



<u>Decision Ref:</u>	2021-0030
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Union Loan
<u>Conduct(s) complained of:</u>	Maladministration Failure to implement payment terms
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a credit union loan.

The Complainant's Case

The Complainant states that in June 2018, she sought a top up loan with the Provider. The Complainant states that she "would never have applied for a loan with a repayment plan exceeding €200 a month and I would have been very clear about that at the appointment".

The Complainant submits that in November 2018, the Provider's credit controller contacted her by phone to inform her that her payments should have been €240 per month rather than €200 per month. Subsequently, the Complainant states that the Provider sent a copy of a credit agreement, signed by her, which states that the schedule of repayments would be "87 monthly payments of €240 including interest". The Complainant contends that she had been given no copy of this credit agreement at the time of signing.

The Complainant states that following the request to increase the monthly payments, the Provider followed up with a mobile call, emails and letters, one of which demanded that she clear the loan, failing which legal action would follow.

The complaint is that the Provider assigned the Complainant a loan with payments exceeding what she was willing and/or able to pay and that correspondence from the Provider on this issue was excessive and intimidating.

The Complainant wants the Provider to allow the loan to run its course with the remaining monthly repayments of €200 per month.

The Provider's Case

It is the Provider's position that the Complainant's assertions are incorrect. The Provider's position is that the monthly repayments of €240 per month were expressly agreed with the Complainant and forms part of the credit agreement. The Provider states that the loan document expressly sets out that the monthly payments would be €240 per month and that this is evidenced in the loan documentation which was signed by the Complainant.

The Complaint for Adjudication

There are two elements to this complaint. The first element is the complaint that the Provider assigned the Complainant a loan with payments exceeding what she was willing and/or able to pay. In essence, the Complainant is asserting that she did not and would never have agreed to repayments of €240 per month. The second aspect of the complaint is that the correspondence from the Provider on this issue was excessive and intimidating.

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.

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A Preliminary Decision was issued to the parties on 6 October 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 parties made the following submissions:

1. E-mail from the Complainant to this Office dated 6 October 2020.
2. Letter from the Complainant to this Office dated 29 October 2020.
3. E-mail, together with attachment, from the Provider to this Office dated 17 November 2020.
4. E-mail from the Complainant to this Office dated 23 November 2020.
5. Letter from the Complainant to this Office dated 1 December 2020.
6. E-mail from the Provider to this Office dated 7 December 2020.
7. E-mail from the Provider to this Office dated 17 December 2020.
8. E-mail from the Provider to this Office dated 4 January 2021.
9. E-mail from the Complainant to this Office dated 6 January 2021.

Copies of the above submissions were exchanged between the parties.

I note that the Provider, under cover of its e-mails to this Office dated 7 December 2020, advised that it wished to have an opportunity to contact the Complainant directly with a view to resolving this matter. By letter dated 7 December 2020, this Office confirmed its agreement to the Provider that it was in order for negotiations to take place between the parties and the Complainant was advised accordingly.

By e-mail to this Office dated 4 January 2021, the Provider outlined its efforts to resolve this matter.

By e-mail to this Office dated 6 January 2021, the Complainant advised that “... *as requested by the Ombudsman, I have done my part and ... if the Financial Ombudsman is satisfied that nothing untoward happened, I believe this should be stated in the Financial Ombudsman's findings*”.

Having considered this matter further, I considered it appropriate to continue with my adjudication of this matter and both parties were advised by this Office on 6 January 2021 that my Legally Binding Decision would issue in due course.

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Having considered these additional submissions and all of the submissions and evidence furnished by both parties to this Office, in particular, the Provider's efforts to reach an amicable resolution of this matter with the Complainant, I set out below my final determination.

The Complainant's position is that she took out a top up loan in June 2018 with the Provider. She states that she was requested at the drawdown to set up a direct debit for €200 per month with her bank. This office has been provided with copies of both the direct debit mandate form and the credit agreement.

Dealing firstly with the standing order setup request, this document clearly states that the standing order request relates to an amount of €200 per month. It is also signed by the Complainant. However, the date of this standing order set up request is 3 May 2018.

The Complainant states that the standing order request is evidence that it was only her intention and her understanding that the monthly repayments on the credit agreement with the Provider were €200 per month. In her letter to the Provider dated 15 February 2019, the Complainant states that her loan with the Provider consisted of several top ups with the most recent having been drawn down in May 2018. She goes on to state that she completed the standing order set up in the amount of €200 a month and that she "definitely would not have applied for a top up loan then if it meant paying an amount in excess of €200 a month".

The Provider in response to this points out is that the standing order form was completed in May 2018 whereas in fact, the loan, the subject matter of this complaint was taken out on 25 June 2018.

In that regard, a copy of the loan application form which is signed by the Complainant, has been provided to this office. The loan application form is dated 25 June 2018. The loan application form refers to the loan purpose as a home improvement loan. It refers to an existing loan balance of €5921.85 and the amount requested in this loan being €8000. The net loan therefore is stated on the documentation to be €13,921.85. The term of the loan is said to be 7.25 years.

The next field on the loan application is "repayment". That expressly states as follows: "87 monthly payments of €240 including interest".

The document is signed by the Complainant. There is a declaration on the loan application form that is also signed by the Complainant which confirms, amongst other things, that the statements made in the loan application form are made for the purpose of obtaining the loan and are true to the best of the applicant's knowledge and belief. It also contains a declaration which states "I confirm that I have the financial means to repay this loan, and that it will be used for the purposes stated overleaf".

Based on the signed loan application form, there is written and documented evidence that the Complainant signed a loan application form and in doing so, she agreed to the expressly stated monthly repayments of €240 per month over a period of 87 months.

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The standing order set up predates the loan application and the loan agreement and is not therefore evidence or sufficient evidence to displace the express wording of the loan application form which was signed by the Complainant on 25 June 2018.

In light of the foregoing, I am satisfied that the Complainant did in fact agree to repayments of €240 per month.

In relation to the second element of the complaint, which is that the correspondence from the Provider in relation to the Complainant arrears was excessive and intimidating.

This office has been provided with numerous correspondence issued by the Provider to the Complainant arising out of the arrears. There are letters dated 2 January 2019, 7 January 2019, 31 January 2019, 7 February 2019, 23 August 2019, 12 September 2019, 14 January 2020 and 27 January 2020. In each of these letters, the Complainant is advised that her account is in arrears, what the loan balances are at the time of the letter, the amount of interest and the amount of arrears. In the letter dated 2 January 2019, there is a proposal from the Provider to pay €300 a month until the arrears are cleared. It appears that the Complainant did not respond to any of the aforementioned letters. In addition, there is an email from the Provider to the Complainant dated 10 January 2019. That email states, amongst other things, that the signed credit agreement cannot be changed but that if the Complainant wants to meet to discuss a renegotiation of the loan she can contact the Provider. The Provider states that it has asked the Complainant on the phone and in writing to call in to facilitate a reassessment of the repayment terms but that the Complainant has not accepted this offer in circumstances where she is disputing that she signed the agreement in the first place.

Amongst other things, the Consumer Protections Code, 2012, provides as follows:

ARREARS HANDLING GENERAL

8.1 *A regulated entity must have in place written procedures for the handling of arrears.*

8.2 *A regulated entity must make the following information available for personal consumers, including on a dedicated section of any website it operates:*

- a) general information to encourage a personal consumer to deal with arrears and stating the benefits of dealing with arrears;*
- b) relevant contact details of the regulated entity for dealing with arrears;*
- c) details on the charges that may be imposed on personal consumers in arrears;*
- and*
- d) a link to the Money Advice and Budgeting Service (MABS) website. The information on the website must be easily accessible from a prominent link on the homepage.*

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8.3 Where an account is in arrears, a regulated entity must seek to agree an approach (whether with a personal consumer or through a third party nominated by the personal consumer in accordance with Provision 8.5) that will assist the personal consumer in resolving the arrears.

8.4 Where an account remains in arrears ten business days after the arrears first arose, a regulated entity must immediately communicate clearly with the personal consumer to establish in the first instance why the arrears have arisen.

8.5 At the personal consumer's request and with the personal consumer's written consent, a regulated entity must liaise with a third party nominated by the personal consumer to act on his or her behalf in relation to an arrears situation. This does not prevent the regulated entity from contacting the personal consumer directly in relation to other matters.

PROVISION OF INFORMATION

8.6 Where an account remains in arrears 31 calendar days after the arrears first arose, a regulated entity must within three business days inform the personal consumer and any guarantor of the loan, on paper or on another durable medium, of the status of the account.

This information must include the following:

- a) the date the account fell into arrears;
- b) the number and total amount of repayments (including partial repayments) missed (this information is not required for credit card accounts);
- c) the amount of the arrears to date;
- d) the interest rate applicable to the arrears;
- e) details of any charges in relation to the arrears that may be applied;
- f) the importance of the personal consumer engaging with the regulated entity in order to address the arrears;
- g) relevant contact points;
- h) the consequences of continued non-payment, including where relevant, sharing of data relating to the consumer's arrears with the Irish Credit Bureau or any other credit reference agency;
- i) if relevant, any impact of the non-payment on other accounts held by the personal consumer with that regulated entity including the potential for off-setting of accounts, where there is a possibility that this may occur under existing terms and conditions; and
- j) a statement that the personal consumer may wish to seek assistance from MABS and contact details for the MABS National Helpline and the link to the MABS website.

In light of all of the foregoing considerations and the evidence of the correspondence and communication from the Provider to the Complainant, I do not believe that it would be reasonable or fair to describe the Provider's actions on this issue as excessive and/or intimidating. I am also satisfied that the Provider broadly complied with its obligations in this regard under the Consumer Protection Code 2012.

It is not disputed that the Complainant availed of the loan in the sum of €13,921.85 (€5,921.85 + top-up of €8,000).

I note the Complainant does not want to pay more than €200 per month. I also note the Provider's offer to facilitate a reassessment of the repayment terms and more recently, following the issue of my Preliminary Decision, its efforts to reach an amicable resolution of this matter with the Complainant. I welcome the Provider's efforts to resolve the matter and accept that the approach by the Provider was reasonable. It is a matter for the Complainant to decide if she is willing to engage with the Provider in order to resolve the matter.

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.



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

4 February 2021

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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.

