



<b><u>Decision Ref:</u></b>	2021-0249
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Personal Loan
<b><u>Conduct(s) complained of:</u></b>	Arrears handling Disputed transactions Incorrect information sent to credit reference agency Failure to process instructions
<b><u>Outcome:</u></b>	Partially upheld

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

The Complainant restructured a business loan by way of a Letter of Sanction dated **12 July 2016**.

In **July 2018**, arrears began to accrue on the Complainant's loan account and his current account was also overdrawn. It was suggested that the Complainant cancel his direct debits, which included his loan repayments from his current account, to avoid unpaid direct debit fees. The Complainant then began to make manual loan payments. However, the Complainant says that the direct debit continued to present to his loan account. He says that the Provider failed to correctly cancel the direct debit on his loan account, which resulted in incorrect reporting to the Central Credit Register (**CCR**).

#### **The Complainant's Case**

The Complainant explains that the loan the subject of this complaint, was originally for €20,000 and "... after several months of chasing by me, [the Provider] eventually agreed to restructure the loan to a more manageable rate." In **2018**, the Complainant says that he experienced "a few rough months" when he broke his leg (which did not heal correctly) just as he had given up his job, to start a new business.

The Complainant says that he tried to contact the Provider "... to take a break from the repayments of the loan ..." and despite knowing the Complainant's situation, "... they refused point blank to assist me ..." Following this, the Complainant missed a number of loan repayments and arrears began to accrue on his loan account.

The Complainant says that the Provider's Arrears Support Unit (**ASU**) contacted him "... saying they would now help me." The Complainant states that the ASU advised him to cancel all standing orders and direct debits on his account and to make manual loan repayments, to avoid unpaid direct debit fees and any adverse impact on his credit rating. The Complainant attended at one of the Provider's branches and with the help of a member of staff, cancelled all direct debits. The Complainant says that he began to lodge €30 each week to the loan account but he "... did miss one or two weeks but paid double the next time to catch up."

The Complainant outlined, when making this complaint that he had recently applied for a business loan but was refused due to his credit rating. When the Complainant looked into this, he discovered that the Provider had been trying to debit his loan account with the monthly loan repayments which were returning unpaid, even though the Complainant had cancelled the direct debit. The Complainant then made several telephone calls to the Provider, but the Provider would not rectify the mistake. The Complainant says he received several promises from the Provider's Customer Care agents that the direct debits would stop. However, the direct debits continued to be applied to his account. The Complainant states that

*"[a]ll I want them to do is to stop the €117 being presented on my account each month and to clear any arrears on my credit register because of this, from the last few months."*

During **2019**, the Complainant spoke with someone in the ASU and this individual

*"... would not fix the problem, would not put me through to his manager or the branch and said loans would call me back, but they did not."*

The Complainant explains that he wasted hours on the telephone with the Provider and it was only when he requested transcripts of the telephone conversations with the Provider and threatened to make a formal complaint, that the Provider then began to take him seriously.

The Complainant says that he also spoke with a staff member in his local branch who said she would look into the issue and revert to him. However, he did not receive a response. The Complainant contacted the Provider by telephone and eventually spoke to the relevant branch staff member who apologised for not contacting him. He was advised that this individual would have more information for him at lunch time. The Complainant says that he was contacted at lunch time and was then advised that "... she had spoken to the arrears team and they said that I had restructured the loan in 2009 so I should be aware of the repercussions of missing payments."

The Complainant says he explained that the missed payments were not his fault, but the Provider's and he also says that the CCR was not in place in **2009** when the restructure occurred. The Provider's staff member advised the Complainant that the CCR would not prevent him from getting a loan with the Provider, as the Provider only looked at the Irish Credit Bureau (**ICB**) record.

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In a subsequent call with this individual, it was suggested to the Complainant that he get a copy of his credit report and highlight what the Complainant wanted changed. The Complainant states that he had previously made the Provider aware of what he wanted changed. The Complainant advises that his credit rating has been *ruined* for the last 12 years.

The Complainant states that he made a formal complaint on **3 September 2019**, which was followed by a number of complaints over the phone, but these were not recorded or investigated. Despite the telephone conversations and correspondence with the Provider, the Complainant was not given an explanation regarding the direct debits, until the Provider issued a Final Response letter.

The Complainant explains the Provider's conduct has caused him *huge distress*, stating:

*"My business has suffered because I have been unable to get the money I need to grow my business. I am still trying to secure more funds for my business. My health has suffered too and I am so drained from it all that several shop owners have asked me if I am OK or do I need a coffee.*

*I really think that the banks are not learning from mistakes and need severe punishments to make them change."*

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

The Provider says that in **May 2019**, it verbally agreed to allow the Complainant make manual loan repayments of €30 per week to repay the loan. Although the Complainant did not fully adhere to this arrangement, the Provider advises that it continued to work with the Complainant by affording him additional time to clear the arrears on his loan, rather than transferring it to its Recoveries Department.

The Provider also says that it maintained regular contact with the Complainant, until the loan was cleared in **August 2019**.

The Provider explains that the loan account first fell into arrears on **21 June 2018** and by **22 May 2019**, the loan was 246 days in arrears. At the time the Complainant fell into arrears, the loan account had a debit/negative balance of €1,565.10. The Complainant was also in an unauthorised overdraft on his current account of €1,167.30. The Complainant had an authorised overdraft facility of €800, however, this facility expired on **30 April 2018**.

When the overdraft facility expired, the Complainant did not clear the excess balance on his current account. The Provider states that two attempts were made to telephone the Complainant on **22 June 2018** and **4 July 2018**, however, both calls were unanswered and there was no option to leave a voicemail. An arrears letter was issued to the Complainant on **13 July 2018**.

The Provider says that on **20 July 2018**, it spoke with the Complainant by telephone and the Complainant acknowledged that he was behind on his repayments. The Complainant advised the Provider that he would not be in a position to meet his direct debit payments for the foreseeable future because his current account was overdrawn. The Provider says that it was suggested to the Complainant that he cancel the direct debit for the loan, to avoid unpaid direct debit fees, and instead make manual payments to the loan account.

The Provider submits that its agent emphasised the importance of continuing to make some repayments to the loan account, even if it was not the full repayment amount. The Complainant was given the direct line for the Provider's agent should he wish to make contact in the future.

The Complainant cancelled the direct debit using an in-branch self-service machine. The Provider explains that while this cancellation stopped the direct debit presenting on the current account, the loan account was still scheduled to receive monthly payments by direct debit of €117.44, as per the Letter of Sanction dated **16 July 2016**. The Complainant's loan account statements therefore showed the direct debits being unpaid with a narrative of *SEPA RET MD01* which means SEPA direct debit – no mandate.

The Provider says that it

*"... acknowledges a service failing as the Complainant should have been advised by the staff member he spoke with at the time, that the loan account would also need to be amended to reflect the change in payment method."*

The Provider's agent did not however mention that the loan account would need to be amended to cash payments. However, the Provider says that even if the loan account had been amended to cash payments, rather than direct debit, the loan account would still have shown an amount of €117.44 being due on the sixteenth day of each month. The Provider explains that as part of the complaint investigation, the relevant case manager tried to have the direct debit stopped, but as the loan had expired at that point, the payment method on the loan account could not be changed to cash.

The Provider says that a further telephone call took place on **1 August 2018** as the loan account was still in arrears by €113.33. The Complainant advised the Provider's agent that he was waiting for a cheque to clear and would be able to discharge the arrears the following week and possibly make two payments to the loan account. During the conversation, the Complainant indicated that things were getting *back on track*. The Complainant cleared the overdrawn balance on his current account on **4 September 2018**.

The Provider says that on **8 October 2018**, it telephoned the Complainant again, as there were arrears of €112.21 on the loan account. The Complainant informed the Provider that he had recently lodged €1,400 to his current account which had put him under pressure. The Complainant stated that he would make a double payment to the loan account in early **November 2018**.

The Provider says that on **6 November 2018**, it telephoned the Complainant as the arrears were €109.65. The Complainant expressed annoyance at the Provider's calls and assured the Provider that he would repay the loan in full. The Provider's agent said that it appreciated this, but told the Complainant that as long as there were arrears on the account, it would continue to contact him. This was followed by a further call from the Provider on **31 January 2019**.

The Provider says that on **26 March 2019**, the Complainant made contact, as the arrears on his loan account were €601.85. The Complainant explained that he was not in a position to clear the arrears. He had applied for funding to scale up his business and he hoped to clear the loan in full in the next 2/3 months. It was indicated to the Complainant that the loan was due to expire on **16 July 2019** and the account had been *out of order* since **September 2018**.

The Provider's agent also advised the Complainant that the arrears on the loan could affect his credit rating. The Complainant suggested a payment holiday to which the Provider's agent responded that he would need to provide certain financial information and supporting documentation, in order for a payment holiday application to be processed. However, given the relatively small balance on the loan, it was suggested that this was probably not worth the time or inconvenience.

The Provider says that the Complainant was also advised that if the arrears on the loan account remained outstanding, there was a possibility of the loan being transferred to the Collections and Arrangements Department. The Provider's agent advised the Complainant to pay whatever he could, to demonstrate his commitment to repaying the loan. A follow up call took place on **30 April 2019**.

The Provider says that during a telephone call on **22 May 2019**, the Complainant stated that he would make repayments of €120 per month/€30 per week. The Complainant was advised that the management of his loan account would remain where it was, if he adhered to this arrangement.

The Provider says that on **15 July 2019**, it telephoned the Complainant as he had not been making all of the repayments of €30 per week as promised. The Provider states that the Complainant was reminded that it had agreed to work with the Complainant but if did not adhere to his commitment, and if the repayments were not made, then the loan would be passed to the Recoveries Department.

Referring to a telephone conversation with the Complainant on **12 August 2019**, the Provider states that the Complainant contacted the Provider regarding his loan account and it was acknowledged that he had missed some repayments. However, the Complainant was unhappy with the Provider reporting the arrears to the CCR. The Complainant was of the opinion that because he was trying to repay the loan and he was engaging with the Provider, the Provider should not have been reporting arrears to the CCR. The Provider says that the Complainant explained that he was trying to obtain finance for a new business that he had started, and because his CCR report was showing 4 missed payments on his loan with the Provider, and 20 missed payments with another financial service provider, he was experiencing difficulty getting finance.

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The Provider says that the Complainant continued to make ad hoc repayments to his loan account until the loan was repaid on **14 November 2019**.

It contacted the Complainant on **19 September 2019** in response to an email from the Complainant dated **17 September 2019** in relation to the direct debit still showing on the loan account. The Provider told the Complainant that it could not cancel the direct debit on the loan account, as it was due on **16 September 2019**, and it was *in flight* at the time he tried to have it cancelled and it was not therefore possible to have it stopped. The Provider's agent did, however, tell the Complainant that the direct debit would be stopped on **23 September 2019**. The Provider's agent also told the Complainant that he would contact him on **23 September 2019** to confirm the direct debit was stopped.

The Provider *"... acknowledges the case handler was unable to have the direct debit stopped and did not contact the Complainant as agreed on the Monday to provide him with an update."* The Provider advises that the relevant staff member continued to seek an explanation as to why the direct debit could not be stopped but, unfortunately, before he got an answer, he was unexpectedly out of the office on compassionate leave. The Provider says that its staff member provided incorrect information to the Complainant in terms of advising him that the direct debit would be stopped on **23 September 2019**. However, efforts were made to have the payment method changed to cash, but as the loan account had matured, the Provider's Loan Maintenance team was unable to make any changes to the account. The Provider

*"... acknowledges that incorrect information was given to the Complainant and apologises for this."*

The Provider explains that the Complainant's loan was not being reported to the ICB because it was a business loan. The Provider began reporting the loan to the CCR on **31 March 2018** as it was obliged to do so, because it had an outstanding balance which exceeded €500.

The Provider says that the first arrears reported to the CCR was in **July 2018**. The Provider states that the reason arrears were being reported to the CCR was not because of the unpaid direct debits on the loan account, but because the Complainant was not lodging sufficient funds to meet the monthly repayments.

The Provider says that the loan was subject to monthly repayments of €117.44 and was due to be repaid on **16 August 2019**. It advises that the Complainant did not make any repayments for the months of **May, June, September, October** and **December 2018**, and **January** and **February 2019**. In addition to this, partial payments were made in **March, April** and **June 2019**.

The Provider says that it submits a report to the CCR on a monthly basis on the fifth working day of each month. It states that if the Complainant had adhered to his verbal agreement of manually lodging €30 per week to the loan account, the scheduled loan repayment amount would have been made, which is what would have been reported to the CCR, if this had happened.

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The Provider maintains that it did not make any error in its reporting to the CCR and it says that it is therefore not obliged to rectify or amend any entry. The Complainant's loan account was in arrears and this is what was reported. The Provider explains that it does not specifically report that a direct debit was unpaid, rather it reports on the actual loan position.

The Provider states that it issued regular letters to the Complainant in relation to the arrears which highlighted that arrears and/or missed payments could affect his credit rating. It says that at no time was the Complainant advised that because he was engaging with the Provider and meeting some of his weekly repayments, that his credit rating would not be affected or that the Provider would not be reporting the loan or the arrears to the CCR.

The Provider submits that it did not ignore any complaints. However, the Provider

*"... does acknowledge it fell short of its obligations in terms of providing the Complainant with an anticipated timeframe of when we expected to resolve the complaint [reference ending 027] as it was not resolved/closed within 40 business days."*

### **The Complaints for Adjudication**

The complaints are that the Provider:

1. Failed to correctly cancel the direct debit instruction for the Complainant's loan repayments and reported incorrect information to the Central Credit Register.
2. Failed to adequately investigate his complaint regarding these issues.

### **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 **19 October 2020**, 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. Following the consideration of a number of additional submissions from the parties, the final determination of this office is set out below.

I note that in the course of the submissions which followed the preliminary decision of this Office, in **December 2020**, the Complainant suggested that the audio evidence submitted by the Provider, had been "*omitted or altered*". For that reason, this Office requested that he clarify whether he wished to have the FSPO hold the adjudication of the complaint, to enable him to challenge the integrity of the audio evidence submitted by the Provider, by way of complaint to the Data Protection Commission. The Complainant made clear at that time that he did not wish to bring the matter to the attention of the DPC, but he noted his entitlement to appeal the decision of this Office to the Court, if he believed that decision to be unfair, or if he took the view that the FSPO had failed to get to the bottom of his complaint.

In **February 2021**, the Complainant advised that he was seeking legal advice and ultimately, on **18 April 2021**, having made further submissions regarding the merits of the complaint, he advised that he wished for this Office to "*complete the investigation fairly and make a suitable ruling*"

### ***The Complainant's Loan***

By Letter of Sanction dated **12 July 2016**, the Provider extended a business loan to the Complainant in the amount of €3,832 (the **Loan**). The Loan was repayable by way of 36 consecutive monthly payments of €117.44 commencing on **16 August 2016**. To facilitate the repayment of the Loan, the Complainant set up a direct debit on his current account.

The Provider wrote to the Complainant on **13 July 2018** advising him that the Loan account had gone into arrears on **2 July 2018**, and the arrears stood at €113.89. A number of arrears letters, in varying formats, were subsequently issued to the Complainant.

I note that each such letter advised the Complainant that missed payments (i) could affect his credit rating, or (ii) that details of his loan, including any arrears, may be reported to the Central Credit Register and that arrears could impact his credit rating which could make it more difficult to obtain credit in the future.

I also note that several telephone conversations took place between the Complainant and the Provider following the accrual of arrears of the loan account. The Provider says that on **20 July 2018**, the Complainant outlined that he was experiencing certain difficulties making payments. The Provider says that its agent advised that if this was the case, direct debits would be returned unpaid, because the direct debit for the loan repayments was set up on the Complainant's current account, which was overdrawn.

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To avoid unpaid charges, the Provider's agent suggested that the Complainant was better off cancelling the direct debit and changing it to another current account. However, the Complainant indicated that he would make manual payments. The Complainant stated that it would take a few months to bring the account up to date. The Provider's agent gave the Complainant his direct line if he wished to discuss the loan account in the future, and he explained that it was better to make some kind of payment, even if it was a small amount.

I note that, 8 months later, during a telephone conversation on **26 March 2019**, when the Complainant contacted the Provider, in response to a written communication, he was asked if he could clear the arrears balance of **€601.85** that day, but he confirmed that he was unable to do so. Before being passed to the business team I note that the agent confirmed that other than a payment of €95 on 21 March 2019, no payment had been made to the loan since €120 had been paid in November 2018.

The business team agent explained that there had been previous attempts to make contact with the Complainant, and an update was sought from him as to when he could address the outstanding excess on the account. The Complainant explained that he would try to clear the Loan "*in little bits*", though he couldn't be definite because of his situation, and he hoped to discharge it, over the next 2-3 months hopefully, by way of a single payment, as he was starting a new business.

The Complainant was advised during that conversation that the Loan would be expiring on **16 July 2019**. The agent noted that the balance was relatively small, but the account had not been up to date since **September 2018** (189 days) and given that the Complainant was now also advising that in addition to not being in a position to address the arrears, he was not going to be able to meet his monthly repayments, this presented "*a tricky situation*". Whilst I note that the agent was sympathetic to the Complainant's position, and she sought to discuss possibilities of addressing his situation, she made it clear to the Complainant that as matters stood, the loan was liable to surcharge interest, arrears would continue to accrue, and his credit rating was being affected.

The Provider's agent told the Complainant that the Provider would normally look at an alternative repayment arrangement, a repayment holiday or a restructure, but because the balance on the Loan was so small, this would not be worthwhile as an application would have to be made and approved. The Complainant explained that his new business was only breaking even at the moment, and he was reliant on getting funding, to develop that business further, but he had no clarity yet as to when this would become available, so he could not give the agent a set date. The Complainant reminded the agent that he had "*got the balance right down*" from what it had been and he also mentioned that he also had other people to pay. He mentioned a "funding loan" he was seeking, in addition to the other funding, and that he had "*allowed for a little bit extra*" as there were "*two or three little bits of outstanding monies that are just owed, you know, that I want to clear because it's always at the back of your mind*" but he explained that this was a different thing, and it might or might not happen.

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The Complainant emphasised his genuine attempts to look at the big picture, and to meet his commitments, not just to the Provider. He made clear that if his funding loan came through (though he was unwilling to identify the source) he would discharge the full balance, with some other small liabilities that it seems he had, including one with his credit union.

The Complainant was clearly unhappy when the agent pressed him to identify the entity from which the funding loan was being sought, and he said that he was unwilling to do so, in case the Provider jeopardised his application. The agent made clear that the Provider could not and would not contact a third party, but was seeking to understand the position, and the Complainant explained that it just wouldn't matter unless that funding loan actually came through.

Ultimately, the Provider agreed to hold action for a month and the Complainant was advised to make some small level of payment each month towards the Loan, which she explained would then be looked on favourably. She made clear to the Complainant that this situation was impacting his credit rating and that the letters to him would continue to issue automatically, as long as the account remained out of order. The Complainant explained the pressure he had been under, but pointed out that he had got the loan balance right down, and he was unwilling to walk away from his remaining small debts and he was determined to pay them off.

I note that the agent mentioned to the Complainant, that every missed direct debit, sent the account into further arrears and created a snowball effect, and she was conscious of the Complainant's young age and the impact this was having on his credit report. She pointed out that *"everyone will see it – especially now with the Central Credit Register, and with the ICB..."* She made clear that this history would be on the Complainant's credit record and it could affect his borrowing ability in the future.

During a call the following month, on **30 April 2019**, the Complainant confirmed that he had made a couple of payments to the account (totalling €55). He referred to his application for funding, and he had been required to submit more details of his business plan, and he would not now receive an answer to the request for funding, until June. The agent referred to the previous conversation in March regarding *"the ICB and surcharge interest and that"* and pointed out that it did have an effect, the longer an account is in arrears. The call ended with the Complainant agreeing to *"keep tipping away at it"*, and the Provider agreed to push out any action for another few weeks.

I note that, in the course of a telephone conversation the following month, on **22 May 2019**, when the arrears stood at **€661** (with the arrears period showing as 246 days) representing most of the full outstanding balance of €875, the Complainant explained that he would try to make payments of €30 per week to the loan account (€120/month). There was a discussion during which the Complainant referred to having been let down by people regarding bills, over the years, and his credit rating being damaged. He indicated his opinion that he should have probably just paid the bank to keep the credit rating right, rather than having tried to pay a number of different entities. He indicated that now *"he was snookered every way"*.

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The agent explained that the debt might be transferred to another internal division of the Provider, though the Complainant indicated that he would prefer to keep working on it, to the same arrangement as recently. The agent explained that the Provider was still trying to work with him. The Complainant was however clearly feeling under pressure. He said he was being forced to consider walking away. The agent explained that once the loan was cleared, it would be to his benefit as the credit report would show that full discharge of the liability, in addition to showing the various missed payments.

The Complainant explained that he felt like he was getting nowhere. Up to recently his business had been operating at a loss but it was finally turning around. The call concluded on the basis that the Complainant would deal only with that particular agent and continue making payments of €30 each week. This was accepted by the Provider's agent, who said he would monitor the account to ensure these payments were made.

However, two months later, during a telephone call on **15 July 2019**, another agent of the Provider informed the Complainant that he had not been making the weekly payments as agreed. Only 3 payments had been made in June, and so far only one had been made in July. The agent pointed out that the Provider wished to work with the Complainant, and was trying very hard to do that, but if the Complainant said "*€30 a week, it means €30 a week, not three weeks out of four, not one week out of two*".

The agent explained that this required the Complainant to meet any commitment he had agreed to, to enable the Provider "*to back you*". The agent made clear that he would "*run it through July*" but if the account payments at €30 per week were not back on track by the end of July, there would be no phone call, and the account would be moved to the collections and recoveries team.

### ***The First Complaint***

The Complainant wrote to the Provider on **3 September 2019** requesting copies of all call recordings with the Provider from **June 2019** to **August 2019**, stating that:

*"I again asked you today on the phone to cancel my loan direct debit and amend my credit register but as before you did not agree to do this."*

The individual investigating the complaint contacted the Complainant on **12 September 2019** to discuss his complaint. The Provider wrote to the Complainant that day, referring to the telephone conversation earlier, stating:

*"I am sorry that we have not been able to resolve this issue for you yet. I will make sure to keep in contact with you by letter and phone, so that you know how I'm getting on. I will be in touch with you again, no later than 27 September 2019."*

I note that by email dated **17 September 2019**, the Complainant wrote to the Provider expressing his frustration that the direct debit had not been cancelled:

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*“Following on from our long telephone conversation where I detailed my grievances with [the Provider], one of which was [the Provider’s] continued putting through of the 117 euro payment through my loan account causing further damage to my credit rating.*

*You assured me that you would look into all my grievances so why have you not stopped this payment being presented to my account when I was advised to put 30 per week manually into my loan account instead of the direct debit by your arrears team. I really am fuming that no matter whom I talk to in [the Provider] they will not correct their errors and continue to damage me. You all say you want to help yet still have not corrected this simple request that I made.*

*I wish to make a formal complaint against you for not doing what you said you would as well as [redacted] in arrears and allowing this 117 euro to continue to bounce even after I have asked over 4 personnel to stop it. ...”*

The Provider contacted the Complainant by telephone on **19 September 2019** to advise that it was not possible to cancel the direct debit, because it was too close to the most recent due date, but the Provider would try to cancel the direct debit the following Monday. The Provider’s agent advised the Complainant that he would follow up with the relevant department to ensure the direct debit was cancelled and he would contact the Complainant to update him on matters. It appears that this follow-up call did not take place as promised.

I note that the Provider wrote to the Complainant on **23 September 2019** referring to a telephone conversation of **19 September 2019** regarding the complaint, explaining that the matter was being investigated and that the Provider hoped to have an answer soon. The Complainant contacted the Provider again by email on **16 October 2019** advising that the direct debit had still not been stopped, even though “... you promised that ... stopped and would not come out again.” The Complainant also stated that he was still waiting for the Provider to correct the Loan details on the CCR.

The Provider explains that an additional complaint was made through its online complaints platform which was received and recorded on **17 October 2019**. The additional complaint related to the fact the Provider would not send the call recordings requested by the Complainant on **5 September 2019**, by post. The Provider states that a call was made to the Complainant by one of its branch staff on **22 October 2019** to explain that call recordings could not be sent by post, for security reasons and were available for collection in branch.

By letter dated **21 October 2019**, the Provider wrote to the Complainant to advise him that the Provider was “... still working on your case, and ... still looking into exactly what happened.” It was also stated that the Provider would write to the Complainant soon with its conclusions.

The Provider telephoned the Complainant on **5 November 2019** to advise him that as the Loan was a business loan, it was not being reported to the ICB. The Provider contacted the Complainant on **8 November 2019** to explain that having concluded a detailed investigation it was confirming that the information being reported to the CCR was accurate and as a result, the Provider would not be making any changes to what had previously been reported.

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I note that the Complainant appeared to accept this, but stated that because of the CCR details showing on his credit history, that he had also been asked by the entity he had applied to for funding, to provide the loan account statements, and he believed the reason he had been refused credit, was because of the direct debit requests appearing on his loan account statements, which showed *“the money bouncing in and out”* although this was *“meant to be stopped”*. He said they were *“not going to believe”* him, that those direct debits should never have been presented. He accused the Provider of having agreed to a manual payment of €30 per week and then turning around and *“bury[ing]”* him.

There was a discussion around the Complainant’s payment having fallen “outside the credit agreement”, and the agent explained that this was not because of the variation of the agreement to €30 per week, but rather because he had not met that €30/week commitment.

I note that the Complainant appeared to refer to a copy of his credit report during this conversation and suggested that the Provider was reporting four consecutive missed repayments and he suggested that this was because the Provider was reporting to the CCR based on weekly, as opposed to a monthly, payments. He said that he may have missed 4 weeks of payments, but certainly not 4 months. The Provider agreed to double check that question, and write to him to confirm the position. The Complainant also stated that he wished to make a complaint regarding the manner in which the Provider was handling his complaints. The Provider’s agent indicated that she would address this in the Final Response letter.

The Provider wrote to the Complainant on **12 November 2019** to inform him that the calls he requested were available for collection at his local branch, and for security reasons, they could not be sent by post. The Provider also took the opportunity to explain that its reporting to the CCR was

*“... an accurate reflection of the account performance.”*

Regarding the direct debits, the letter states:

*“... You will see that your direct debits were returned unpaid from your loan account in May, June, September, October 2018. I note that you made manual repayments to the loan account in July, August and November 2018. Direct debits were returned unpaid in January and February 2019, and you began making frequent manual repayments to the account from March 2019 to date. As you did not meet all repayments as they fell due in line with that outlined in your credit agreement, this is what caused your account to fall into arrears. ...”*

### ***The Second Complaint***

On **14 November 2019**, the Complainant contacted the Provider by telephone as he wished to make a complaint regarding the adequacy of the Provider’s investigation into his previous complaints, and for not providing clarification as to why the CCR was not an accurate reflection of his present loan account balance.

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The person handling this complaint rang the Complainant on **15 November 2019** to discuss/clarify his complaint. The Complainant expressed the view that his complaints were not fully investigated, and the direct debit was not stopped, as promised.

The Complainant recounted his impression of the history of this matter going back to October – December 2018, when he had asked the Provider for help when money was tight, but the answer was “no” so he got frustrated and then didn’t pay anything, but when he spoke to [name redacted] in arrears he had assisted him in moving towards getting his accounts into order, so he cancelled the direct debits and paid manually, though he might have missed one or two weekly payments, but he had brought it down from about €20,000, to a couple of hundred and had always explained that there was no fear, and if he missed it, then he would pay double then, that there was no big issue.

The Complainant said that it was only when he applied for a loan that he had looked into all of this. He explained that although he had stopped the direct debit for the loan at his end, the Provider kept calling for it, and although he had originally believed that this would show on his credit rating, he now understood that it wouldn’t. Apart from the charges on his account for the bouncing, he explained the poor position he was in, when he had to produce his account statements when he sought funding from the credit union and from “*micro finance*” and tried to explain that the direct debit being called for, should not have been called for at all.

The Provider acknowledged this complaint by letter dated **20 November 2019**. An update issued to the Complainant on **4 December 2019** with a Final Response letter issuing on **13 December 2019**.

The relevant parts of this letter states:

- “1. As explained in our letter of 12 November 2019, we are unable to post your SAR to you for security reasons, and you confirmed in our call of 15 November 2019 that you could collect it from our ... branch. ...
2. As confirmed in our recent call, we are unable to stop this direct debit transaction from appearing on your loan account statements.
- ...
5. The reason why we reported your loan in arrears from May 2018 was that the monthly agreed payment of €117.44 as outlined in the Letter of Offer dated 12 July 2016 were not made by you from May 2018. ... In the period from May 2018 to November 2019 you made a number of payments to the loan account for various amounts and the loan is now cleared in full. Your CCR record will reflect that while your loan account fell into arrears from May 2018, the loan was cleared in full in November 2019.
- ...

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7. *Please provide us with written proof that other financial institutions declined to give you loan facilities due [to] the unpaid direct debit transactions appearing on your loan account statement, after you had asked for the direct debit to be cancelled. On receipt of this information, we can investigate the matter further.*
8. *We made no mistake in the reporting of arrears on [your] loan account as outlined in the Letter of Offer you signed dated 12 July 2016. Your loan account fell into arrears from May 2018 onwards. This resulted in us advising the CCR of the arrears as outlined in the seven letters we sent you from July 2018 to March 2019.*
9. *You told me in our phone call of 9 December 2019 that we did not 'work with you' to reach a suitable repayment schedule to enable you to clear your loan account, and that we did not keep up contact with you from May 2018 onwards. Our Retail Management Unit, who were managing your loan account, have documented twenty phone contacts they made with you in addition to the seven letters you received from us from July 2018 to November 2019. They spoke to you in excess of ten of those calls, and left voice messages for you on other occasions. They have also documented that there was no facility to leave a voice message on your phone on some occasion. ..."*

### **Analysis**

Pursuant to the Letter of Sanction dated July 2016, the repayments falling due to be paid by the Complainant under the Loan, were €117.44 per month. Unfortunately, arrears began to accumulate on the Loan from **2 July 2018**.

On **20 July 2018**, it seems that the Complainant explained to the Provider's agent that he was experiencing difficulty making payments. During this call, it was suggested by the Provider's agent that as the Complainant's current account was overdrawn, to avoid unpaid direct debit charges to his current account, that he cancel his direct debits. The Complainant did this and chose instead to make manual payments to the loan account. Following this, the Complainant however missed a number of manual repayments and instead he made several partial payments.

During a number of subsequent telephone conversations, the Provider's agents queried if the Complainant was in a position to bring his account up to date and address the arrears. When the Complainant outlined his position, he was advised to pay what he could, to the loan account.

I note that the Complainant was also advised of the impact that missed payments could have on his credit rating and that missed payments/arrears would attract surcharge interest. I note that similar information was also contained in the various arrears letters issued to the Complainant from **July 2018** onwards.

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On **22 May 2019**, the Complainant indicated that he would make payments on a weekly basis and try to pay €30 per week towards the Loan. This would equate to €120 per month and in fact would exceed the Complainant's agreed contractual monthly repayments of €117.44. I note that, as a result, if the Complainant had adhered to this arrangement, arrears would not have accumulated on the loan account. However, the Complainant did not make all of the agreed weekly payments, as was explained to the Complainant during a telephone conversation on **15 July 2019**.

The Complainant notified the Provider during a telephone call on **26 August 2019** that the monthly direct debit of €117.44 was continuing to present on the loan account. The Provider's agent confirmed that the direct debit was still showing, but explained that it was not active. The Complainant appears to have been given an assurance during a telephone call on **19 September 2019** that the direct debit arrangement which had in fact been cancelled by the Complainant himself (so that it would not present on his current account) would be noted as cancelled on the loan account. In fact, however at this stage, this was not possible because the loan had expired. The follow-up call that was promised to the Complainant, also does not appear to have been made.

It appears from the evidence available that although the direct debit was cancelled on the Complainant's current account, the loan account was not amended by the Provider to reflect that cancellation. The Provider has explained that the payment method on the loan account, should have been changed from direct debit to cash payments, when the agreement was reached for the Complainant to pay €30 per week, but it failed to do this.

It seems that after the Complainant's telephone interactions, the Provider attempted to cancel the direct debit but it was unable to do so. The main obstacle preventing the Provider from doing this, appears to have been the fact that the 3 year term of the Loan had by then expired in **July 2019**. As a result, the expectation of a direct debit payment continued on the loan account, until the loan was cleared. Accordingly, I am satisfied on the evidence that the Provider failed to correctly amend the direct debit arrangement on the Complainant's loan account, in July 2018, as a result of which it continued to present for payment, unsuccessfully.

The Provider is required to report to the CCR in respect of certain loans. I note that the loan the subject of this complaint was one such loan. It is quite clear that the Complainant did not make his contractual repayments. This triggered the Provider's CCR reporting obligation. I am not satisfied that the direct debit issue (whereby the direct debit continued to present for payment, unsuccessfully) caused the Provider to wrongly or incorrectly report the loan to the CCR. The Complainant indeed acknowledged this, during his phone discussions with the Provider's complaints team. Nevertheless, I am satisfied that repayments due to be made, were missed by the Complainant, irrespective of whether they were due to be paid by direct debit or paid manually at a rate of €30 per week.

There is no evidence before me to suggest that the direct debit issue caused or triggered any incorrect reporting to the CCR. While a copy of the Complainant's credit report has not been supplied by either of the parties, I am not satisfied, based on the evidence, that the Provider incorrectly reported the Complainant's loan to the CCR.

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The statement of account for the loan discloses no payment during May, June, September or October 2018, and although I note that the Complainant made a manual payment in August 2018, representing the amount of 2 monthly repayments, this did not address his failure to pay during those other months, at the times when those payments fell due.

I accept however, that in the months during which the Complainant made the full repayment, an expected direct debit for that month showed on the loan account and was recorded on the account statements as being unpaid, even though it should not have been called for.

I am also satisfied that this created much confusion in terms of the Complainant's understanding as to how the loan account was continuing to operate, during a period which was undoubtedly already stressful for him. It is disappointing that the issue created by the continued reference to direct debit payments, was not clarified earlier to the Complainant, as it seems likely that this would have eased his mind, and reduced the confusion which unfortunately ensued.

The Complainant explained to the Provider during a telephone conversation on **8 November 2019** that he had been refused credit due to the missed direct debits appearing on his loan account statements, though the Complainant has not supplied any evidence to support this statement.

I take the view nevertheless that the issue gave rise to failed transactions appearing on the Complainant's loan account statement that should not have appeared. If, during 2018, the Provider had correctly amended the account to reflect the agreement reached with the Complainant that he would make manual payments, these failed transactions would not have appeared on the Complainant's loan account statement. Once those transactions occurred, they formed part of the permanent history of the loan account statement and I accept the Complainant's contention that caused an issue for him, in producing those statement to other entities from which he sought funding. Quite apart from any needless embarrassment caused to the Complainant, I accept that these transactions, at the very least, raised a question for the credit union and for Microfinance Ireland, when those loan account statements were examined in the course of the Complainant's request to be approved for loan facilities.

It is not possible for this Office to form an opinion as to whether the Complainant would have been approved for loan facilities, if those incorrect failed transactions had not appeared on the account. The statement of account in fact, even with those errors on it, nevertheless presents a picture of the Complainant consistently paying down the loan balance in a determined fashion, over a period, leading ultimately to a nil balance, albeit that he was in arrears over a significant period.

The direct debit issue, by itself, is not in my opinion sufficient to demonstrate that a refusal of credit was caused by that issue, either alone, or as a part of the Complainant's circumstances.

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I accept that the Complainant was faced with a more significant issue, as a result of the details registered with the CCR, and whilst the Complainant's profile has not been submitted in evidence, I note that there were periods of time when no repayment were made, in accordance with his obligations to the Provider.

It is clear that at the time of the complainant's discussions with the Provider in **May 2019**, the balance on the loan was €995.93 DR including arrears of €661. It is clear that the Complainant was doing his very best to address this situation and it was agreed during the telephone call between the parties on that date, that he would pay €30 per week until the account balance was cleared in full. I note the Provider's position that the Complainant was advised that the account would not be transferred to recoveries if he stuck to this arrangement. I note from the statements of account however, that although the Complainant did his very best to make the payments of €30 per week, no payment was made between 14 June 2019 and 24 June 2019 and the next payment after that was on 9 July 2019.

This might not have presented such a difficulty, were it not for the fact that the Complainant had missed a very significant number of payments to the account during 2018 which led to arrears continuing in the order of a little more than €100 throughout the second half of 2018, but ultimately amounted to €461.97 in January 2019, rising to €661 when the parties discussed the matter on 22 May 2019.

I note that the Complainant advised the arrears staff member during a call on **26 August 2019** that *"I didn't realise that you were reporting all this stuff"*. I am satisfied however that, quite apart from the warnings within the various arrears letters sent to the Complainant by the Provider, and the reminders from the Provider's agents who dealt with the Complainant over the phone, the original Letter of Sanction for the loan facility which the Complainant signed on **13 July 2016**, made clear in a prominent text box on the front page of the agreement that:-

**WARNING: If you do not meet the repayments on your credit facility agreement, your account will go into arrears. This may affect your credit rating, which may limit your ability to access credit in the future.**

I am satisfied (and I note that the Complainant now accepts) that the failure of the Provider to cancel the direct debit arrangement, as a result of which it continued to present for payment, seeking payment of €117 per month (unsuccessfully) did not contribute to the reporting of negative indicators on the Complainant's credit history, to the CCR. Rather, it was the Complainant's failure to meet his contractual repayments when they fell due, which resulted in the details in question being registered with the CCR. I am satisfied that, quite apart from the parties' agreement of July 2016, the Provider had a statutory obligation to notify the CCR of the relevant details regarding the Complainant's loan.

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The Complainant is also dissatisfied with the Provider's handling of his complaints. A formal complaint was first made on **3 September 2019**. Having reviewed the letters issued by the Provider in response to this complaint and the cancellation of the Complainant's direct debit, I am not satisfied the Provider adequately explained the reason behind the direct debit arrangement continuing to show on the account, or why the Provider was unable to prevent it from occurring. Further to this, during a call on **26 August 2019**, the Complainant requested a call from the relevant manager. The Complainant was put on hold while the Provider's agent spoke with the manager. Regrettably, the call recording ends at this point.

During a call on **5 November 2019**, the Complainant expressed his dissatisfaction with the manner in which he was dealt with during that earlier call in August, in particular when he had requested to speak with the manager. Despite this conversation being with an individual dealing with the complaint, I note that this issue was not addressed by the Provider in the complaint correspondence sent to the Complainant.

The Provider issued a Final Response letter to this complaint on **12 November 2019**. While this was outside the 40 day time limit contained in provision 10.9 of the **Consumer Protection Code 2012**, it was not in my opinion, a particularly prolonged delay, being approximately 10 days. Further to this, updates were issued to the Complainant in the intervening period and I am also conscious that the Provider's personnel spoke with the Complainant regarding his complaint on **12 September, 5 November and 8 November 2019**.

Two further complaints were made by the Complainant. Having reviewed these complaints, I don't accept that the Provider failed to handle them in an appropriate manner. While it was clear from the telephone conversations that the Complainant disagreed with the Provider's findings, this does not mean the Provider's investigation was flawed.

The Complainant states that the Provider refused to assist him when he sought "... to take a break from the repayments of the loan ...." He says that this assistance was sought in early 2018, but the Provider refused him a payment break. In response, the Provider has stated that it sought financial information from the Complainant, which was required in order to review the account, but it did not receive that information from him.

I note the various arrears letters sent by the Provider to the Complainant during 2018, referring him to the "**Information Booklet for Small and Medium Enterprises in Financial Difficulty**", and the location on the Provider's website, where it could be found.

I also note that following a number of letters during late 2018, and early 2019, in the Provider's letter of 19 March 2019, the Provider confirmed in very clear terms to the Complainant that:

*"We have written to you previously requesting provision of information in relation to your facility(ies). The information requested is required in order for a review of your business circumstances to be completed. Such a review would consider the appropriateness of offering an alternative arrangement/restructuring of your accounts*

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*To conduct a review we need you to provide us with the information as set out below:*

- *Firm written proposal regarding clearance of the outstanding excess/arrears position(s)*

...”

No written communication from the Complainant is evident in response to this letter, but I note that in September 2019, the Complainant wrote to the Provider seeking for it to “*send on copies of all my calls to [Provider] from June/July and August 2019 as soon as possible.*”

The calls made available in evidence, which I note had been requested by the Complainant, include the telephone call of **26 March 2019**, during which certain options were discussed, in light of the small amount owed by the Complainant at that time, the Provider’s agent expressed the reasonable opinion that such options did not appear to be appropriate. No further discussion of these options took place, and none of these options appear to have been requested by the Complainant.

The audio evidence discloses some challenges faced by the Complainant from May 2018 onwards, in managing the balances within his accounts, and an expired overdraft, owing to cheques being presented late, and some difficulty he encountered in getting paid himself. The audio evidence includes quite a number of calls during which the Complainant sought specific information as to the date of clearance of certain cheque payments either in, or out of the account.

When he was encountering difficulty with making the loan repayment in June 2018, he explored the possibility of paying by credit card, but this was not possible.

It is also not entirely clear from the audio evidence if the request for a payment break to which the Complainant refers, was actually in respect of the Complainant’s then current difficulties because, during the telephone conversation on **22 May 2019**, the Complainant stated that he had been begging for help during the financial crisis and the Provider had refused. The audio evidence also confirms that the Complainant also stated that his credit rating was *in spiral for last few years*. From my consideration of the evidence, it seems that the Complainant at that time was referring to the way in which any bad luck, such as his broken leg, can cause financial problems for a customer, that then give rise to further financial problems, thereby regrettably having an unfortunate spiralling effect, for which the customer cannot be blamed.

I am conscious that the Complainant’s submissions after receiving the Preliminary Decision of this Office, reference a period “*over the last 11 years ...unfair treatment of me by the banks which has caused most stress for me*”. This investigation does not however constitute an analysis of the parties’ interactions over the 11 year period that the Complainant has referred to. Rather, the complaints for adjudication by this Office are those that are specified at page 7 of this document, concerning the events of 2019, after the Complainant had fallen into arrears on his loan repayments in 2018.

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## Goodwill Gesture

In its Formal Response to the investigation of this complaint, the Provider stated that:

*"[It] would like to apologise for any error or service failing identified in this submission and for any inconvenience or upset that these may have caused the Complainant. In recognition of this, the Bank would like to offer €1,000 as a gesture of goodwill in full and final settlement of this dispute."*

Following further submissions from the Complainant regarding the call recordings furnished by the Provider in response to this complaint, the Provider conducted further searches and located a number of additional call recordings. In light of this, the Provider advised in a submission dated **23 July 2020** that:

*"Given the delay in providing the additional calls as detailed above the Bank would like to make an increased offer of €3000 as a gesture of goodwill in full and final settlement of this Complaint."*

The first element of the Complainant's complaint is that the Provider failed to correctly cancel the direct debit instruction for the Complainant's loan repayments and reported incorrect information to the Central Credit Register. I take the view that there is no evidence upon which I can conclude that the details registered by the Provider with the CCR were incorrect, as it is clear that the Complainant did not meet the payments he had agreed to make.

I am satisfied however that the Complainant is correct that the Provider failed to cancel the direct debit request which was linked to his loan account, which continued to be actioned every month, leading to a number of failed transactions showing on his loan account statement, which should not have appeared on those statements. The Provider has a case to answer in that regard, though as noted above, I do not accept that it is reasonable to conclude, given the Complainant's overall circumstances, that this issue in itself, resulted in the Complainant being unable to secure loan facilities elsewhere.

The Complainant also maintains that the Provider failed to adequately investigate his complaint regarding these issues. Although I accept that the Provider made a mistake regarding this direct debit issue, I am satisfied that it has explained why it was unable to rectify the situation, which I note continued until the Complainant had discharged the outstanding balance. I do not accept the Complainant's contention that this means that the Provider *"have been allowed to get away with this"*. Rather, to the limited degree that this Office has noted wrongdoing on the part of the Provider, the FSPO is satisfied that the Provider acknowledged its wrongdoing when responding to the formal investigation of this Office.

Taking account of the criticisms which I have made above regarding the Provider's errors, I consider the Provider's more recent offer of €3,000 to be a reasonable compensatory measure. It is disappointing however that the Provider's original compensatory offer of €1,000 fell short of what might be considered an appropriate compensatory measure.

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One can well understand the pressure which the Complainant was feeling, during this stressful time; indeed it is not unusual for a borrower to look to address outstanding arrears by borrowing elsewhere, but being unable to do so because of the content of a credit profile with the ICB or CCR. I am satisfied however, for the reasons outlined above, that the Provider, when issuing its Final Response Letter to the Complainant, acknowledged the direct debit issue which had arisen, though in my opinion, bearing in mind the statement of account which reflected failed transactions which should never have appeared, I believe the Provider ought to have recognised a greater degree of seriousness in its compensatory offer to the Complainant.

The Provider has very significantly increased its offer in more recent times, but this has arisen owing to the Provider's more recent failure to correctly gather the audio evidence which had been requested by this Office. Indeed the Complainant remains dissatisfied with the extent of the audio evidence made available by the Provider. I note in that regard, that in the course of the submissions which followed the preliminary decision of this Office, the Complainant suggested that the audio evidence had been "omitted or altered". For that reason, this Office requested that he clarify whether he wished to have the FSPO hold the adjudication of the complaint to enable him to challenge the integrity of the audio evidence submitted by the Provider by way of complaint to the Data Protection Commission. The Complainant however elected to proceed, as outlined in more detail above at page 8 above.

Accordingly, for the reasons outlined above, I consider it appropriate to partially uphold this complaint, because I am satisfied that the Provider failed to cancel the direct debit on the Complainant's loan account, as a result of which unsuccessful transactions continued to present on his account statement, his account history now reflects a history of dealings between the parties, which is not accurate.

In those circumstances, noting that the Provider's original compensatory offer at the time when it responded to the formal investigation of this complaint, was a figure of €1,000, I believe that the Provider's more recent offer is a more reasonable compensatory payment to reflect this wrongdoing on its part. This more satisfactory offer was not however made in early course by the Provider.

It is not considered appropriate to uphold the other elements of the Complainant's complaint against the Provider.

### **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €3,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

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- I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN  
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

19 July 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.