



<u>Decision Ref:</u>	2021-0007
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Debt Management
<u>Conduct(s) complained of:</u>	Failure to provide accurate account/balance information
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to a loan the Complainant had with the Provider, against which this complaint is made.

The Complainant's Case

The Complainant entered a loan agreement with the Provider in **October 2009**. This loan was topped-up and extended in **May 2010**. A number of repayments were missed by the Complainant and arrears began to accumulate on the loan account. The Provider made demands for repayment of the loan in **January 2013** and **March 2015**. The purpose of the loan was to purchase stock and the purpose of the top-up was to purchase equipment.

The total loan amounted to over €4,000 and as a result of the restructure, the loan was repayable over 121 months. It was due to expire in May 2020.

The Complainant asserts that his loan account was mishandled by the Provider for 10 months, and that he received no letters or telephone calls from the Provider regarding who was dealing with his loan.

The Provider's Case

The Provider explains that on **1 October 2009**, a business loan in the amount of €4,200.00 for a term of 24 months was sanctioned in favour of the Complainant. The purpose of the loan was for *stock purchase*.

In **May 2010**, the Complainant sought additional funds for the purchase of equipment. The existing loan was restructured with further funds of €1,243.00 over a 121 month term. The brought the overall loan account balance to €4,167.00.

The Provider demanded repayment of the loan on **29 January 2013** as the Complainant failed to adhere to the terms of the loan agreement. Currently, the Complainant's loan is being managed by a Debt Recovery Agent. The Debt Recovery Agent took over the management of the loan on **25 April 2015**, having been first referred to it on **25 March 2015**. The Provider advises that no payments have been received in respect of the loan since **9 September 2014**.

It is stated that while the Complainant was notified of the passing of the loan to the Debt Recovery Agent, the Debt Recovery Agent, due to an oversight, did not make contact with the Complainant in respect of the loan. The Provider explains that as part of its debt recovery procedures, it notified the Debt Recovery Agent in **March** and **July 2015** that the Complainant's loan was being passed to it for management. The Provider wrote to the Complainant on **25 March** and **31 July 2015**, and **16 August 2016**, to inform him of the transfer.

On **16 August 2016**, the Provider identified that its system had failed to send relevant files to the Debt Recovery Agent. Having identified this issue, the files were sent, but the Debt Recovery Agent failed to upload the electronic file to their systems which resulted in no contact being made with the Complainant. This resulted in the Complainant's loan account *not being worked* for 25 months between **25 March 2015** and **20 April 2017**. When this issue was identified in **April 2017**, the Provider referred the account to the Debt Recovery Agent.

The Provider explains that it takes full responsibility for above issues and this was accepted in its Final Response letter of **12 May 2017**. As a result of this error, the Provider advises that it will not pursue the Complainant for the interest outstanding on the loan in the amount of €740.78 as at **18 September 2018**. The Provider will only seek the principal balance.

The Provider states that the Complainant's credit rating had already been negatively impacted due to the Complainant defaulting on the original loan agreement resulting in full repayment being demanded on **23 January 2013**. It is submitted that had the loan account been managed by the Debt Recovery Agent and had the Complainant cleared the balance in full or reached a compromise settlement agreement, the Complainant's credit rating would have come off the relevant credit register within 5 years from that date. If the Complainant had only made regular payments to the outstanding debt, the length of time his credit rating remained impacted would have been the same. The Provider remarks that prior to the loan first being referred to the Debt Recovery Agent, no payments had been made since **September 2014**.

The Complaint for Adjudication

The complaint is that the Provider failed to properly manage or administer and/or ensure the proper management or administration of the Complainant's loan account.

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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 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.

Following the issue of my Preliminary Decision, the Complainant made a submission to this Office under cover of his letter dated 1 December 2020, a copy of which was transmitted to the Provider for its consideration.

The Provider advised this Office under cover of its e-mail dated 21 December 2020 that it had no further submission to make.

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

The Complainant has, in his post Preliminary Decision submission dated **1 September 2020**, detailed that:

"I would like to [add] for investigation, my personal details [were] put out to [the] Debt Collector.

The Complainant's post Preliminary Decision submission continues and he states that:

"For ten months, my GDPR was in the hands [of] people I did not know this is worrying that [the Provider] had my information and I was not aware of it being handed over for collection I want answers on this or I will be forced to go and involve GDPR".

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The conduct identified by the Complainant in his post Preliminary Decision submission relates to the processing, use and storage of his personal data.

These matters are not within my jurisdiction and are more properly matters for the Office of the Data Protection Commissioner. Therefore, I will not be investigating any aspect of this complaint relating to the Provider's processing or otherwise, of the Complainant's identification documentation or personal data, or any matter considered to be within the jurisdiction of the Data Protection Commissioner.

The Provider wrote to the Complainant on **23 September 2009** sanctioning a loan facility in the amount of €4,200.00 which was subject to a 24 month term. The purpose of the loan was to purchase stock. This loan appears to have been extended or topped up around **15 May 2010** to facilitate the purchase of equipment. The amount of credit advanced to the Complainant at this stage stood at €4,167.00. As a result of this restructure, the Complainant's loan was repayable over a 121 month term expiring on **22 May 2020**.

It is clear from the account statements and the arrears correspondence issued to the Complainant that a number of repayments were missed. Consequently, the Provider wrote to the Complainant on **29 January 2013**, demanding repayment of the loan and notifying him that his banking facilities would be terminated. Following this, in the 25 months between **27 March 2013** and **27 April 2015** and prior to the conduct giving rise to this complaint, only 3 payments were made towards the loan.

It appears from a letter dated **24 February 2014** that an agreement was reached whereby the Complainant would lodge €60.00 per month to the loan account. This agreement was stated to be subject to review in **August 2014**. It was confirmed in a letter dated **19 May 2014**, that the Provider would continue to accept €60.00 per month towards the loan. The evidence indicates that this agreement was not adhered to by the Complainant and no such payments were made to the loan account.

The Provider wrote to the Complainant on **14 August 2014** asking that he bring the loan account up to date. In the event the Complainant failed to do so, the Provider advised that it would take whatever steps were necessary to recover the debt. As the loan account was not brought up to date, the Provider informed the Complainant on **9 January 2015** that it would be withdrawing banking facilities within two months of the date of its letter. The Provider demanded immediate payment of the amount outstanding in respect of the loan on **10 March 2015**.

By letter dated **25 March 2015**, the Provider wrote to the Debt Recovery Agent instructing it to collect the debt outstanding on the loan. Similar letters were sent in **May** and **July 2015**, **August 2016**, and **March** and **April 2017**.

During a telephone conversation on **19 March 2015**, the Complainant was advised that he would receive correspondence the following week notifying him of the appointment of a debt collection agency. On **25 March 2015**, the Provider wrote to the Complainant to advise him that the Debt Recovery Agent had been appointed to collect the debt due on foot of the loan.

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The letter contained the contact details of the Debt Recovery Agent and stated: *"The agent will contact you either in writing or by telephone to agree a repayment schedule to repay your debt."* Similar letters were sent to the Complainant in **July 2015** and **August 2016**.

Analysis

It is acknowledged by the Provider, and I accept, that there was a failure to communicate with the Complainant for a 25 month period between **March 2015** and **April 2017**.

The Provider notified the Complainant in **March** and **July 2015** of the appointment of the Debt Recovery Agent and again in **August 2016**. It was explained to the Complainant during a telephone conversation on **1 June 2017** that the **March 2015** and **August 2016** letters were issued because of certain difficulties with the Complainant's file.

While the Provider issued correspondence to the Complainant and the Debt Recovery Agent regarding the appointment of the Debt Recovery Agent, there does not appear to have been any follow-up communication from the Provider with the Debt Recovery Agent regarding progress made in recovering the debt owed by the Complainant or to ensure there were no further issues with the Complainant's file. It is disappointing that no such communication took place and that such a prolonged period of time was allowed to elapse before the situation was rectified. Further to this, I do not believe it was sufficient to simply issue fresh notifications to the Complainant regarding the appointment of the Debt Recovery Agent when difficulties arose with the transferring or uploading Complainant's file without notifying the Complainant of these difficulties or updating him each time they arose.

Additionally, during certain of the telephone conversations with the Complainant in **2017**, the Provider's agent informed the Complainant that efforts were made to transfer his file to the Debt Recovery Agent between **August 2016** and **April 2017**. This would tend to suggest that further difficulties were encountered by the Provider between **August 2016** and **April 2017**. Notwithstanding these matters, and quite disappointingly, the Provider did not make the Complainant aware of any of the difficulties encountered and I am satisfied there should have been some form of communication with the Complainant during this period.

The Complainant states there was a 10 month period during which there was a failure to communicate. This would suggest there was some communication between from the Provider between **March 2015** and **April 2017**. This is further supported by the correspondence referred above and two particular telephone conversations.

The first of which took place on **24 September 2015** where the Complainant was advised that his account had been passed to the Debt Recovery Agent on **25 March 2015**. The Complainant was also advised that any correspondence regarding the loan would have to be sent through the Debt Recovery Agent. The second telephone call took place on **27 April 2017**, where the Complainant expressed the view that there was no contact from the Provider for the last 10 months and acknowledged receiving correspondence from the Provider in **August 2016**.

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Although there was a failure on the part of the Provider and the Debt Recovery Agent to communicate with the Complainant, I accept that the Complainant was aware of the appointment of the Debt Recovery Agent. Further to this, it appears that while the Complainant did not receive any communication from the Debt Recovery Agent, he did not seek to contact the Provider or the Debt Recovery Agent to enquire about his loan. In such circumstances, given that the Complainant still owed the debt, it is not unreasonable to expect the Complainant to have contacted, or attempted to contact, the Provider or the Debt Recovery Agent regarding the status of the loan. However, the Complainant did not do so, and this is very much consistent with the Complainant's lack of engagement regarding the loan prior to the notification of the appointment of the Debt Recovery Agent.

Given the repayment history of the loan account, the lack of engagement from the Complainant, and absence of any efforts or intention to make the agreed repayments (which can be seen, in particular, from the second telephone conversation on **19 January 2015**), I am not satisfied the Complainant was necessarily prejudiced by the communication failures acknowledged by the Provider, especially in the context of the goodwill gesture outlined below.

Further to this, the evidence shows that the loan account was not kept up to date by the Complainant and a number of arrears letters, together with various demands were issued by the Provider. The evidence demonstrates that the manner in which the loan account was maintained would have caused extensive and prolonged negative credit reporting in respect of the loan; well before the issues the subject of this complaint arose. As noted in the previous paragraph, there is no evidence to show any effort or willingness on the part of the Complainant to make any repayments or engage with either the Provider or the Debt Recovery Agent. Furthermore, the period of non-communication, as accepted by the Complainant, was for 10 months which shows the Complainant had received correspondence from the Provider up to the August 2016 letter but took no action on foot of it. Therefore, taking these matters into consideration, I am not satisfied that any adverse credit reporting is likely to be directly attributable to the failings acknowledged by the Provider or, at least, materially adversely affected the Complainant's credit rating; and the Complainant has not made any submission or produced any evidence to show otherwise.

Goodwill Gesture

The Provider states that:

"In recognition of the Bank's failures and those of the Debt Recovery Agent, in addition to the interest accrued of €294.70 which was waived by the Bank in April 2017, the Bank will not pursue the Complainant for the total interest accrued on the loan account since 19 March 2013 which is when the account was deemed a bad debt and which currently stands at €740.78dr as at 14 September 2018. The Bank would also like to formally offer the Complainant a goodwill gesture of €1,500 in recognition of the customer service failing in settlement of the complaint."

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In light of the circumstances of this complaint, I consider this goodwill gesture to be a reasonable sum of compensation for the customer service failings acknowledged by the Provider. 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**

14 January 2021

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.