An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0253
Sector:	Banking
Product / Service:	Personal Loan
Conduct(s) complained of:	Incorrect information sent to credit reference agency
Outcome:	Substantially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants entered into a loan agreement with the Provider in **May 2016**. The Complainants missed a number of the repayments under the loan thereby causing arrears to accrue on their loan account. These arrears were reported to the Irish Credit Bureau (**ICB**). Primarily, the Complainants are dissatisfied with the manner in which the Provider reported their loan to the ICB.

The Complainants' Case

The Complainants explain that when applying for a mortgage loan they had to provide an ICB credit report. When the First Complainant reviewed the credit report he noted that it stated that his loan had been written off even though weekly payments were being made towards the loan. The credit report also stated that the First Complainant owed €11,765.80 at **June 2018**. However, the correct amount outstanding was €7,433.32. When the matter was raised with the Provider, the First Complainant *"… was told that the loan was nothing."* The Complainants state the Provider would not assist them as the loan was written off: *"[t]hey said it was written off in 2017 then it was changed to 2018."*

The First Complainant expressed his concern regarding the credit report in that he was unable to apply for a mortgage loan due to the arrears recorded on the credit report. The Complainants state that they were advised by the Provider that it was not their job to update the credit report and this was a matter for the ICB.

When the First Complainant questioned this with the Provider he was told *"… by management and [the Provider] it was tough luck that they Update their reports on a weekly basis and it was up to date."* The First Complainant points out that even when he showed the Provider the updated credit report *"… they didn't want to know as far as they were concerned they were right and I was wrong."*

The Complainants received a letter dated **5 February 2019** stating that the loan was €8,080 even though it was not due to be repaid for another 12 months *"… and I still owed 8,000 in arrears but my outstanding balance is 9,009!"* The First Complainant states that he does not understand this letter.

It is stated that the loan was written off in **June 2018** *"… with no phone call and when I asked them about this they said they don't have to have any communication with their customers! … No line of communication was offered from June 2018 when a massive decision was made to my credit history!"* The First Complainant outlines that his payment receipt states that as of **5 February 2019**, there was only €7,480.00 outstanding on the loan which the First Complainant finds very confusing.

The First Complainant acknowledges that due to the loss of his job he had to reduce his repayments but states that he made an agreement with the Provider at the time, and from **June 2018**, the First Complainant has been making the agreed repayments.

The Complainants explain that because the Provider will not update the relevant credit report, they have been unable be get mortgage loan approval to purchase a home. The Complainants have also placed a deposit on their prospective home and do not want to lose it. The First Complainant states that there are 12 months left on the loan and now that he has a job, he can repay the loan.

The Complainants have also set out in an email dated **23 March 2019** and two emails dated **1 April 2019**, the poor customer service they say they received from the Provider. These emails state that the Complainants were ignored, refused service and shouted at by staff members; advised they were not welcome and told to leave the branch in public view. They also assert that they were not provided with a complaint form when they requested one.

<u>The Provider's Case</u>

The Provider advises that the loan was issued on a joint and several basis and was subject to weekly repayments of €85. The Provider states that a reduced or alternative repayment was never agreed or put in place. The Provider also submits it is not correct to say that it only dealt with the First Complainant as communications were sent to the address of both Complainants.

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The Provider states that the payment status and payment profile of all loan accounts are submitted automatically on a monthly basis to the ICB and the Central Credit Register. It states that the information submitted is based on the repayments made to a loan account and the reporting criteria are set by these entities.

The Provider submits the information reported in respect of the Complainants' loan is correct with the arrears profile reporting as 8 months in arrears before being written off in **June 2018**. The Provider states that the payment profile on the ICB does not show that no payments have been made for 8 months. It shows the loan was 8 months in arrears and was then written off.

The Provider states that the loan was re-classified, as per the Provider's rules and Central Bank of Ireland requirements, as a bad debt on **25 June 2018**, with an outstanding principal amount of €11,765.80. The Provider states that such a classification is made when there has been no repayment of principal in 12 months or prolonged arrears. The last principal payment was made on **25 July 2017**. This classification and amount were automatically reported to the ICB and this status remained in place until the outstanding balance was cleared in full in **February 2019** with the ICB now showing the loan as *C*, completed. The balance outstanding on the loan at **7 February 2019** was €7,433.32.

The Provider also explains the classification of a loan as written off does not impact the amount owed and recoverable from customers and all balances written off remain payable to the Provider. Further to this, the Provider does not issue specific communication relating to the re-classification of a loan as a bad debt or written off. However, regular credit control communication continues to issue.

The Provider states that the status and payment profile of an ICB record does not preclude an individual from applying for a mortgage loan. However, a mortgage provider may consider the payment profile, arrears and status of any other debts an applicant has as being materially relevant in their consideration of a mortgage loan application. In addition, the Provider surmises that it is probable that a mortgage provider would consider any distress on a loan as being a material factor regardless of the extent of the distress. The Provider remarks that the credit report submitted by the Complainants does not show under the heading *History of Enquiries*, any financial service providers other than the Provider, accessing the credit report. The Provider also submits that the Complainants have not provided any documentation relating to a mortgage loan application or the payment of a deposit and queries whether a mortgage loan was in fact applied for.

The Provider submits that it made extensive efforts over the period of the loan to communicate with the First Complainant and engage with him in the form of calls, texts, and letters. It asserts that the First Complainant chose not to engage with the Provider on many of the communications. The Provider remarks that when the First Complainant did engage, the notes of the engagement did not report the First Complainant making any reference or asking any questions in relation to not understanding or being confused by any communication. The Provider states that 23 outgoing calls were made, and 21 text messages and 12 letters were sent.

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The Provider submits that many times when it telephoned the First Complainant there was no answer and when the call would be returned, it was terminated when the First Complainant realised who was calling.

The Provider states that the Complainants, in particular the First Complainant, attended its branch during **February/March 2019** on a regular basis without notice or an appointment.

The Provider asserts that the Complainants' approach was at times aggressive towards the staff dealing with them. A number of times the First Complainant stated that he was not leaving the premises until his credit record was changed and remained on the premises for a period of time. The Provider submits that its staff always dealt with the Complainants in a professional and courteous manner despite the aggressive approach, tone and language of the Complainants.

The Provider explains that in one of the meetings that took place with the Complainants, they stated that they were dealing with a mortgage broker and had been advised that the Provider could change the credit record in respect of the loan. It was explained to the Complainants that this was not correct. The Complainants asked the Provider to speak directly with the mortgage broker. This was agreed to by the Provider subject to the Complainants' consent.

The Complaints for Adjudication

The complaints are that the Provider:

1. Failed to communicate with the Complainants regarding their loan;

2. Reported incorrect information to the Irish Credit Bureau in respect of the loan; and

3. Provided poor customer service.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

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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 26 November 2020, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the issue of my Preliminary Decision, the Provider made a submission to this Office under cover of its letter dated 15 December 2020, a copy of which was transmitted to the Complainants for their consideration.

The Complainants have not made any further submission.

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

The Complainants entered into a *Credit Agreement* with the Provider in **May 2016** in the amount of €17,500. The loan was subject to weekly repayments of €85 over a 5 year period. From the loan account statement, it appears that only one payment of €120 was made to the account between **August 2017** and **December 2017**, one payment was made in **March 2018**, none in **April 2018**, and one full and one partial payment was made in **May 2018**. The full extent of the missed payments have been set out by the Provider in a letter dated **8 April 2019**. The Provider advises, and the account statements show, that the loan was re-classified as a bad debt and written off on **25 June 2018**. The loan was ultimately cleared on **12 February 2019**.

Between **15 August** and **14 November 2017**, the Provider wrote six letters to the First Complainant. These letters essentially advised the First Complainant of the arrears on the loan account, stressed the importance of making regular and consistent payments, and that arrears may affect his future ability to borrow and his credit rating. The letters also advised the First Complainant to contact the Provider. By letter dated **1 December 2017**, the Provider issued a *Final Notice* to the First Complainant advising that the arrears on the loan account stood at €2,243.39 with an outstanding loan balance of €14,743.62. This letter stated that the First Complainant was in default of his loan obligations and that, if he did not make contact with the Provider, the loan account would be transferred to the Provider's solicitors. The First Complainant was also advised that the Provider was entitled to apply the funds in the First Complainant's saving account towards the loan. It was further explained that these matters could have a serious impact of the First Complainant's credit rating.

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Following this, the Provider wrote a further four letters to the First Complainant between **28 March** and **21 June 2018** similar to those issued in **2017**. Among these letters was another *Final Notice* dated **14 May 2018**.

The Provider wrote to both Complainants on **5 February 2019** informing them that the balance outstanding on the loan was €9,009.20 with arrears of €8,080.20. The letter also advised that the loan was categorised as "W" with the ICB on **25 June 2018**.

The Provider wrote to the Complainants again on **12 February 2019**, to advise them that as of that date, the loan had been cleared in full and a request had been sent to the ICB to clear their record.

Analysis

Both Complainants entered into a loan agreement with the Provider in **May 2016**. However, the evidence presented by the parties shows that there was no communication or correspondence with the Second Complainant in respect of any aspect of this loan until the Provider's letter of **5 February 2019**. The Provider appears to make the point that as the correspondence address of the letters issued to, and in the name of, the First Complainant was the same as the Second Complainant's correspondence address, it has discharged its obligation in this regard. I do not accept this position. The Second Complainant was a party to the loan and, as such, any correspondence issued in respect of the loan should have been jointly addressed to both Complainants or separately addressed to each Complainant.

There is also no evidence of any telephone contact or attempted telephone contact with the Second Complainant regarding the loan or any text messages being sent, as was the case with the First Complainant. Accordingly, I am satisfied the Provider failed to properly communicate, or communicate at all, with the Second Complainant regarding the loan. However, as the loan was a joint loan, the Complainants lived together and the purpose of the loan was to pay for their wedding, I am satisfied that the Second Complainant is likely to have been aware of the correspondence issued to the First Complainant in respect of the loan.

Separately, while correspondence only issued to the First Complainant, having considered the contents of this correspondence, contrary to the Complainants' position, I am satisfied it was set out in a clear and understandable manner using plain English. Further to this, the evidence also demonstrates that a number of telephone calls were made to the First Complainant regarding the loan together with a number of text messages. In the main, these do not appear to have been responded to by the First Complainant. While it is submitted that the First Complainant telephoned the Provider on several occasions to make loan repayments and the status of the loan was not brought to his attention, this was not the purpose of those calls and does not make up for the fact that many of the Provider's calls, letters and text messages went unanswered. In any event, having received the various forms of communication from the Provider, it was always open to the First Complainant to discuss the loan when he telephoned the Provider to make repayments.

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In relation to the Provider's reporting of the arrears on the loan account to the ICB, having reviewed the evidence, I am satisfied that a number of loan repayments were missed by the Complainants and a number of partial payments were made. This caused arrears to accrue on the loan account. It appears that arrears first began to accrue on the loan account in or around **August 2017**. This resulted in the arrears being reported to the ICB.

The Provider wrote to the First Complainant to bring the arrears to his attention and highlight the fact this could affect his credit rating. It is important to note that there is no evidence to support the Complainants' position that any alternative repayment arrangement was entered into with the Provider while the First Complainant was not working.

The Complainants have only provided copies of the First Complainant's credit reports and none have been provided in respect of the Second Complainant. However, having reviewed the credit reports provided in respect of the First Complainant, I am satisfied that the arrears were correctly reported to the ICB in respect of the loan.

A matter of concern is the Provider's reclassification of the loan as a bad debt and its reporting as *written off* to the ICB. In particular, I am concerned about the communication surrounding the writing off of the loan. The Provider submits that such a classification is made when there has been no repayment of principal for 12 months or prolonged arrears on a loan account.

The Provider has furnished a copy of its rules relating to bad debts.

The following extract states:

> *"**Bad Debt Write Off***
>
> *Resolution No. 24 of Annual General meeting 2002 provides as follows:*
>
> > *'A loan other than a single payment loan, on which no due payment on foot of principal has been received during the 12 month period immediately preceding the year end account date, shall be deemed to be a bad debt. ….' …."*

The Central Bank of Ireland *Provisioning Guidelines* furnished by the Provider states, in part:

> *"… When assessing the recoverability of a loan [entities] should pay particular attention to those loans which have prolonged arrears. In general, where a loan is in arrears for 53 weeks or more this is strongly indicative that the loan should be written off … In certain instances a partial write off may be warranted where there is reasonable financial evidence to demonstrate an inability on the borrower's behalf to fully repay all amounts outstanding on the loan. …"*

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The last payment towards principal was made on **25 July 2017**. The loan was reclassified as a bad debt/written off on **25 June 2018**. In my Preliminary Decision I concluded from the evidence available to me that the reclassification occurred 11 months after the last payment towards principal was made, not 12 months as required by Resolution 24. I concluded that the loan first entered arrears according to the *Payment Profile* supplied by the Provider on **6 August 2017**, this was approximately 46 weeks before the loan was written off, which would be a number of weeks short of the *Provisioning Guidelines*.

According to Resolution 24 there must be (i) *no due payment on foot of principal* and (ii) *received during the 12 month period immediately preceding the year end account date*. The Provider has not furnished its year end account date, nor has it shown a payment towards principal was not received in the 12 months which preceded this date. In any event, the Provider only demonstrated non-payment of principal for an 11 month period which is not sufficient to satisfy the requirement of Resolution 24 irrespective of when the year-end account date falls.

Further to this, the loan account statements show that during the period **26 July 2017** to **16 June 2018**, while repayments were made, these repayments were allocated to the interest charge and no repayments, or any portion of those repayments, were allocated towards the principal/capital amount.

In my Preliminary Decision I stated:

> "*it is not clear why repayments during this period were allocated in this manner. Prior to this, repayments were generally apportioned between capital and interest but this suddenly changed without explanation. It is quite unfair for the Provider to say that no repayments were being made towards principle when, in fact, repayments were being made. Further to this, there is no evidence to suggest the Complainants had a choice as to how their repayments would be allocated".*

The Provider, in its post Preliminary Decision submission, responded to the above statement. It submits that the statement "*expresses an opinion by the Ombudsman Office regarding the standard process of allocating payments inclusive of interest*". The Provider then quotes from the Credit agreement entered into by the Complainants which detailed:

> "*the loan is payable by: 258 Weekly Instalments of 85.00 Inclusive of interest commencing 26 May 2016 and every subsequent instalment on the same day of each succeeding WEEK".*

The Provider submits that the Complainants signed the contract and as such are "*bound by the terms and conditions contained in this agreement"* and it further states that "*it is also standard practice and in in (sic*) *Credit Unions in Ireland to allocate in this manner for all non-written off loans. Interest is included first, then principal if enough funds are received to do so".*

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While the Complainants are bound by the terms and conditions of the loan agreement, I do not find any express statement regarding how any payments made, which fall short of the contractual amount, are then allocated between the capital and interest in the terms and conditions. It is especially unclear where previously repayments were generally apportioned between capital and interest, but this suddenly changed without informing the Complainants and without explanation.

I would expect that the Provider would have made it clear to the Complainants where insufficient payments are being made, that the amount paid was solely being allocated to the accumulating arrears and remained insufficient to be allocated to the principal. This was particularly necessary where the payments made had previously been allocated to both and where the change had serious consequences.

The main issue here is the lack of information furnished to the Complainants. Given the consequences of the manner in which the repayments were being allocated, I am satisfied the Provider should have made the Complainants aware that repayments were not being allocated towards principal, the consequences this could have for them, and how they could rectify the situation. I believe these matters also made it unreasonable for the Provider to have reclassified the loan as a bad debt pursuant to Resolution 24.

In terms of the *Provisioning Guidelines*, these are guidelines and the Provider is not obliged to strictly adhere to them. However, if, as is the case here, the Provider seeks to rely on them as the basis for its decision to reclassify the Complainants' loan, it must make reasonable efforts to ensure it follows those guidelines. According to the guidelines, *where a loan is in arrears for 53 weeks or more this is strongly indicative that the loan should be written off*. At the time of the Provider's decision to write off the loan, as noted above, the loan was 46 weeks in arrears. It was also the case that arrears were continuing to accrue with no evidence of any payments being made to reduce the arrears balance or any arrangements being made to address the arrears. In such circumstances, I am satisfied that it was reasonable for the Provider to write off the loan by reference to the *Provisioning Guidelines*.

In my Preliminary Decision I stated that in consideration of the forgoing:

> *…while both Resolution 24 and the Provisioning Guidelines in essence provide that 12 months must have elapsed before such a decision to reclassify a loan is made, I consider the Provider's decision to reclassify the loan as somewhat premature, and the Provider should have waited approximately another month before doing so. The Provider appears to have reported the loan to the ICB as written off in or around* ***28 June 2018****. The reclassification of the loan and its reporting as written off to the ICB should not have been done until on or after* ***25 July 2018****. Therefore, I find that the Provider incorrectly reclassified and reported the loan as written off to the ICB one month earlier than it ought to have.*

In response, the Provider has submitted in its post Preliminary Decision submission that it "*believes that an error of fact*" has occurred in that it calculates "*the loan was 60 weeks in arrears at the time of write off on 25/6/2018*".

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It details that "*this arrears measure is derived under the Resolution 49 calculations used across all Credit Unions*" and that "*this is a different measure from the number of weeks with no principal repayment*". The Provider submits that it appears to it that this Office has "*used the measure of no principal repayment weeks instead of the number of weeks in arrears in deriving the* [Preliminary Decision]".

It should be noted that my Preliminary Decision was reached following my consideration of the submissions and evidence submitted by both parties. The Provider, in its formal response to this Office, did not include reference to Resolution 49, nor did it provide details in this regard.

In its formal response to this Office the Provider detailed that "*the re-classification of a loan as a bad debt (called a write off in a Credit Union*) *is required under the Credit Union Rules and the Central Bank of Ireland requirements - see excerpts* […] *A loan must be classified as a bad debt, or written off, as per the requirements where there is no principal repayment in 12 months or where a loan is in prolonged arrears".*

The "excerpts" submitted by the Provider were as set out in my analysis above.

The Provider submitted an additional document with its post Preliminary Decision submission, referenced as *Resolution 49* report, dated **25 June 2018,** which shows the number of weeks in arrears at the time of write off/ classification as a bad debt as '60 weeks'.

This document does not appear to have been submitted by the Provider in its formal response to this Office during the investigation of the complaint.

In light of the submission of this document and the Provider's explanation, I accept that the loan may not have been written off prematurely. However, the issue of the communication surrounding the write off remains of concern.

The *Historical Enquiries* section of the First Complainant's credit report dated **20 February 2019** shows that no ICB enquires were made by any financial service provider other than the Provider. Accordingly, I have no evidence that the Complainants were adversely impacted in the eyes of other financial service providers as a result of the Provider's conduct.

That said, it is clear that the Complainants were engaging with a mortgage broker about their ICB record. There can be no doubt that having "W" on an ICB profile could impact on a mortgage application.

The reclassification of the loan as a bad debt and its reporting as written off to the ICB is a serious decision to take, particularly in light of the adverse impact this can have on a person's ability to obtain future credit. The Provider did not communicate this to the Complainants. In the circumstances, it is reasonable to expect that the Provider would have written to the Complainants to notify them that their loan was being written off and that it would be reported to the ICB as written off.

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The loan was repaid on **12 February 2019**. The credit report dated **20 February 2019** records the loan as having been cleared on **12 February 2019**. This is also captured in the *Repayment History* section, denoted with the indicator *C*.

However, I note that "W" (written off) remains on the First Complainant's ICB credit record. In the circumstances of this complaint, I believe this is unreasonable.

I note the Provider states that it does not issue specific communications relating to the reclassification of loans as a bad debt or written off.

In my Preliminary Decision I stated that, in circumstances where the Provider records a loan written off on the ICB profile of the borrower, I believe it is unreasonable not to inform the borrower of this important reclassification. I stated that I believe the Provider should have informed the Complainants of its intention to write off the loan and the consequences that this would have for their ICB record.

I stated that the Provider should also have informed the Complainants that the loan had been written off and this information had been notified to the ICB.

The Provider, in its post Preliminary Decision submission, submits:

> "*it is not the practice of* [the Provider] *to specifically refer to the classification of loans as 'written off' in communications. Historically this is an internal classification and a write off is an accountancy term which can lead to non-collection as it suggests forgiveness of debt. There is no legal requirement to notify as a write off and it would be highly prejudicial, if such an obligation was now introduced, to* [the Provider's] *duty to attempt to collect such impaired assets in the best interests of their membership. No such specific requirement has ever been prescribed by a regulatory authority for* [entities such as the Provider] *in Ireland*".

I find the Provider's position quite unreasonable. On the one hand it is stating it is not the practice of the Provider to specifically refer to the classification of loans as written off in communications. I presume the Provider is referring to communications with borrowers such as the Complainants. Therefore, it would appear that the Provider's practice is not to communicate with the borrower that it proposes to classify, or has classified their loan, as written off but will notify this information to the ICB. This policy resulted in a situation where the Provider was unwilling to inform the Complainants that their loan was classified as written off at the same time as it was reporting the Complainants' loan to the ICB as written off. The effect of this is that other third parties had access to this information, but the Complainants did not, unless they made an application to ICB to access their records. I find this to be a most unreasonable approach.

Contrary to the Provider's response in its post Preliminary Decision submission, I do not view my finding in this regard as imposing an obligation on the Provider, nor do I believe it is prejudicial. It is entirely a matter for the Provider as to how it designates an account for credit and accounting purposes.

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However, where I take issue with the approach is where the Provider notified the ICB that the loan was written off in circumstances where it was unwilling to inform the Complainants of that same information. The Provider cannot have it both ways.

It cannot report the Complainants' loan to the ICB as written off and justify not telling the Complainants that it was written off because it was not in fact written off on the basis that the write off was some form of an "*internal classification*" or an "*accountancy term*". It is not clear to me why an internal classification or an accountancy term would be reported on an ICB profile.

What is clear is that the designation of "W" on the ICB caused difficulties and inconvenience to the Complainants.

The evidence indicates that the Complainants were in discussions with a mortgage broker with a view to securing a loan. I note the Provider initially agreed to communicate with the mortgage broker in an attempt to resolve matters. This would have been a very welcome development.

However, I note that the Provider states "*a letter from the FSPO was subsequently received the next day, so the Credit Union never proceeding (sic) in contacting the broker".*

It is disappointing that the Provider did not proceed with its offer to contact the broker in order to assist the Complainants. The involvement of this Office in no way precluded the Provider from doing so. In fact, this Office encourages parties to seek to resolve their complaints at all stages of the process.

In my Preliminary Decision I stated:

> *As the Provider did not notify the Complainants that their loan was to be written off, or had been written off and in circumstances where the loan had been paid in full, I do not believe that it is fair or reasonable that "W" should remain on the Complainants' ICB record.*

I indicated that for this reason, I proposed to direct the Provider to correct the Complainants' ICB record by removing the "W" from their profile in respect of the loan at the centre of this dispute.

The Provider, in its post Preliminary Decision stated:

> "[The Provider] *did write off the loan under its policy in June 2018.* [The Provider] *believes it did so lawfully in accordance with regulatory guidelines, internal polices and laws. We do not believe that there was any choice in submitting the facts of write off either now or at the time it was reported. The ICB operated based on the submission of bona fide information. We believe from reading the rules of the ICB that it can only be altered if it is determined that there was an error in fact.*

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> [The Provider] *cannot comment on the underwriting activities of other financial institution or brokers, nor do we routinely communicate with other lenders as best practice on behalf of our members.*
>
> [The Provider] *would point out that the track record of missed payments on the ICB could potentially impact on a credit application with an equal effect to a 'W' being present. The removal of just the W without the removal of the recorded series of payments would be unproductive in restoring the record to a fully complaint loan record, were that to be judged as correct.*

I accept that the Complainants' credit history was negatively impacted by the arrears on their loan. However, the matter I take issue with is the Provider's unwillingness to furnish the Complainants with the same information as it was furnishing to the ICB.

The Provider seems to be expressing the view that it will not be possible to have the status "W" removed from the Complainants' ICB record. I will deal with this in my direction.

The Complainants have also taken issue with the manner in which they were treated by the Provider and its staff members when they visited the branch. A number of submissions have been made by the Complainants in this regard. The Provider has also furnished statements prepared by the staff members who dealt with the Complainants. I will now set out certain parts of these statements.

<u>Credit Control Department:</u>

> *"I dealt with [the First Complainant] on a number of occasions where he was seeking to change his Credit Report.*
>
> *I explained it is not possible to change a members Credit Report unless the information provided is inaccurate. In this case it was not.*
>
> *I further explained that there is nothing more that could be done and that the credit report accurately reflected the members account.*
>
> *On one occasion he became agitated and left the meeting."*

<u>Business Development Manager:</u>

> *"… On a number of occasions, [the First Complainant] turned up at reception in [the Provider's branch] in an agitated state. He wanted his Credit History amended and he wasn't going to leave until this was done.*
>
> *…*
>
> *On a number of occasions, as he was getting more agitated, I came from my Office to see if I could be of any assistance to the staff dealing with the matter.*

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On one occasion, the member said he was not leaving until he someone (sic). I listened to what [the First Complainant] had to say and I suggested that I would arrange for his issue to be dealt with. He then repletely (sic) asked me in an aggressive manner 'was I telling him to leave', I answered 'as a member he could stay as long as he wanted but nobody was available to discuss the matter at that time'."

Operations Manager:

"… I met with [the First Complainant] on a number of occasions, all occasions to my recollection were not by appointment but where [the First Complainant] turned up at Reception and demanded to speak with someone.

I went through [the First Complainant's] account position in detail and explained to him why there were issues with his credit report, detailing a large number of missed payments and arrears on his account. [The First Complainant] became agitated and argumentative when I was unable to facilitate a request to change the details on his credit report.

[The First Complainant] did call to Reception on several occasions to discuss the issue again. He was always very aggressive."

Complaints Officer:

"… I subsequently met with [the First Complainant] and [the Second Complainant]. The request to talk to the broker was discussed and [the First Complainant] signed a consent to allow [the Provider] to talk to the broker. The members were strenuously adamant that the credit record had to be changed. …"

It is clear from the evidence that the Complainants were quite frustrated with the manner in which their loan was being reported to the ICB, in particular, the designated "W" and the impact this could have on purchasing a home. This resulted in a number of visits to the Provider's branch, not all of which were pre-arranged, and none of which proved fruitful from the Complainants' perspectives. The Provider's position was that its reporting to the ICB was correct and, because of this, it could not amend either of the Complainants' credit reports. It is clear that the Complainants were unwilling to accept this, and it is likely this added to their frustration which was expressed by them during their branch visits. However, the point appears to have been reached, to the dissatisfaction of the Complainants, where the Provider was no longer willing to offer assistance regarding the reporting of the loan to the ICB. It is also likely this was followed by further branch visits by the Complainants to express their frustration and have their credit reports, from their perspective, corrected.

Therefore, on the basis of the evidence, I am satisfied that when the Complainants attended the Provider's branch, they became agitated and frustrated with the Provider's position. It is also likely the Complainants would have adopted a strong position on the matter and indicated their unwillingness to leave the branch until the matter was resolved.

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These situations can be difficult to deal with, however, based on the evidence presented, I am not satisfied that the Provider's staff members dealt with the Complainants in an inappropriate or unprofessional manner.

On the basis that the Provider, as a matter of policy, did not inform the Complainants that their loan would be, or had been, written off while at the same time reporting the loan to the ICB as written off, I propose to substantially uphold this complaint. I believe the Provider's conduct in this regard was unreasonable.

For this reason, I direct that the Provider pay a sum of €5,000 to the Complainants and arrange to alter the Complainants' ICB record by removing the "W" from their credit profile. I note the Provider, in its post Preliminary Decision, has expressed the belief that this will not be possible. If that is the case, I direct that the Provider pay an additional sum of €3,000 in compensation. For the avoidance of doubt in addition to paying the €5,000 in compensation the Provider is to either arrange to have the "W" removed from the Complainants' ICB record **or** pay an additional sum of €3,000 to the Complainants.

Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is substantially upheld, on the grounds prescribed in ***Section 60(2) (b).***

Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct that the Respondent Provider pay a sum of €5,000 to the Complainants to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider. I also direct that the Provider arrange to alter the Complainants' ICB record by removing the "W" from their credit profile **or** pay an additional sum of €3,000 to the Complainants.

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.***

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

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

21 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 2018.7