



<u>Decision Ref:</u>	2021-0277
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Union Loan
<u>Conduct(s) complained of:</u>	Arrears handling Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Failure to process instructions in a timely manner Errors in calculations
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to a loan account and the Provider's alleged maladministration and wrongful reporting of the Complainant to the Central Credit Register (CCR) in relation to the account.

The Complainant's Case

The Complainant was issued a loan from the Provider on 14 September 2012. The term was 5 years with monthly repayments of €260 per month. The Complainant states that he adhered to the repayments up to February 2014 but due to a change in his personal circumstances, the Complainant's financial position was adversely affected, and he was unable to continue making the agreed monthly repayments of €260.

The Complainant states that he contacted the Provider on 20 February 2014 to explain his circumstances and he entered into a verbal agreement with the Provider that he would reduce his monthly repayments to €140. He also states that he requested to offset a sum of €1,500 which was lodged to the account in 2013 to assist him while he was experiencing the financial burden. The Complainant's intention was to resume paying under the new agreed amount of €140 once this credit had been used up. The Complainant stated that he resumed making payments of €140 from September 2014 to December 2014 and increased monthly payments to €150 per month in March 2014 and then €200 per month in February 2019.

The Complainant states that anomalies relating to his account came to his attention in October 2019.

He states that he contacted the Provider in the first week of October 2019 and also gave his partner permission to assist in the matter. In essence, the Complainant had applied for a mortgage and during the mortgage application, a check on the CCR appears to have produced an adverse report showing 13 Missed payments recorded in relation to the loan account with the Provider. The missed payments were recorded during the period April 2014 to January 2019.

The Complainant maintains that he continued to make monthly repayments to his loan account throughout the loan term. He states that the new term letters sent to him by the Provider were signed and returned and that he received no communication from the Provider asking him to send in any outstanding documentation.

The Complainant takes issue with 5 Missed payments recorded from April to September 2014. He states there was an agreement with the Provider in which repayments would be offset by a lodged lump-sum. The Complainant also takes issue with 4 recorded missed payments from September to December 2014 when in fact they were reduced payments which had been agreed with the Provider.

The Complainant states that a further 2 missed payments in April 2018 and December 2018 can be explained. He explains that the April 2018 missed payment is attributed to a transaction error by a third-party Provider and the latter was not a missed payment but rather a payment scheduled to be paid by standing order over the Christmas holiday period.

The Complainant also submits that over several emails and complaints correspondence between October 2019 to the end of November 2019 the Provider had been inconsistent in its responses to his complaint.

The Provider's Case

The Provider states that it can correctly confirm that a record of 11 missed payments is accurate. The Provider explains that missed payments are determined in relation to months when no payment was received, or payments were received which were insufficient to make repayments against the loan principal. The Provider states that it did agree to the Complainant reducing his monthly repayments in February 2014 on condition that he regularised his affairs to the satisfaction of the Provider.

The Provider states that full documentation was not completed or returned by the Complainant and inconsistencies and postal addresses given to the Provider were not verified by the Complainant. The Provider denies acting inappropriately. The Provider also states that it contacted the Complainant several times by post and by phone in an effort to regularise the loan account.

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The Complaint for Adjudication

The complaint is that the Provider wrongfully and inaccurately listed the Complainant's credit history with the CCR in that it wrongly treated certain payments pursuant to a repayment arrangement made as missed payments.

The Complainant is seeking to have all inaccurate information corrected by the Provider with the CCR linked to his name removed from the CCR.

Decision

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

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

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 21 June 2021, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the issue of my Preliminary Decision, the parties made the following submissions:

1. E-mail from the Complainant's representative to this Office dated 25 June 2021.
2. E-mail from the Provider to this Office dated 21 July 2021.

Copies of these submissions were exchanged between the parties.

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Having considered these additional submissions and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

A copy of the credit agreement has been provided. It shows that on 14 September 2012, the Complainant borrowed a sum of €5,500 which was on top of an outstanding loan which was being refinanced as part of the 2012 credit agreement. The total loan was therefore, €11,799.42 repayable over a period of 59 months with monthly repayments agreed at €260 per month until completion on 14 August 2017. Amongst other things, the credit agreement expressly provides as follows:

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

The loan account statements have been furnished and they show that the Complainant paid €260 per month from the outset up to February 2013. In March 2013, he made a lump sum payment of €1,500 and thereafter he continued to pay €260 per month up to and including, February 2014.

On 20 February 2014, the Complainant telephoned the Provider to explain that there was a change in his personal circumstances, and he was querying whether there was any way he could reduce the repayments. He was advised by the Provider that he needed to submit proof that his circumstances have changed. He later advised the Provider that he would like to reduce his monthly repayments to €150 per month. At this point, the Provider expressly advised the Complainant that this would have the effect of making it longer for him to clear the loan and that the account would go into arrears and because of that, it would affect future loans. The Complainant acknowledged this. The Complainant was advised that the loan repayments were €1,400 ahead and that this would give him a little bit of "leeway" for a couple of months, and it would not go into arrears for a couple of months and after that, he could go back and see if he was able to start paying back €260 per month.

The Complainant stated that he would make an appointment the following week to commence the process of furnishing the Provider with information necessary in relation to his changed circumstances.

The account statement shows that a standing order payment for €150 was then made on 25 March 2014. Thereafter, there were no payments for the months April, May, June, July and August 2014. The Complainant commenced standing order payments of €140 per month from 26 September 2014 onwards. He continued to pay €140 per month and then began paying €150 per month from 25 March 2015 onwards. The account statement shows that there was no payment for the month of April 2018 or for the month of January 2019. From February 2019 onwards, the Complainant made payments of €200 per month and then €40 per month from August 2019 and with the final payment of €220 to close the account with a zero balance.

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It is important to record that Section 11 of the Credit Reporting Act, 2013 provides for a statutory obligation on the part of the Provider to report information in respect of credit agreements to the Central Credit Register. In addition, section 8 of the Credit Reporting Act, 2013 provides that the credit information shall remain on the register until the end of the period of 5 years beginning with the first day on which all liabilities under the credit agreement to which it relates have been discharged.

The Central Bank Guidance on the Central Credit Register states, amongst other things, at page 43 of 121, that where a credit information subject (that is, a person who has made a credit agreement) misses a scheduled payment on an Instalment agreement, a reporting obligation arises for the Provider. The Central Bank Guidance on the Central Credit Register further provides, at page 48 of 121, that an arrears position should continue to be reported on a monthly basis until the arrears balance has been cleared.

In this dispute there are eleven disputed recorded missed payments which can be divided into three separate groupings.

Firstly, there are the five recorded missed payments for the months April, May, June, July and August 2014. Secondly, there are the four recorded missed payments from September to December 2014 and thirdly there are the two recorded missed payments for April 2018 and January 2019.

I will deal firstly with the agreed temporary reduction in loan repayments. The Provider states that no *“formal loan reschedules have been offered to Members since October 2010”* and that the arrangement with the Complainant was a verbal agreement to reduce his loan repayment on a temporary basis but that this was not a restructuring of the credit agreement. The Provider further asserts that the temporary arrangement was subject to certain information being provided by the Complainant regarding his change of circumstances.

Recordings of telephone calls between the Complainant and the Provider have been furnished in evidence. Having considered the audio recordings of the telephone calls between the Complainant and the Provider, it is evident that while the entire credit agreement was not restructured, there was a temporary repayment arrangement. This is recognised by the Provider consistently in the telephone interactions between the parties, albeit it was agreed verbally.

The Central Bank Guidance on the Central Credit Register states that the CCR will capture both permanent and temporary restructure events and expressly refers to *“restructure events that involve a temporary change to a contract”* (page 38 of 121 of the Guidance).

In addition, Clause 8.11 of the Consumer Protection Code 2012 provides:

“Where a regulated entity reaches an agreement on a revised repayment arrangement with a personal consumer, the regulated entity must, within five business days, provide the personal consumer, on paper or on another durable medium, with a clear explanation of the revised repayment arrangement and clarification on what data relating to the consumer’s arrears will be shared with the Irish Credit Bureau or any other relevant credit reference agency.”

Pursuant to Clause 8.11 of the Consumer Protection Code 2012, the Provider is obliged to provide the Complainant with “a clear explanation of what data relating to the consumer’s arrears” will be shared with any relevant credit reference agency. The Provider asserts that in order to make change in the loan repayment amount, the Complainant was required to complete a Statement of Means and to provide supporting documentation of the items on the statement. However, while it is accepted that the Complainant did not provide the requested information in any timely manner, the Provider continued to treat the verbal repayment arrangement with him as continuing and ongoing and where he made monthly repayments of €150. These were not treated or reported as missed payments. Therefore, the issue as to correspondence, discrepancies over addresses and receipt of certain information is not determinative of the existence of a repayment arrangement being in place.

There is no doubt that the Provider informed the Complainant verbally and in clear terms that the repayment arrangement would have the effect of making it longer for him to clear the loan and that the account would go into arrears and because of that, it would affect future loans. However, the Provider does not appear to have recorded the temporary restructure with the CCR or complied with its obligations under Clause 8.11 of the Consumer Protection Code 2012.

In relation to the five recorded missed payments for the months April, May, June, July and August 2014. Irrespective of the repayment arrangement agreed, no repayments were made during this period. The Complainant asserts that there was an agreement with the Provider in which repayments would be offset by the March 2013 lodged lump-sum. However, this assertion is not supported by the contents of the phone call on 20 February 2014. Firstly, there is no such express agreement articulated by either party. The agreement was that the Complainant would commence making the repayment arrangement as soon as he could change the standing order. Secondly, the Provider advises the Complainant that while the repayment arrangement would cause his account to go into arrears, the fact that he was ahead due to the March 2013 lump sum, it would give him a bit of leeway from going into arrears for a few months. It was not stated at any point that he was not due to make the agreed repayment arrangement for a fixed period of time. Furthermore, the Provider called the Complainant on 9 July 2014 to query why there had been no repayments since the previous March. The Complainant did not assert any belief that he felt the March 2013 lump sum was being used for this period. Instead, he asserted that he changed the standing order, but it had not been coming out and he did not know why.

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The Provider telephoned him again on 30 July 2014 to remind him that no payments have been made since March and the Complainant committed to getting the standing order forms set up for the 24th of every month.

Therefore, I accept that the Provider is correct to treat these 5 scheduled payments as missed payments and record them as such with the CCR.

In relation to the four recorded missed payments from September to December 2014. The Complainant argues that he made payments of €140 for those months and has therefore complied with the repayment arrangement. The Provider asserts that missed payments are determined in relation to months where no payments are received or where the payments were insufficient to make a payment against the loan principal. In relation to these four payments, the Provider submits that they were only serving the interest and therefore it was appropriate to record them as missed payments.

When the Provider spoke to the Complainant on 9 July 2013, the Complainant was expressly advised that his interest was currently €223 per month because of the previous missed payments and that if he was only going to be paying €150 per month going forward it would only be taken off the interest. The Complainant acknowledged and accepted this. I accept on balance that the payments between September to December 2014 did not serve to pay towards the principal amount of the loan.

However, while the Provider did advise the Complainant that only the interest would be reduced by re-starting the payments, it did not make it clear to him that this would be treated and/or recorded as a missed payment notwithstanding he was supposed to be re-commencing the agreed repayment arrangement.

Had the Complainant restarted paying €150 per month as agreed, then to treat these 4 actual payments as missed payments on those grounds would have been unreasonable where the Complainant was not expressly notified that paying the agreed rearranged amount at this time would be recorded as a missed payment. However, notwithstanding all of the foregoing, the evidence from the audio recordings and the quarterly account reviews issued by the Provider is that the repayment arrangement was that the Complainant would pay €150 per month. For some reason, the Complainant only paid an amount of €140 per month during this period therefore he did not meet the terms of the repayment arrangement. There is no evidence that a monthly sum of €140 was agreed and in circumstances therefore, where the full amount of the agreed repayment arrangement was not paid, the Provider was obliged to record this as a missed scheduled payment on an instalment agreement with the CCR.

In relation to the April 2018 missed payment, the Provider telephoned the Complainant on 9 May 2018 querying the payment for April 2018. He was offered the opportunity to pay over the phone, but he was unable to do that as he did not have his card with him. The Complainant committed to making the payment online. However, there has been no explanation proffered by the Complainant to lead to a determination that the Provider was wrong to record this as a missed payment.

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The Complainant, while placing the blame at a third-party Provider for the missed payment, still had obligations to make payment under the credit agreement.

In relation to the January 2019 missed payment, no adequate explanation or sufficient evidence has been provided by the Complainant as to any wrongdoing on the part of the Provider in recording this as a missed payment. The account statement shows payment being made over the Christmas period on 28 December 2018, but no further payment was made in January 2019 and it appears the standing orders were amended to make payment from the beginning of the months of March, April, May and onwards. Therefore, the statement records no payment for January 2019.

I find that the Provider was correct to treat the 11 missed payments as missed payments for the reasons set out above and accordingly a reporting obligation to the CCR arose.

However, the Provider should have recorded the temporary restructure with the CCR, and it failed to fully comply with its obligation under Clause 8.11 of the Consumer Protection Code 2012 to inform the Complainant, in writing, of the revised arrangement and its potential impact on his credit record.

For this reason, I partially uphold this complaint and direct that the Provider make a compensatory payment in the sum of €500 to the Complainant.

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)(c)** because of its error.

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 €500, 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.

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.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

19 August 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.