



<u>Decision Ref:</u>	2020-0472
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Level of contact or communications re. Arrears Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Fees & charges applied
<u>Outcome:</u>	Rejected

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

The Complainants entered into three mortgage loans agreements with the Provider, against which this complaint is made, between **October 2005** and **June 2009**. An overdraft was also sanctioned in respect of the Complainants' joint current account. A personal loan was taken out with the Provider in **April 2012** to clear the overdraft on the current account. Between **2015** and **2017**, the Complainants were refused credit from other financial service providers on three occasions because of the information reported by the Provider to the Irish Credit Bureau in respect of their loans.

The Complainants' Case

The Complainants have set out their complaint in a letter dated **27 February 2017**. The complaints contained in this letter relate to the Provider's reporting to the Irish Credit Bureau (**ICB**) and a personal loan.

The First Complainant explains that she experienced a short period of financial difficulty and throughout this time, remained fully engaged with the Provider, and explained the circumstance giving rise to her financial difficulty. The First Complainant was declared unfit to return to work on grounds of ill health. After this, the First Complainant took early retirement and "... had always promised to the [Provider], once my state pension was arranged, I would use the lump sum received to repay all monies owed to restore my good standings" The First Complainant's arrears were cleared and as far as she was concerned her financial problems had been resolved.

In **2015**, following certain difficulty securing a small loan, the First Complainant became aware of issues with her credit report. She contacted the Provider about this in **April 2015** and was told a complaint would be logged to facilitate the investigation of the credit report problems. A letter dated **14 May 2015** was received from the Provider advising the First Complainant that as of **30 April 2016**, the matter would be resolved and she would have “... *a perfect payment record* ...” so long as she kept her payments up to date. The First Complainant states that her payments were up to date and in fact, overpaid.

The First Complainant believed everything was in order until **September 2016**, when she was refused a loan. The First Complainant was told the reason for the refusal was due to issues with her credit report. The First Complainant telephoned the Provider in an attempt to establish why this was the case and why the matter regarding her credit report had not been resolved. The First Complainant advises that she received a letter from the Provider stating that an instruction had been given to the ICB to close an account that was “... *showing as otherwise* ...”, and this would resolve the situation going forward.

On **2 February 2017**, the First Complainant applied for a car loan but was declined. However, none of the Provider’s branch staff or Arrears Support Unit (**ASU**) staff could explain what the problem was. The First Complainant recounts that she spent from 12 noon to 5:30pm travelling between two provincial towns “... *visiting banks, and on telephone calls.*” It was discovered the reason for the refusal on this occasion related to a personal loan taken out in **2012** which was closed **2014**.

The First Complainant states that she was extremely upset with having contacted the Provider on three occasions regarding her ICB record and being informed each time that any issues with her profile were resolved, that she was still experiencing difficulties getting credit approval. The First Complainant states she repaid all money owed to the Provider on all accounts on the same day as she her State pension was *sorted*, as promised.

The second part of this complaint relates to a personal loan. This loan was approved and drawn down in **2012**, at the height of the First Complainant’s financial difficulty. The First Complainant explains that she could not afford the loan and was not in a position to repay it. Given her circumstances, the First Complainant submits she should not have been approved for the loan. During this period, the First Complainant’s investment property was vacant and she was coming to the of an interest only arrangement. Realising that she required further funds, the First Complainant *revamped* the investment property as a holiday home. This resulted in the First Complainant’s overdraft being *maxed out*. However, the First Complainant “... *knew that once the bookings for the holiday letting came to fruition, I could and would clear the overdraft in a short period.*” The First Complainant requested that all direct debits be stopped and instead, she would pay cash as money was coming in. This request was not honoured by the Provider and consequently, many unpaid direct debit fees of €12.70 began to accumulate on the First Complainant’s account on top of the overdraft. The Provider’s staff member apologised to the First Complainant for failing to put a stay on direct debits and refunded 8 of the unpaid fees. The First Complainant points out that many more unpaid fees remain *non-refunded* despite many requests for refunds.

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During a meeting with one of the Provider's staff members, a financial advisor, the First Complainant states this individual "... transferred my overdraft to a personal loan." The First Complainant states she "... felt pressurised into signing the paperwork believing it to be the only option available to me." The First Complainant has since learned "... this was a poorly advised, illegal transaction" It is this personal loan, despite being repaid in full, that is causing the First Complainant's credit rating "... to remain in question."

The First Complainant states that in a most vulnerable time with a lack of financial knowledge, the Provider's financial advisor ill-advised the First Complainant to change to an *unsecured bank draft* to a personal loan which she could not afford. The First Complainant also expresses her amazement that given her financial difficulties and the financial crisis, that a personal loan could be granted in the space of a few minutes. It is submitted that "... this move by [the financial advisor], ultimately had resulted in my current account being terminated by the Bank." The First Complainant also takes issue with "[h]is behaviour, and the way he has treated me, and the way in which he bullied me into transferring my overdraft to a personal loan, is comparable to what you could expect from a loan shark."

The First Complainant states the Provider's threat of legal action and order that she vacate her property within 7 days came at a time when it was clear that she had secured her retirement and would have sufficient funds to clear the loans. The First Complainant kept the Provider aware of this throughout the process. It is submitted that during this time, the Provider's only concern was to restructure the First Complainant's loans and get rid of her tracker interest rate. From the First Complainant's perspective, "... [this] would have been a long-term loss for a short-term crisis and if had happened would have left me today repaying thousands of extra euro ..." It is submitted this "... was yet more ill-advised, and illegal information being passed down to me ..."

The First Complainant states that "I have been poorly advised, verbally abused and bullied by members of [the Provider]."

The Provider's Case

The Provider states that on **1 March 2012**, in line with section 54(1) of the **Consumer Credit Act 1995**, a 21 day default notice was issued to the Complainants outlining the overdraft facility and direct debits on their current account would be cancelled in 21 days as the balance on the current account was €12,396.34 overdrawn. This was in excess of the permitted overdraft of €10,000.

On **12 March 2012**, the Complainants completed a loan application form and a Consumer Banking Financial Review form. It is stated the application form clearly detailed the First Complainant's income as €60,000 from her employer and €200 weekly rental income, and the reason for the loan application was to clear the overdraft. The Consumer Banking Financial Review form stated the Complainants were applying for a loan as their '*son had accident and we had to pay medical expenses and also buy car.*' These documents were signed by the Complainants.

The Provider also refers the notes on its loan application system from the Underwriting Department: *'OD run up because of accident that their son had. [The Complainants] had to pay his medical expenses & also bought him another car to replace crashed car. Sons case should be settled soon & they are owed back 7K from him – so hoping to clear t/l early.'*

It is stated that the Consumer Credit Agreement for this loan was signed, and the Terms and Conditions agreed to by the Complainants on **27 March 2012** (the **Personal Loan**). The Provider submits that if the Complainants were not happy with the Personal Loan, they should not have accepted the Credit Agreement.

The Provider remarks that the Complainants have acknowledged the Personal Loan went into continuous arrears from **August 2013** to **April 2014**. During this time, the Complainants received correspondence from the Provider which outlined the arrears status of the loan and the impact this would have on their credit record.

The Provider explains the Complainants hold three mortgage loan accounts (ending 103, 106 and 794; together, the **Mortgages**). It is stated that when a mortgage loan offer letter is executed, it forms the contractual relationship between a borrower and a lender, and imposes mutual obligations on each of the parties including the repayment schedule necessary to redeem the loan. In the absence of an agreed Alternative Repayment Arrangement (**ARA**), the Provider administers a loan in accordance with the original terms. The Provider refers to clause 4(a) and 4(b) of the General Conditions which contain various repayment provisions.

The Provider states that standard loan repayments bill to an account unless there is an agreed ARA in place. When a borrower fails to make a standard repayment in accordance with clause 4(a) or an agreed ARA, arrears accrue. Arrears are the measure of the difference between the payment due and the payment received.

Financial services providers who are part of the ICB, report on both performing loans which operate within the agreed terms, and non-performing loans whether through missed payments, arrears or amended terms. It is submitted by the Provider the arrears notified to the ICB in relation to the Complainants were an accurate reflection of the transaction history on the Mortgages. In accordance with the Provider's arrangement with the ICB, adverse criteria were reported where the Complainants did not meet the full repayments due and were not in an agreed ARA.

The Provider states that the Complainants were advised of adverse credit reporting within arrears correspondence. On **26 November 2013**, the Provider offered the Complainants an ARA across the Mortgages which were not accepted. The Mortgages continued to accrue arrears with no repayments being received. The Provider called in the debt and appointed legal representatives to commence legal proceedings.

The Provider refers to the Final Response letters issued on **14 May 2015** and **11 October 2016** in relation to specific complaints regarding the Mortgages. The Provider explains that it investigated the matters raised by the First Complainant.

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However, its mortgage bank section did not have access to the Complainants' overall ICB credit history. This is because of the presence of a Chinese Wall which prevented the mortgage bank section from general access to the Complainants' overall banking relationship. It is only open to the Provider to request an ICB report with the consent of the named parties and the Provider would not request an ICB report.

It is stated that the Provider's investigator surmised that the Complainants' mortgage loan account ending 103 was being misinterpreted as continuing to report as litigation pending. The account had been cleared in **April 2014** and reported as closed to the ICB. The last report on this account was provided in **April 2014**. This had the effect of crystallising the ICB reporting window on this account to the most recent 24 month period ending in **April 2014**. As set out in the Provider's Final Response letter, the window remains static and is not updated by the Complainants' ongoing repayment record.

The Provider states that it previously issued correspondence confirming the active accounts were up to date. However, as a resolution, the Provider agreed to issue an instruction to the ICB to reflect the last 2 years on this account as C, closed. This updated the reporting window in relation to mortgage loan account ending 103 beyond the period where litigation was pending. The Provider submits that it was acting in good faith based on the representations made by the Complainants. It is noted that the Provider did not amend the reporting period ending in **April 2014** which remains part of the Complainants' ICB record.

The First Complainant contacted the Provider in **February 2017** raising issues in relation to the Complainants' ICB record. The Provider stated that the above update had been implemented and the First Complainant was advised to clarify that the adverse ICB reporting complained of was in respect of her mortgage loan account. The First Complainant later confirmed the adverse reporting related to her personal loan account. The First Complainant was advised that this would have to be raised as a separate issue with the retail section of the Provider who manage personal loan accounts. A complaint was raised in respect of the personal loan account on **27 February 2017**.

It is not accepted by the Provider that there was any agreement to repair the Complainants' ICB record in the general terms asserted by the Complainants. The complaints raised were always understood to be in relation to the Mortgages and the Provider states that it responded accordingly. It states that at no point were the Complainants advised their ICB profile for the Personal Loan would be removed or amended. The Provider does not accept that the Complainants are entitled to rely on its previous gesture in order to have the ICB profile amended to represent a repayment record which is at variance with the repayments actually made/not made.

Finally, the Provider states that on **30 April 2012**, its branch refunded unpaid direct debit fees in the amount of €76.20 as a gesture of goodwill as the Complainants had not cancelled their direct debits on their current account in time. It is submitted that the Complainants incurred these fees correctly in accordance with the terms and conditions of the personal current account.

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The Complaints for Adjudication

The complaints are that the Provider:

1. Reported incorrect information to the Irish Credit Bureau regarding the Complainants loans and failed to rectify the Complainants' Irish Credit Bureau record;
2. Forced and/or bullied and/or wrongly advised the Complainants to enter a personal loan agreement to clear an overdraft on their joint current account; and
3. Failed and/or refused to refund unpaid direct debit fees.

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 26 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 Mortgages

The Complainants entered three mortgage loan agreements with the Provider in **October 2005 (Loan 1)**, **September 2007 (Loan 2)**, and **June 2009 (Loan 3)**.

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The Mortgages were subject to full capital and interest repayments. Loan 1 was subject to 12 month interest only repayments in **July 2010** and **December 2011**.

Beginning on **31 January 2013**, the Provider wrote to the Complainants to advise them that Loan 3 had fallen into arrears on **31 December 2012**. Amongst other matters, this letter advised the Complainants of its credit reporting obligations regarding arrears. This was followed by further letters in **July, August** and **September 2013**. A similar letter was issued to the Complainants in respect of Loan 2 on **30 September** and **30 October 2013** which advised Loan 2 fell into arrears on **30 August 2013**.

The Provider wrote to the Complainants on **26 November 2013** separately in respect of Loan 2 and Loan 3 offering an alternative repayment arrangement of 6 months interest only repayments. By letter dated **5 December 2013**, a 6 month interest only arrangement was offered in respect of Loan 1. However, this was subject to moving from the current tracker interest rate to a new variable interest rate. These ARAs do not appear to have been accepted by the Complainants. The Provider wrote to the Complainants on **20 January 2014** confirming the ARA in respect of Loan 1 was not accepted, advising that the Provider could commence legal proceedings for possession of the mortgaged property. Somewhat similar letters were issued to the Complainants in respect of Loan 2 and Loan 3 on **20 January** and **28 January 2014** respectively.

The Provider issued the Complainants with a *Legal Proceedings Threat Letter* in respect of Loan 1 on **4 February 2014**, noting the outstanding arrears and its attempts to agree an ARA. The letter requested that the Complainants contact the Provider, or it would be left with no option but to place the loan account with its solicitors to initiate Possession Proceedings. The Provider issued formal demands for the full repayment of the Mortgages on **18 February 2014**. The Provider provided the Complainants with details of its appointed solicitors by letter dated **7 March 2014**. The Provider's solicitors demanded vacant possession of the property secured on foot of Loan 2 and Loan 3 on **14 March 2014**. Shortly after this, Loan 3 was cleared in **April 2014**.

The Overdraft and Personal Loan

The Provider wrote to the Complainants on **1 March 2012** to advise them that due to the unsatisfactory operation of the current account, the Provider was no longer prepared to offer banking facilities to the Complainants. The balance on the current account was overdrawn to an amount of €12,396.34 at the date of this letter.

The Complainants applied for a personal loan by signing a loan application form on **12 March 2012**. The purpose of this loan is stated on the application form as *To clear overdraft*. A Customer Banking Financial Review Form was also signed by the Complainants on **12 March 2012**. In the *Reason for Review* section it states: "*Restructure of O/D required. Per phone call with Credit Ops son had accident & we had to pay medical expenses & also buy him a new car.*"

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The Provider wrote to the Complainants on **27 April 2012** advising that they had been conditionally approved for the Personal Loan. The loan was to be repaid over 84 months by way of 84 monthly payments of approximately €233.00. The letter advised that the loan was subject to confirmation of certain matters and on receipt of the relevant information, the Provider would finalise the processing of the loan application. The letter also stated:

“We strongly recommend you take the time to read the [Standard Pre-Contract Information Information] carefully and to make sure you are satisfied with it before you consider the Credit Agreement itself and whether or not to sign the Credit Agreement.

Credit Agreement

We enclose the Credit Agreement which sets out the terms and conditions of the Personal Loan we have provisionally approved for you. The Credit Agreement does not become binding on you until (a) you sign it and (b) we sign it (or, if earlier, we allow you drawn down any part of the loan).

Please make sure you have read the entire Credit Agreement before you sign it. It is a detailed but important legal document. To accept, please sign the credit agreement and return all copies to this Branch. The Bank will then sign the credit agreement and send you a copy for your records. ...”

The Provider wrote to the Complainants on **19 June 2012**, advising them that the Personal Loan had fallen into arrears. This letter also advised the Complainants, amongst other matters, that the loan may be reported to the ICB. This was followed by similar letters in **July, August** and two in **September 2013**.

On **12 November 2013**, the Provider issued a *Notice of Default under Section 54(2) Of the Consumer Credit Act, 1995*. This letter informed the Complainants they were in breach of the credit agreement having failed to make payments totalling €523.32. The Complainants were called on to remedy this breach, failing which, the loan would become due and the Provider could take certain action to recover the debt.

Further arrears letters issued to the Complainants on **31 December 2013** and **1 March 2014** showing an arrears balance of €1,682.31. The Provider notified the Complainants that the Personal Loan was being handed to its solicitors by letter dated **13 March 2014**. Shortly after this, the Personal Loan was clear in **April 2014**.

Formal Complaints

The First Complainant made three complaints to the Provider regarding the Complainants' credit rating. The first was made on **9 April 2015**. The Complainants attended the Provider's branch and advised a staff member that they had been refused credit from another financial services provider following a credit check as there was litigation pending in respect of a mortgage loan.

The staff member telephoned the Provider's ASU Department. This agent then spoke with the First Complainant. The First Complainant explained she was advised by the financial services provider that legal action was pending and she wanted a letter stating that no legal action was pending. The Provider wrote to the Complainants on **14 April 2015** confirming Loan 1 and Loan 2 were up to date, had no outstanding arrears and were not pending legal proceedings.

A Final Response letter issued on **14 May 2015**. This letter references only Loan 1 and refers to the loan account throughout the letter as the *Mortgage Account*.

The letter explains:

"1. Reporting of your Mortgage Account to the Irish Credit Bureau

All [Provider] accounts report monthly to the Irish Credit Bureau as do most financial institutions in Ireland. Where there are arrears on an account, the Bureau records an adverse credit rating. Where the account holder/holders are in receipt of Legal or Pre Legal Letters, this is also recorded with the Irish Credit Bureau.

Your Mortgage Account was showing as 'in arrears' from February 2013 to the March 2014, and a Proceeding Threat Letter issued to you on the 4th February 2014, copy enclosed. A Court Hearing Calling in debt letter issued to you on the 18th February 2014 ...

Your account was showing an arrears balance as at the 4th February 2014 of €7344.27, and as there was no arrangement to clear this balance the Proceedings Threat Letter issued to you on the 4th February 2014. The instalment for the 30th March 2014 billed in the amount of €972.63 bringing the amount outstanding to €9289.53 and as there was no payment arrangement in place the calling in debt letter issued to you, calling in the full balance outstanding. This letter was issued to you on the 18th February 2014.

Your payment of the 24th April 2014 in the amount of €10,262.16 cleared the arrears and left a credit balance on the account of €972.63. The report to the Irish Credit Bureau reflected this payment and your credit rating was amended accordingly.

2. Present position on the account

The rating to the Irish Credit Bureau is recorded over a 24 month period, so your record is showing from the 31st May 2013 to the 30th April 2015. Your account is showing that all payments have been made since 30th April 2014 to date. By the 30th April 2016, and provided all payments are maintained, you will have a perfect payment record in relation to your Mortgage Account. ..."

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The second complaint was made on **13 September 2016** when the First Complainant telephoned the Provider's ASU. The First Complainant provided the account number for Loan 1 at the beginning of the call. The First Complainant expressed her dissatisfaction with her credit record. The First Complainant explained her accounts were up to date and that no legal action was pending. The First Complainant explained she was *reliably told* that there were 10 unpaid transactions with the Provider and legal action was pending. The Provider's agent enquired if this was in relation to the account number given at the start of the call to which the First Complainant responded *"it is in relation to my affairs with [the Provider] and I really do not know what account. It's actually, I think, the legal pending action is in relation to an account that I have actually closed I'm led to believe."* The First Complainant stated *"I was reassured that that would be lifted off my record in April 2016 ..."*

The Provider's agent referred to the letter of **15 May 2015** which the First Complainant stated she did not receive. It was agreed to issue this letter again. Later in the conversation, the Provider's agent explained to the First Complainant that her ICB record remained in place for 5 years. The First Complainant disagreed with this stating: *"I was definitely told, definitely, and I will search until I find it in writing, April 2016."* A number of minutes later, the Provider's agent asked the First Complainant about the manner in which the assurance regarding the clearing of her credit rating was communicated. Responding to a question whether this assurance was given over the phone, the First Complainant stated: *"I would probably say not. When I took out this letter I said, oh that's the letter I'm looking and I rang you straight away. It doesn't actually say on that letter but I know I definitely got it ... I definitely was told, if not by correspondence, by phone that it would be removed by April 2016. The First Complainant continued by saying the Second Complainant read the relevant letter, "...he read it. So it must have come in writing."* The First Complainant also indicated this assurance did not come from the Provider's [location] branch.

The Provider issued a Final Response letter on **11 October 2016**. The account reference in the subject line was Loan 1. The loans comprising the Mortgages were the only loans discussed in the Provider's letter. This letter states:

"I understand the essence of your complaint related to your Irish Credit Bureau ("ICB") regarding your mortgage accounts profile.

The Bank report your mortgages on a monthly basis to the ICB and your profile with them reflects the last 2 years reported. The information is retained for a period of 5 years by the ICB.

The information contained in our correspondence dated 14th May 2015 ... was correct in terms of reporting on active loans and mortgage accounts [Loans 2] and [Loan 1] are reflected as "0" for each month for the last 2 years as these repayments have been met.

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In relation to mortgage account [Loan 2], the last transaction reported by the Bank was "C" for closed in April 2014. Prior to closure of the account the previous months status reported as "P" for pending litigation and prior to this "6" to reflect 6 repayments in arrears. As this account closed in April 2014, this was the last time the Bank reported on this loan and therefore it has remained "static" for the last 2 years and will continue to do so until April 2019.

As a means of resolving this for you, I have sent an instruction to the ICB to reflect the last 2 years on your account as "C" for closed which should rectify matters for you. ..."

The third complaint was made to the Provider by letter dated **27 February 2017** which has been outlined in detail above.

The Provider's response dated **6 April 2017** states:

"I understand from your letter you are extremely upset in relation to your credit rating with the Irish Credit Bureau (ICB), as you believed your credit rating had been amended as a result of your previous complaint investigations.

While you state in your letter that you had queried your ICB in general and not in relation to a specific product, all responses issued by our complaints department specifically stated that the accounts being reviewed were your mortgage accounts and the profile of your mortgage accounts would be amended.

As part of my investigation I have reviewed the payment history of [the Personal Loan] in line with the information reporting to the ICB and note the account fell into arrears of €59.32 in August 2013, as a lodgement of €150 was made to the account on the 30th August 2013 which resulted in a shortfall of the Contractual Credit Agreement (CCA) payment of €232.97 per month. As the amount of the arrears on the account was less than a full payment, your ICB profile reports [the Personal Loan] as being online for August 2013. Bank records confirm you spoke with our office on the 25th September 2013 and advised our agent of your situation and that you were in negotiations regarding your mortgage. As no further payments were received to [the Personal Loan] over the following months, correspondence issued on your account to advise of the arrears status and the possible impact of arrears on your credit rating. ...

An agent from our office spoke with you on the 25th November 2013 regarding your arrears and advised you during this call of the impact the arrears could have on your credit rating with the ICB and the surcharges on the account as a result of the arrears.

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An agent in our office contacted you again on 12th March 2014 and advised as no payments had been made to the account since August 2013 and you were not in a position to make any payments at that time, correspondence would issue to close your account and advised you the loan account would have to be referred to our solicitors.

The branch contacted our office on the 24th April 2014 to advise you had been in contact with them to inform you had received funds and would be addressing your loan account. Bank records confirm you contacted our office on the 25th April 2015 and advised that you would be lodging to the loan account.

As part of my investigation, I have reviewed your ICB profile for [the Personal Loan] to ensure the information recorded is accurate. As outlined below, your profile shows the account went one full payment in arrears in September 2013 (Month 17) and unfortunately reached seven payments in arrears in March 2014 (Month 23). The profile also confirms the account was cleared in full in April 2014 (Month 24).

24	23	22	21	20	19	18	17	16	15	14	13
C	7	6	5	4	3	2	1	0	0	0	0
12	11	10	9	8	7	6	5	4	3	2	1
0	0	0	0	0	0	0	0	0	0	0	0

I can confirm the payment profile being reported to the ICB is correct and therefore cannot be amended. It is policy that the Full Payment Profile on the ICB Database should accurately reflect the actual / correct payment profile on the Bank's record; nothing more, nothing less. Anything different to our own record and we are in breach of our contract with the ICB.

I apologise if you believed [the Personal Loan] would be amended on the ICB however as stated above, all correspondence issued in relation to your previous complaints regarding the ICB report, specifically stated that any amendments were made to your mortgage account and at no time have the Bank indicated that your [Personal Loan] could be amended. ...”

Analysis

Credit Reporting

Dealing first with the Mortgages, it is clear from the evidence that arrears accumulated on each of these loan accounts. A number of letters were issued to the Complainants notifying them of the arrears and alternative repayments arrangements were offered by the Provider but were not accepted. Owing to the accumulation of arrears on the Mortgages and the absence of any alternative repayment arrangement, the Provider issued correspondence advising the Complainants that it may commence legal proceedings. In terms of the Personal Loan, arrears began to accrue and similar correspondence was issued by the Provider.

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During a telephone call on **13 September 2016**, the Provider's agent advised the First Complainant that a formal arrangement had not been put in place in respect of the loans. The First Complainant disagreed with this and referred to her retirement lump sum payment and the fact she had notified the Provider that this money would be used to clear the loans, saying "... *as far as I was concerned there was a very formal plan in place.*" While the First Complainant considered that a formal arrangement had been in place, there is no evidence of this being accepted by the Provider and the Complainants cannot unilaterally seek to impose an alternative repayment arrangement on the Provider. Therefore, I accept that no alternative repayment arrangement was in place in respect of any of the loans.

The First Complainant also explained during the telephone conversation on **13 September 2016** that she was assured the *litigation pending* identifier would be removed from the Complainants' credit report. The basis of this belief appears to have stemmed from a letter dated **14 April 2015**. However, this letter has not been furnished by the Complainants. When questioned about this assurance, the First Complainant was unable to provide any specific details as to whether it was given orally or in writing, when it was given or by whom.

Therefore, the Complainants have not established that the Provider informed them that it would take any particular action regarding its reporting to the ICB other than that stated in the complaint correspondence outlined above.

The above complaint correspondence shows that the Provider agreed to take make certain amendments to its reporting of Loan 1 and Loan 2. The first two Final Response letters deal only with the Mortgages and none contain any reference to the Personal Loan account.

The Provider maintains that its credit reporting in respect of each of the Complainants' loans was correct. While the Complainants believe there has been incorrect credit reporting, especially in respect of the Personal Loan, they have not identified precisely what was wrong with the information reported to the ICB in respect of any of their loans or how exactly the Provider engaged in incorrect credit reporting.

Therefore, having considered the evidence and the parties' submissions, I have been provided with no evidence that the Provider reported incorrect information to the ICB regarding any of the Complainants' loans.

The Overdraft and the Personal Loan

The Complainants were granted an overdraft in respect of their current account with a limit of €10,000. However, none of the parties have advised the date the overdraft was agreed or sanctioned, and the Provider explains that it had been unable to locate a copy of the overdraft application form or overdraft facility letter. However, it is not disputed that the Complainants had an overdraft facility of €10,000.

The Complainants reached and exceeded the overdraft limit between **2 and 3 November 2011**. The overdraft was cleared using the proceeds of the Personal Loan on **27 April 2012**.

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However, up to that point, only two payments were made to the Complainants' current account to reduce the overdraft: one on **22 December 2011** in the amount of €1,120 and a second on **27 February 2012** in the amount of €38.47. The Provider wrote to the Complainants on **1 March 2012** to advise them that due to the unsatisfactory operation of the current account, it was no longer prepared to offer banking facilities to them.

A loan application form was signed by the Complainants on **12 March 2012**. It is not disputed that the purpose of the loan was to clear the overdraft nor is it disputed that the overdraft was due to be repaid by that date. However, the parties are not in agreement as to how the overdraft accumulated. For the purposes of this complaint, I am satisfied that I am not required to resolve this conflict of fact. Further to this, the Complainants content they did not complete the Customer Banking Financial Review Form. However, they acknowledge signing it. In a submission dated **3 January 2018**, the Provider clarified the loan application form was completed by the Complainants and the Customer Banking Financial Review Form was completed by a staff member in the branch in the presence of the Complainants.

The Provider wrote to the Complainants on **27 April 2012** enclosing the credit agreement for the Personal Loan advising them to read the loan documentation and that the agreement was not binding unless signed by the parties. This was 15 days after the Complainants completed the loan application, giving the Complainant ample time to consider the loan, whether or not it was suitable and to seek legal or financial advice. It is also important to note that the Complainants were or ought to have been aware of their ability to repay the loan.

In a submission dated **4 December 2017**, the Complainants state that:

"We received many phone-calls and threats from the bank before we agreed to move the overdraft to a loan. It was on a 2nd meeting with [the Provider's agent] that we succumbed to threats and bullying and agreed to go along with the loan application believing we did not have any choice. ..."

While the Provider has been unable to provide recordings of certain telephone conversations as it does not record calls at branch level, the Complainant have not identified the dates these threatening phone calls took place or described in any detail, the specific threats made by the Provider.

In a submission dated **25 January 2018**, the Providers refers to a telephone conversation which took place on **27 March 2012** and the First Complainant's comment that *'they (the Bank) are going to be delighted to give me a loan'* and *'It is in the Bank's own interest to give the loan.'*

In response to this, on **4 February 2014**, the First Complainant acknowledges that *"Yes, I would have said this."* However, the First Complainant explains:

"The Bank had insisted that we would convert our unsecured overdraft into a Personal Loan.

/Cont'd...

Despite being unable to afford this loan, and with our statements clearly outlining we had 'run up' the overdraft (redecorating a house), and with the 'purpose of the loan' clearly stating that the purpose of the loan was to clear that overdraft ..."

I have been provided with no evidence that the Complainants were forced, bullied, coerced or wrongly advised to enter into the Personal Loan.

Direct Debit Fees

It is not clear when the First Complainant's request to stop direct debits on the current account was made. In this respect, I would note the requirements of clause 9.5 of the Provider's current account terms and conditions:

"9.5 If you wish to cancel a direct debit or a direct debit payment on your Account, you must give a written instruction to the branch where you have your Account. ..."

There is no evidence of a written request being made to cancel direct debits.

A document furnished by the Provider and headed *List of Direct Debit Instructions held at 16/03/2012* showed the status of 14 direct debits as being cancelled on the Complainants' current account. It can be seen from the relevant account statements that no direct debit payments were presents after this date.

The Provider explains that on **30 April 2012**, its branch refunded unpaid direct debit fees in the amount of €76.20 as a gesture of goodwill as the Complainants had not cancelled their direct debits on their current account in time to avoid them being presented.

As the Complainants have not shown when they instructed the Provider to cancel their direct debits, I am not satisfied the Provider failed to act on any such instruction. Further to this, an amount of €76.20 was refunded to the Complainants' current account on **30 April 2012** which equated to 6 unpaid direct debit charges of €12.70.

For the reasons outlined 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.



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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.