that he is entitled to redress over and above the apology and rectification that was provided to him.

The Provider has accepted that there were shortcomings in its dealings with the Complainant's authorised third party (ATP) in relation to the complaint.

In recognition of the shortcomings in service and in addition to its apologies, the Provider has offered the sum of €1,000.00 as a goodwill gesture in its responses to this Office on **4 February 2020**.

### **Decision**

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

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

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 25 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.

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The Complainant took out a loan with the Provider in **2002** for €330,000 to be repaid over 25 years.

The loan fell into arrears in **2011** and it was agreed that the property would be sold. This would leave a residual balance after the sale. The sale proceeds were applied to the account in **October 2012** leaving a residual balance / shortfall in the region of €24,000.

Although the Complainant made efforts to agree a settlement of this outstanding debt, agreement was not reached on the debt (and the Complainant did not make full repayments until **19 December 2014** when the Provider agreed to accept a lump sum payment of €10,000, plus 120 monthly repayments of €70.82. The outstanding balance on the loan account was €13,697.47 in **January 2019**.

From **27 August 2012** to **8 July 2016** the ICB record for this loan incorrectly showed entries of "R" (meaning "repossession") rather than "T" (meaning "terms revised"). The Provider uncovered this error, and advised the Complainant by letter dated **3 August 2016**, after the error had been rectified.

The letter of **3 August 2016** read as follows:

"Dear Complainant,

The Irish Credit Bureau ("ICB") is an electronic database which contains information of the

performance of credit agreements between financial institutions and borrowers

[The Provider]

together with all the main banks, submits information to the ICB on a monthly basis in line with the

terms and conditions of relevant loan accounts

A review of your mortgage account has identified that a profile code of 'R' (Repossession of Goods)

was submitted to the ICB in respect of this record. As no repossession of the relevant property

occurred, this profile code was an inaccurate representation of your account.

We have therefore taken steps to amend the relevant ICB record in order to accurately record the

facts in respect of your mortgage account. The profile code of "R" has been amended and replaced

with a profile code of "T" (Terms Revised). Any historical information held on the ICB system has

been removed from their database and replaced with your accurate profile.

A free copy of your record can be obtained by contacting the Bank by telephone on 021 6014995.

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Alternatively, you may request a copy directly from the ICB at a cost of C6.00 per application by applying online at [www.icb.ie](http://www.icb.ie) or by telephone on 01-2600388.

We trust this is in order and apologise for any inconvenience caused.

Yours sincerely”

The Complainant’s authorised third party (ATP) contacted the Provider on **10 August 2016**, in response to this letter.

The ATP explained that he was very concerned about the letter that had been received. The ATP noted that the Provider had not explained the issue, but had simply stated that there was an error and it had been rectified. He asked to know who had put this incorrect information on the ICB, how long was it there, and when was it remedied. These were all perfectly reasonable questions. The ATP was reassured that the error had been rectified, and was told that the information sought would be sent.

Holding letters were sent to the Complainant on **16 August 2016, 6 September 2016 and 4 October 2016**.

In the meantime the Complainant’s ATP telephoned the Provider on **23 August 2016** seeking a copy of the ICB record.

A substantive response was issued by the Provider on **7 October 2016**.

The letter of **7 October 2016** read as follows:

“Dear Complainant,

I refer to our conversation on the 10<sup>th</sup> August 2016 in relation to a complaint regarding the above mortgage account.

My understanding of your complaint is that you are dissatisfied with the correspondence received dated 3rd August 2016 in relation to your client's Irish Credit Bureau (ICB) profile amendment. You have enquired about the following points:

- 1 You wish to know which office reported this to the ICB
2. For how long it was reported to the ICB
3. On what date it was reported to the ICB

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I have investigated these matters and I am now in a position to respond.

1. [The Provider] reports account information to the ICB, not one specific office.  
As  
advised in the correspondence of the 3rd August 2016 "*[the Provider], together with all the main banks, submits information to the ICB on a monthly basis in line with the terms and conditions of relevant loan accounts*".
2. The error first occurred on the 27<sup>th</sup> August 2012, from then until the issues was rectified on by the bank in early July 2016.
3. As above the error first occurred on the 27th August 2012.

Please note that the Bank has amended your client's ICB to accurately reflect the facts of their mortgage account."

There was no further contact between the parties on this matter until the Complainant's ATP rang the Provider on **18 October 2017**. The Complainant's ATP sought to speak to a particular staff member of the Provider – the person who had signed the letter of 7 October 2016. The Complainant's ATP was dissatisfied that he was not able to speak to the specific staff member. He was told that staff member would call him back. The ATP became frustrated at the level of service that he was being provided with during this call. I do not believe this level of frustration was justified. I believe the Provider's agent dealt with this call in a reasonable manner.

On **20 October 2017** the Complainant's ATP contacted the Provider as he had not received the call back as requested. An immediately confrontational tone was evident from the ATP and maintained throughout the call. While to some degree his frustration was understandable, I do not believe it was justified. I believe the Provider's agent dealt with this call in a reasonable manner.

The Complainant's ATP was given another contact number for the specific staff member being sought. A number of telephone call attempts were exchanged during the rest of that day but the parties did not succeed in talking to each other.

On **15 November 2017** the Complainant's ATP succeeded in contacting the staff member he was looking for the previous month. A new complaint was logged on the Complainant's behalf as the Complainant's ATP was seeking additional information. It appears that this contact was also in the context of a missed repayment on the loan account.

On **21 November 2017** a holding letter issued in respect of this complaint. Further holding letters issued on **12 December 2017, 15 January 2018, 12 February 2018, 12 March 2018, 12 April 2018, 11 May 2018, 11 June 2018**.

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A substantive response issued on **29 June 2018**. It apologised for the delay and advised that the Provider had been experiencing an unprecedented level of complaints. It set out the Provider's position that, in essence, the ICB record was rectified and in the absence of evidence that the Complainant was negatively impacted by the error, it would not offer any further redress.

The letter of **29 June 2018** stated, among other things:

I note from our conversation that you were not happy with my previous correspondence dated 7<sup>th</sup> October 2016 in regards to this issue under CFM 144460 and you have queried what [the Provider] are doing to redress this issue.

Having referred this matter to management in the relevant departments they have advised that the redress for the issues was to change the ICB record to accurately reflect the events that took place and I can advise that this has been completed and [the Complainant's] ICB record is now accurately reported.

Notwithstanding the above, Management have advised that if [the Complainant] can show that he was negatively impacted by this error e.g. refused credit as a result of the miss reporting of the ICB, we will be happy to review this matter. However without evidence that [the Complainant] has been negatively impacted [the Provider] feels they have taken the appropriate steps to redress the issue."

The Complainant made a complaint to this Office in **October 2018**.

I accept that if the Provider had reported the correct information to the ICB during this period, the Complainant's credit rating would not have been perfect, but the incorrect reporting has undoubtedly impaired his credit rating unnecessarily, unjustifiably, and unreasonably from 2012 to 2016.

The Complainant contends, in his submissions to this office, that this impaired rating caused him to be offered a smaller sum in finance from a third party provider than he would have otherwise been offered. No objective evidence of this has been furnished to this Office or to the Provider to support this contention.

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## Analysis

It is not in dispute that the Provider furnished incorrect information to the ICB for a period of four years.

Therefore, the dispute in this complaint is whether or not the Provider has offered sufficient redress for its failure in relation to the ICB reporting issue, and whether or not it proffered an acceptable level of customer service in its response to the Complainant's complaint.

The Complainant has not provided objective evidence of any prejudice actually suffered by him as a result. Nevertheless, furnishing incorrect information to the ICB is a serious issue and has the potential to cause major inconvenience to a borrower.

It is important to note that it was the Provider which identified the error and brought it to the attention of the Complainant. In fact it appears to me that the Complainant would have remained unaware of this issue had the Provider not alerted him to it.

That said, in all of the circumstances, I accept that the redress of €1,000 offered by the Provider in its responses to this office may have been sufficient had it been offered, together with more fulsome explanations, during 2016 or 2017, and in any event prior to the complaint being submitted to this office. However, it was offered in February 2020, over two and a half years after the issue arose.

The Provider states that it discovered the possibility of an issue in **November 2015** and carried out an internal investigation. On foot of this investigation, an issue was identified in **March 2016** and this account was rectified in **July 2016**.

The relevant section of the Consumer Protection Code 2012 (CPC) states that:

*"2.8 A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it: corrects errors and handles complaints speedily, efficiently, and fairly"*

In relation to the ICB reporting issue, I have no evidence to find that the Provider did not comply with the CPC. Over the course of about 6 months, the Provider investigated, identified and rectified a legacy issue which affected the Complainants.

The Provider then alerted customers (including the Complainant) of the existence of an issue, and that it had been rectified.

However, in its initial notification letter of **1 August 2016**, the Provider did not explain the exact nature of the error (that "R" was entered instead of "T"), and during what period of time the incorrect information was in place. The Complainant was required to make those inquiries himself. I accept that this represents a failure in acceptable levels of customer service in relation to a very important matter.

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When the Complainant sought that information on **10 August 2016**, holding letters issued regularly, until a substantive response issued on **7 October 2016**.

Section 10.9 of the CPC requires that a provider acknowledge a complaint within 5 business days, provide the name of a contact point with the provider, update the Complainant every 20 business days, and *attempt to* investigate and resolve the complaint within 40 business days.

The above timelines were observed by the Provider in response to the initial complaint of 10 August 2016.

The matter essentially went into abeyance from October 2016 until the Complainant's ATP contacted the Provider once year later, in October 2017. On **15 November 2017** another complaint was logged. The Provider issued holding letters in accordance with the CPC until a response was issued in **July 2018**.

Whilst I accept that the Provider may have been dealing with an unprecedented level of complaints and holding letters were issued in accordance with the CPC, I believe that a period of 7 months to furnish a response to the complaint was excessive given the substance of the complaint that was made and, in particular, given that the Provider states that it had investigated the matter over a six month period. It is difficult to understand how it took so long to furnish an explanation for the error.

In my view, the Provider failed to furnish sufficient information to the Complainant in its letter dated 1 August 2016; failed to offer sufficient redress in relation to the ICB reporting issue; and, failed to resolve the November 2017 complaint within an acceptable period of time.

In all of the circumstances, I do not believe that the Provider's offer of €1,000 is sufficient. Therefore I partially uphold this complaint and direct that the Provider make a compensatory payment in the sum of €2,500 to the Complainant.

### **Conclusion**

My Decision pursuant to **Section 60(1) (c) and Section 60(2) (f)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld.


Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €2,500 to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

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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.

**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

17 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.**