



<u>Decision Ref:</u>	2021-0202
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Hire Purchase
<u>Conduct(s) complained of:</u>	Errors in calculations Disputed transactions Incorrect information sent to credit reference agency
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the Complainant's hire purchase agreement entered into with the Provider. The payments falling due in accordance with this agreement are referred to on the face of the agreement as "repayments".

The Complainant's Case

The Complainant entered into a hire purchase agreement with the Provider in **March 2014** in the amount of €18,463.79 to facilitate the acquisition of a car by way of hire purchase. She signed the agreement on 1 April 2014. The first repayment fell due on **30 April 2014**. A direct debit was rejected by the Complainant's bank of **1 August 2014** and arrears accrued thereafter.

The Complainant has submitted that, as of **12 April 2019**, she was informed that arrears on the agreement stood at €510.47. She states that she understood her final March 2019 instalment of €380.22 was also due. The Complainant contends that the arrears were cleared in four instalments of €127.63 between March 2019 and early April 2019. The Complainant argues that the last repayment of the agreement in March 2019 was made on 15 March 2019, and she thought that the agreement was now met in full. She argues however that the Provider has consistently advised that she still owes €380.22.

The Complainant argues that on review of her statement, she is of the view this may have arisen due to the fact that the initial four payments made by direct debit were not properly charged to her account. She contends that she was first billed €380.22 in the same month as entering the agreement, even though, according to the contractual documentation, the first payment is not payable until one month after the start date of the agreement. She argues that this means that the Provider breached the arrangement. The Complainant submits that she has continually raised concerns with the Provider since April 2019 that the figures were not adding up.

The Complainant argues that whether she paid at the start, middle or end of the month of March 2019, should not have any bearing on her account. She argues that her payment on 15 March 2019 should have been allocated to the March payment. She submits that the error of this calculation made by the Provider means that the March 2019 payment on her Irish Credit Bureau (**ICB**) record shows one month arrears, which is incorrect in her opinion. She argues that she was turned down for a loan as a result of this and it has affected her chance to borrow credit. She argues that the Provider has a duty to rectify the inaccurate data as a matter of urgency.

The Complainant advises that she did not sign her new contractual agreement until 1 April 2014. She further indicates that the initial agreement was in place between January and March 2014 so she questions how a revised agreement could have come into effect in March 2014. She argues that payments are made on the account frequently and not intermittently as submitted by the Provider. The Complainant argues she did not receive regular statements from the Provider throughout the agreement. She states that she was receiving excel documents containing a table of figures at one stage but she found this difficult to read, as she explained to the Provider's representative at the time. She argues that she never received notification from the Provider notifying her of the direct debit collection date.

The Complainant emphasises that she was informed that the instalment of €380.22 paid on **18 March 2019** was allocated to the March 2019 payment and not arrears and she questions why the Provider is now disputing that this is the case. The Complainant argues that the arrears of €510 were paid in four instalments of €127.62 in March and April 2019, along with the final instalment of €380.22 on 15 March 2019. The Complainant argues that her ICB profile should not show that the March 2019 payment is still outstanding. She argues that it has negatively affected her credit profile and should be corrected immediately.

The Complainant is very critical of the Provider's delay in responding to queries raised by this office in the present investigation.

The Complainant seeks for the Provider to recognise and acknowledge the error of its account process and to rectify her ICB record as a matter of urgency.

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The Provider's Case

The Provider acknowledges that it delayed in submitting its response to queries raised by the Office and apologises for this delay. It explains that restrictions imposed by Covid-19 resulted in thousands of customers in financial distress and it was against this background that the delay occurred in responding to the FSPO's Summary of Complaint dated April 2020.

The Provider argues that the Complainant commenced hire purchase finance with it in March 2014 in respect of a second hand car. It states that the term of the agreement was 60 months with monthly payments being €305.23. The Provider asserts that this was a refinance of a previous agreement, as the customer had experienced financial difficulties. It argues that it allowed the Complainant to refinance an existing hire purchase agreement to facilitate a lower monthly repayment.

The Provider argues that the Complainant first fell into arrears in **July 2014** and subsequently missed payments in August 2014, September 2014, October 2014 and November 2014. The Provider argues that the Complainant advised it in January 2015 that she would be in a position to meet the monthly repayments from that point onward and would pay extra amounts to compensate the arrears.

The Provider states that in **August 2015**, it advised the Complainant that normal procedures required that any arrears are cleared within three months. At that point, the arrears totalled €1,220.92 and the Complainant committed to paying an extra €40 per month on top of her monthly rental of €305.23 i.e. €345.23 over 23 months in order to clear the arrears in the time frame that was financially viable to her.

The Provider argues that 23 months is considerably longer than the three months it normally allows but it was keen to reach a viable long-term solution with the Complainant. It argues that the Complainant missed a payment in November 2014 which put the payment plan and the agreement in jeopardy. The Provider argues that the Complainant made payments on intermittent dates from this point until **26 April 2019**, when she paid €127.62 which is the last payment recorded to have been received from her. The Provider argues that the Complainant has failed to make any further payments and a balance of €380.21 was outstanding on the agreement from that date.

The Provider argues that the extra payments which the Complainant made on her arrears have been applied retrospectively to the oldest arrears on her account. It argues that it has been explained to the Complainant that her ICB record is correct as an individual's ICB represents a snapshot of the account at a particular moment in time and it is not possible to amend her ICB retrospectively. It argues that the way in which the ICB operates is for the purpose of providing financial institutions with as clear a view as possible of an individual's payment history so that lenders can make responsible decisions on credit applications. The Provider argues that the Complainant's account with the Provider is in order and it has taken full account of all the payments which the Complainant has made.

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The Provider argues that statements including a table of allocations on the agreement were issued frequently on the agreement to the Complainant. The Provider argues that the frequency of the loan repayment is outlined in the agreement documentation and it would seek to debit the Complainant's nominated account on a monthly basis. The Provider argues that while the initial payments were made by direct debit, the Complainant commenced making manual payments from 1 October 2014.

The Provider argues that the original monthly payment date of the agreement was set at the 30th of each month. The Provider argues that the final rental payment fell due on 30 March 2019. The Provider argues that the activation date of the agreement was **27 March 2014** and the due date fell a month later. The Provider argues that it received no correspondence from the Complainant in relation to the due date of the direct debit originally when it was debited from account. It argues that the Complainant made payments on 30 April 2014, 30 May 2014 and 30 June 2014 without fail.

The Provider does not accept that the Complainant was billed her first rental payment in the same month that she signed the agreement despite the fact that the agreement states that the first payment was not payable until one month after the start of the agreement. The Provider argues that the activation date of the agreement was 27 March 2014 and as the agreement commenced in March 2014, the first rental balance fell due in April 2014, as confirmed to the Complainant by email dated 9 May 2019.

The Provider argues that it allocates payments received to the oldest outstanding instalments and this was confirmed to the Complainant on 21 November 2018. It argues that all payments received in respect of the agreement were allocated in line with its policy. The Provider argues that the payment made by the Complainant on 18 March 2018 in the sum of €380.22 related to previous amounts outstanding. It argues that the final rental fell due on 30 March 2019. The Provider confirms that no fees or charges have been applied to the agreement in respect of changes in payment methods or missed payments.

The Provider confirms that the total amount payable shown on the agreement is €18,463.79. As the Complainant made payments totalling €18,083.58, this leaves the balance of €380.21 still outstanding.

The Provider argues that while it acknowledged to the Complainant in March 2019 that the arrears would be cleared at that point, by the making four payments in the sum of €127.62 per week, it did not advise her that the total amount due under the agreement had been paid. The final rental fell due on 30 March 2013 in the sum of €380.22 and the Provider argues that this was advised to the Complainant on several occasions.

The Provider argues that the Complainant fell behind with payments and it assisted her to achieve an affordable repayment of arrears. It argues that it tried to work with the Complainant to assist her at every stage throughout the duration of the agreement. The Provider states that it is willing to offer to not pursue the amount owed by the Complainant by way of a goodwill gesture in full and final settlement of the matter and in recognition of the delay caused to the Complainant by its failure to respond to this Office.

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The Complaint for Adjudication

The complaint is that the Provider incorrectly calculated the Complainant's repayments, wrongfully debited the Complainant's bank account €380.22, and wrongfully reported the Complainant's loan as being in arrears to the Irish Credit Bureau.

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 **27 May 2021**, outlining the preliminary determination of this office 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 substantive submissions from the parties, within the period permitted, the final determination of this office is set out below.

The primary dispute in the present case is whether the Provider has properly calculated the payments made to the Complainant's account and has supplied the appropriate balance information. A decision on this issue will then determine whether the Provider correctly or incorrectly noted a missed payment from March 2019 on the Complainant's Irish Credit Bureau (ICB) record.

A hire purchase agreement was entered into between the parties in March 2014, and I note that the agreement was signed by the Complainant on 1 April 2014. The agreement indicated repayments as follows:

<i>"First repayment:</i>	<i>€380.23</i>
<i>followed by 58 monthly Repayments, each of:</i>	<i>€305.23</i>
<i>and a Final Repayment:</i>	<i>€380.22</i>

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The First Repayment includes the Documentation Fee and is payable 1 month after the start date of this agreement (the date we pay the supplying dealer for the Vehicle which we will notify to you).

The subsequent monthly Repayments are payable on the same date in each consecutive month, starting 1 month after the First Repayment.

The First Repayment and each of the monthly Repayments will each constitute a Repayment.

The Final Repayment includes the Option to Purchase Fee and is payable 1 month after the last monthly Repayment. If you do not elect to purchase the Vehicle at the end of this agreement, the Option to Purchase Fee will not be payable and the Final Repayment will be €305.23.

If the Repayment date is the 29th, 30th or 31st of a month, then in a month with no corresponding date, the payment is due on the first day of the next month.

Hire-Purchase Price €18,463.79.

The total amount of credit is €14,965.04. It will be provided when we pay the supplying dealer for the vehicle.”

The hire purchase agreement was signed by the Complainant on 1 April 2014. It was signed for and on behalf of the Provider on 25 March 2014.

In respect of the date of the first payment became due, this was defined under the agreement as one month after the start date of the agreement, itself defined as the date that the Provider paid the supplying dealer for the vehicle. This was not the date that the agreement was signed by the Complainant, as she seems to believe.

The Provider has submitted that the start date was 27 March 2014 and that the first instalment fell due under the agreement on 30 April 2014. I have not been supplied with any evidence of a specific notification to the Complainant of the start date, and hence the date for the first instalment. I am satisfied, however, that instalments were billed to the account on a consistent basis on the 30th of each month from 30th April 2014 and that no issue was raised in respect of this by the Complainant until the present complaint. I am also satisfied that the commencement date of the agreement does not affect the total amount to be repaid under it. It is further noteworthy that clause 2(c) of the general terms and conditions of the agreement allowed for a change of the date on which repayments were due to a date more convenient to the customer, by the giving of reasonable notice.

In respect of the Provider's entitlement to report missed payments to credit rating agencies, the following condition set out in the agreement:

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“Missing Payments

Missing payments could have serious consequences: we will report missed payments to credit reference agencies, which may make obtaining credit from us and other creditors more difficult. The amount you have to pay to us may increase. We may become entitled to terminate the agreement and recover possession of the Vehicle (we will need the court’s permission to recover the Vehicle if you have paid at least one third of the Hire-Purchase Price under this agreement). We may issue legal proceedings against you to enforce the debt, you may have to pay our legal costs and other expenses, and we may obtain a charging order on your home.”

If the Complainant missed any repayments due under the agreement, I am satisfied that this clause entitled the Provider to make the relevant notification to the ICB.

The Provider has submitted an account statement in respect of the agreement with a detailed payment history. Relevant portions of that payment history can be seen as follows:

Date	Particulars	Instalment	Payment	Arrears Balance
30 Apr 2014	Rental	380.22		380.22
30 Apr 2014	Direct Debit		380.22	0.00
30 May 2014	Rental	305.23		305.23
30 May 2014	Direct Debit		305.23	0.00
30 Jun 2014	Rental	305.23		305.23
30 Jun 2014	Direct Debit		305.23	0.00
30 Jul 2014	Rental	305.23		305.23
30 Jul 2014	Direct Debit		305.23	0.00
01 Aug 2014	Rejected Direct Debit		-305.23	305.23
30 Aug 2014	Rental	305.23		610.46
30 Aug 2014	Direct Debit		305.23	305.23
03 Sep 2014	Rejected Direct Debit		-305.23	610.46
30 Sep 2014	Rental	305.23		915.69
30 Sep 2014	Direct Debt		305.23	610.46
01 Oct 2014	Rejected Direct Debit		-305.23	915.69
01 Oct 2014	Payment		305.23	610.46

It appears that from September 2014, the Complainant made manual payments in respect of instalments due under the agreement rather than payments by direct debit. Each monthly payment in the sum of €305.23 fell due on the 30th of each month. Payments were made by the Complainant most months thereafter but on different dates. For example, payments were made on 10 October 2014, 2 December 2014, 28 January 2015, 6 March 2015, 2 April 2015 and 6 May 2015.

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There was no consistency to the date of the payments made by the Complainant and arrears continued to accrue on the account because there was more than one month elapsed between many of the repayments made. From 8 September 2015 onwards, payments of €345.23 were made by the Complainant. Again there were differing periods between the payments. Payments were made by the Complainant on 8 September 2015, 20 October 2015, 6 November 2015, 12 January 2016, 8 February 2016, 3 March 2016 and 7 March 2016. I note that this pattern continued throughout 2016, 2017 and 2018.

The following table shows the balance due and payments made to the account by the Complainant during 2019:

Date	Particulars	Instalments	Payment	Arrears Balance
30 Dec 2018	Rental	305.23		1220.92
02 Jan 2019	Payment		345.23	875.69
30 Jan 2019	Rental	305.23		1180.92
05 Feb 2019	Payment		240.23	940.69
06 Feb 2019	Payment		50.00	890.69
26 Feb 2019	Payment		305.23	585.46
28 Feb 2019	Rental	305.23		890.69
18 Mar 2019	Payment		380.22	510.47
26 Mar 2019	Payment		127.62	382.85
30 Mar 2019	Rental	380.22		763.07
01 Apr 2019	Payment		127.62	635.45
08 Apr 2019	Payment		127.62	507.83
26 Apr 2019	Payment		127.62	380.21
Totals:		18,463.79	18,083.58	380.21

The dispute between the parties is in respect of the payment made on 18 March 2019 in the sum of €380.22. In the Complainant's submission, this payment should have covered the March 2019 rental payment so that the only remaining payments due under the account should have been clearing the arrears of €510.47. The Provider disputes this and argues that the Complainant did not take into account the payment due from her which was charged on 30 March 2019. Her subsequent repayments therefore did not include the March 2019 instalment, despite clearing the pre-existing arrears on the account.

I have carefully reviewed the Provider's calculation of the payments made and rental payments charged to the account. I am satisfied that the Provider consistently charged rental payments on the 30th of each month between April 2014 and March 2019. This correlates with the 60 month duration of the hire purchase agreement. I am satisfied that in respect of the initial three payments made to the account by way of direct debit in 2014 that payments were made by the Complainant on the 30th of the month.

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Thereafter, and as set out above, manual payments were made by the Complainant on differing days of each month with some months missed completely, as there was more than one month between many of the payments made by the Complainant to the account. As a result of this inconsistency in the payment history, there was an arrears balance on the account from August 2014 onwards. I acknowledge, however, that the Complainant never allowed the arrears to rise to significant levels and her concerted efforts to keep on top of the payments is evident from the payment history.

Nevertheless, I am satisfied that the Provider has properly calculated the payments made to the account and the balance due. This conclusion is supported by the total payments made to and payments due on the account. The total payments to be made under the agreement were €18,463.79. As payments made to the account by the Complainant totalled €18,083.58, this leaves the balance of €380.21. I am therefore satisfied that the Provider has been consistently correct in informing the Complainant since April 2019, that she had a balance outstanding of €380.21 on her account, in respect of the March 2019 payment. As a result, the Provider was correct in making a notification to the ICB in this regard.

The next question arises as to whether there was any confusion created by the Provider's communication to the Complainant in respect of the balance due on the account. The email which appears to have created the confusion in the Complainant's mind, is from a representative of the Provider on 19 March 2019 which stated as follows:

"I can confirm months and amounts outstanding are outlined below.

June 2018 €205.24

September 2018 €305.23

As of close of business on 19th March 2019 the arrears outstanding total €510.47."

The Complainant responded to this email as follows:

"From this Friday 22nd I will pay 127.62e for 4 weeks (every Friday) to balance off the arrears.

I will email on the 12th of April to confirm the final payment has been made."

It appears that arising from this correspondence, the Complainant was of the view that the only remaining sum she was obliged to pay under the agreement was the sum of €510.47. I accept that she repaid this amount in the four instalments that she committed to doing. The Complainant appears to have been of the view that the payment made by her on 18 March 2019 in the sum of €380.22, would be applied to their rental due from her in March 2019. I can find no evidence, however, that this was intimated to her by the Provider. The Provider's email of 19 March 2019 simply dealt with the arrears amount outstanding on the account on that date. It did not confirm that there were no other payments due to be billed to the account.

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Although the email of 19 March 2019 could have clarified that a final rental payment would also be charged to the account at the end of March, I am satisfied that the email is couched in terms of the sum currently due on the account (i.e. due as of 19 March 2019). That calculation was based on the sum of €380.22 (and paid the previous day i.e. 18 March 2019) having already been applied to the Complainant's account. It did not, however, take into account that a final payment of €380.22 was due to be charged to her account on 30 March 2019.

While I appreciate that the Complainant did not understand this at the time, I do not accept that the Provider ever represented to her that there were no further amounts to be billed to the account. The simple fact is that, under the agreement that she signed on 1 April 2014, monthly payments over a 60 month period were to be charged to her. When she made her enquiry in March 2019 as to the sums due on the account, this reflected the period of 59 months that had already elapsed on the account leaving the final month to still fall due. If the sum of €380.22 that had been paid on 18 March 2019 had been applied to the March payment instead of an earlier and outstanding payment, this would have had no impact on the overall balance due by the Complainant.

I do not accept that there was any misinformation provided to the Complainant in March 2019 as to the amount due to be paid by her under the agreement. I am further satisfied that in a series of emails in April and May 2019, the correct position was clarified again and again to the Complainant. While the Complainant raised a series of issues in respect of exactly what payment amounts had been missed on various days and what months those payments made by her had been allocated to, the Provider attempted to deal with each of her queries in a helpful and informative manner.

The fact remained, and remains, that the Complainant's repayments under the agreement fell short in the sum of €380.21. This final payment was not made by her and was correctly considered as a missed payment by the Provider.

In respect of the Complainant's argument that she was never informed that her account would be billed on the 30th of each month, I am satisfied that this position should have been apparent to her two reasons:

1. Direct debits were called for by the Provider on the 30th of each month from 30 April 2014 until the direct debit was cancelled by the Complainant; and
2. There were several references in emails from the Provider to the Complainant that referred to the date on which instalments fell due. In an email dated 11 January 2019, for example, the Provider stated as follows:

"The three instalments I referred to fell due on 30 October 2018, 30 November 2018 and the 30 December 2018. They did not include the January instalment.

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All payments received are allocated to the closest instalment which falls due. Any overpayments are then allocated to the oldest arrears which leaves the outstanding months of April, June and September 2018. The specific months are not reported to the ICB however the number of instalments outstanding at any month and will be reported in line with the ICB reporting rules."

In terms of the Provider's communications to the Complainant in respect of payments falling due, an email dated 19 October 2018 is also instructive:

"Please see attached an updated copy of all payments received to date on the above referenced Agreement. This should identify the months outstanding that you refer to in previous correspondence. As of close of business 19th October 2018 the arrears of this Agreement stand at €1201.27. The Agreement is due to have an end date of 30th March 2019 with 6 instalments remaining plus any remaining outstanding arrears."

[Emphasis added]

In the email of 19 October 2018, therefore, the Complainant was informed that there were six instalments remaining on the account in addition to the arrears. She was thereby on clear notice that her account would be billed in October 2018, November 2018, December 2018, January 2019, February 2019, and March 2019. She was also informed that the agreement had an end date of 30 March 2019 and hence that the final instalment was due on that date.

In view of the totality of the correspondence between the parties, I can find no fault with the Provider in respect of its communications. I am satisfied that it sought every opportunity to respond to the numerous queries raised by the Complainant in respect of balances and arrears due on the account and the allocation of payments made by her. I am satisfied that any confusion that arose in the mind of the Complainant in respect of her obligation to pay the last instalment on 30 March 2019 was not caused by the Provider. As already concluded above, I am satisfied that this final instalment was due under the terms of the agreement that she signed on 1 April 2014.

In respect of the Provider's delay in responding to queries raised by this office, I acknowledge that its response fell very considerably outside the timeline set for a response. I appreciate that the Complainant was frustrated by the Provider's delay in this regard. I am conscious, however, that 2020 was an exceptional year for many businesses in terms of responding to the difficulties and restrictions posed by the COVID-19 pandemic. The Provider has apologised for its delay in this regard.

I further acknowledge that the Provider has offered not to pursue the amount owed by the Complainant by way of goodwill gesture, in full and final settlement of the matter and in recognition of the delay caused to the Complainant by failing to respond to queries raised by this Office. I am satisfied by the Provider's response in this regard and it will be appropriate for the Complainant to communicate directly with the Provider, if she wishes to have that outstanding amount written off by the Provider, with her agreement.

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As the evidence before me discloses no wrongdoing by the Provider in its administration of the Complainant's hire purchase agreement, I am satisfied accordingly that it is not appropriate to 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.



**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

21 June 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.