



<b><u>Decision Ref:</u></b>	2021-0381
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Failure to provide correct information Incorrect information sent to credit reference agency
<b><u>Outcome:</u></b>	Partially upheld

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

The complaint concerns the Provider's credit reporting in respect of a mortgage loan account.

#### **The Complainants' Case**

The First Complainant explains that in 2001, the Second Complainant purchased a house in County [redacted] ("Property 1"). At that time, the First Complainant says the Second Complainant obtained a mortgage loan from a financial service provider. The First Complainant explains that in **2005** the Second Complainant then purchased another house in County [redacted] ("Property 2"). The First Complainant says the Second Complainant decided, at this time, to re-mortgage Property 1. The First Complainant says that both mortgage loans were obtained from a financial service provider ("the Original Lender") that was later acquired by the Provider. The First Complainant says the Second Complainant's father was to be a guarantor in respect of both mortgage loans. As far as Second Complainant was concerned, the First Complainant says there was never an issue with these mortgage loans and they were always paid on time.

The First Complainant says that during the downturn, in **October 2013**, after speaking with their accountant, the Complainants agreed to approach the Provider about lowering their loan repayments. The First Complainant says their accountant performed the calculation and accompanied them to the Provider's office in Dublin to outline a suitable plan.

The First Complainant says an agreement was reached and after a lot of contact, delays and confusion on the part of the Provider, matters were finally sorted with an agreement that the Complainants would pay a new rate, which would not affect their credit rating. The First Complainants say the re-mortgage took more than two years to complete and during this time the Complainants received constant reminders from the Provider informing them they were in arrears, which was not part of the agreement. The First Complainant says this all occurred at a time when the Complainants had an extremely sick family member who the Second Complainant was helping to care for, while working a full-time job, all of which was known to the Provider.

During the re-mortgage process, the First Complainant says it was discovered that the Second Complainant's father was not a guarantor, but in fact the mortgage loans had been taken out in both of their names. The First Complainant says that another difficulty involved both properties being under the same mortgage, which was not supposed to be the case as one of the properties was the Complainants' primary residence. The First Complainant says these were errors which had occurred at the time of drawing down the mortgage loans in 2001 and 2005.

Prior to their agreement with the Provider, the First Complainant says the Second Complainant and her father were the only people recorded *"on these mortgages."* The First Complainant says that he *"was not on the mortgage, nor had I anything to do with the mortgage."* At the time of re-mortgaging, the First Complainant says the Complainants requested the removal of the Second Complainant's father from the mortgage loans, which the Provider agreed to, but only on the understanding that the First Complainant would replace him. The First Complainant says he was happy to do this.

In **August 2017**, the First Complainant says that *"after my wife and I have worked very hard to make sure we've no credit cards and had paid off all loans bar a car loan"*, he applied for a credit card because he was due to travel abroad for work and may have been required to rent a car, which had proven difficult in the past without a credit card. The First Complainant says he had no reason to suspect any difficulties with the credit card application. The First Complainant says he has always made a point of having bills paid first.

On **31 August 2017**, the First Complainant says a credit card provider *"refused me"* due to his credit rating. The First Complainant says this came as a shock. In the Credit Card Provider's letter, the First Complainant says it recommended that he *"apply for my Credit Rating"*, which he did.

On doing this, the First Complainant says:

*"I noticed the only issue was from [the Provider], saying we weren't paying the mortgage back in full from October 2015 to October 2017 (during the time of the remortgage)."*

The First Complainant states that he was not responsible for the mortgage loan during this time. He says that when the Complainants met the Provider at its offices, they were told to pay the new agreed rate and that everything would be cleared up on completion of the re-mortgage.

In **September 2018**, the First Complainant says the Complainants sold both properties and repaid the mortgage borrowing in full.

On **28 March 2019**, the First Complainant says he contacted the Provider with a view to rectifying the issue. The First Complainant says that getting to speaking with a member of the Provider's Complaints Department was very difficult, but he was eventually informed in a letter from a Complaints Associate, that the credit rating could not be changed and one of the reasons was because the Provider only reported to the Irish Credit Bureau ("the ICB") on an account level and not on an individual level.

The First Complainant says he telephoned the Provider and spoke with the Complaints Associate. The First Complainant says he expressed his dissatisfaction with the whole scenario and stated that the Complainants should not be punished for what was a Provider error. The First Complainant says the Complaints Associate was sympathetic to the situation and said she would look further into the matter.

On **8 July 2019**, the First Complainant says he received an email from the Complaints Associate in which she confirmed that the Complainants' report with the ICB had been amended.

Obviously, the First Complainant says, he was delighted as he was expecting the Complainants' credit reports to be clear, other than a 'T' on each report. The First Complainant says it had been explained that the 'T' would not be possible to remove as the Provider could only report to the ICB *"as an account and not as individuals."* As the Complainants are renting at their current address, the First Complainant says they decided to approach a mortgage broker and two banks, one of which they bank with, in the hope of buying their *"forever homes."* After various enquiries, the First Complainant says the Complainants were informed by all three parties, that they would not be able to get a mortgage loan. All informed them, the First Complainant says, that the main issue was the position of their credit ratings.

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The First Complainant says the Complainants applied again for their credit ratings, but this time there was a 'T' stated on the First Complainant's credit rating and not on the Second Complainant's credit rating. The First Complainant says this was in contrast to the advice given to him by Complaints Associate - that a credit rating could only be changed at an account level and not on an individual basis.

On **5 September 2019**, the First Complainant says he sent another email to Complaints Associate, as follows:

*"Thank you for your assistance to date, but I believe there are still some issues to be ironed out. As confirmed by letter dated 24th April 2019 and reaffirmed in our original conversation by phone, you clearly stated that credit ratings could only be corrected by account and not by person. I am sure you will empathise with my anger and annoyance as I now have received my credit rating and [the Second Complainant], on which it clearly stated that the T for amended terms has been applied to my credit documents and removed from [the Second Complainant's]. Please refer again to your own documents which clearly state that I was never on the mortgage at the time in question. I need some very clear direction on this, how can you change [the Second Complainant's] information and not mine? Are the details that you gave on the above dates accurate and true? I expect that you amend my details immediately and return an email stating when this is completed. I am now in the situation where my perfectly clear credit rating is in shreds without as much as an apology, but now amended to reflect incorrect information. My patience is done, I am consulting our solicitor for legal advice with a view of making a complaint to the financial ombudsman for not only the months of confusion, years of stress as well as half-truths and unclear support as your customer. I am sure you are aware we will have an extremely strong case where we can prove the actual loss and suffering, we have had to endure due to the complete negligence of [the Provider]."*

On **9 September 2019**, the First Complainant says he received an email from the Complaints Associate in which she stated:

*"We can confirm as per our previous correspondence that [the Provider] report to the Irish Credit Bureau (ICB) at account level only and not by person."*

The First Complainant says the Complaints Associate attached a screen shot of the report forwarded by the Provider to the ICB and requested copies of the ICB records received by the Complainants.

On **16 October 2019**, the First Complainant says he sent an email to the Complaints Associate enquiring if she had received his email with copies of the Complainants' credit reports. The First Complainant says he did not receive a reply to this email.

On **5 November 2019**, the First Complainant says he sent an email to the Complaints Associate seeking an update and at the time of making this complaint to this Office, he still had not received a reply to this email.

The First Complainant states that the Provider has been a nightmare to deal with in relation to restructuring the Complainants' mortgage loans, at a time when the Complainants had a very sick family member, which was known to the Provider. The First Complainant says that over almost 7 years, there has been error after error with the Complainants' credit ratings which the Complainants value very highly.

The First Complainant says the Provider never once informed the Complainants that it would be sending "*a negative report on our Credit Ratings.*" This, coupled with the embarrassment of being refused a credit card and mortgage applications, the First Complainant says, has caused a great amount of stress, hurt and embarrassment at a sensitive and vulnerable time in the Complainants' lives. The First Complainant says he was also afraid that as a member of [employer] that this would reflect badly on him.

The First Complainant says the Provider has stated a few times that it can only report to the ICB by account, and not by individual, which the First Complainant believes is a flawed process. The First Complainant says that:

*"my experience is a prime example of this as I have been punished for almost seven [years] for a mortgage that I was not on originally and was paid in full in all my time on the account. Never once have we received an apology nor an admittance from [the Provider]. Nor have they ever even suggested any form of compensation which I believe is long overdue."*

In resolution of this complaint, the First Complainant states, as follows:

*"my Credit Rating has been wrongly affected due to incompetence on behalf of the bank since 2013. In this time I have been refused Credit from a Credit Card company and banks in relation to mortgage applications. This has caused a great deal of embarrassment, caused a great amount of stress and hurt at a sensitive and vulnerable time in our lives due to the serious life threatening illness of our [relative]. I was also afraid that as a member of [employer] this would reflect badly on me as well [as the Second Complainant], as a Sales Representative (sic) of a huge multinational corporation."*

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

The Provider says that title to Property 1 and Property 2 was transferred from the Second Complainant's father to the First Complainant on **16 October 2015**. The Provider says when the First Complainant was added to the mortgage loan facility by the Transfer of Equity ("the TOE") offer, dated **24 September 2014**, the Complainants were informed that they would be responsible for all past and future repayments on the loan agreement. The Provider says the Complainants acknowledged that the First Complainant was assuming liability for all amounts payable and all obligations arising under the Letters of Offer as set out under conditions 2.1(f)(iii), (g), (h), 2.2(a)(ii), 4.1(c) and 4.2. The Provider has cited each of these conditions in its Complaint Response.

Furthermore, the Provider says the TOE document, which was signed by the Complainants in the presence of their solicitor, detailed the level of arrears, at condition 1.1. The Provider says it also notes that during a telephone conversation on **5 October 2015**, the Second Complainant was informed of the level of arrears present on the account.

The Provider says the First Complainant was informed of the potential impact that the existing mortgage loan agreement could have on his credit rating, on a number of occasions. Firstly, in signing the TOE application form declaration, relating to '**Credit Reference Searching and Reporting**', the Complainant acknowledged that the Provider would provide information to credit reference agencies concerning the application and the manner in which any resulting account was conducted. The loan account in question, the Provider says, was existing and the First Complainant was aware of this, as per his request to be added to the facility. The Provider says the First Complainant signed the declaration on **18 October 2013**.

The TOE document, the Provider says, clearly set out that the First Complainant was to be added to the existing facility and that he would become a joint borrower. The Provider says the approval was subject to acceptance of the TOE document dated **24 September 2014** and the existing Letter of Offer and associated conditions. The Provider says copies of the Letter of Offer were provided for consideration and attached to the TOE document.

The Provider says the pre-existing Letter of Offer, dated **14 September 2005**, set out the following in relation to authorisation provided to the Provider, within the Loan Application Form and associated Declaration, Authorisation and Consent Form:

*"(ii) As stated in the Loan Application Form or Lender's Declaration, Authorisation and Consent Form the Applicant(s) authorise the Lender to record and/or access and/or give information concerning this transaction or particulars thereof as may be the Lender's practice from time to time."*

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The Provider says the original application form included the following statement in relation to credit reporting:

*“Credit reference searching reporting*

*[The Original Lender] may from time to time make enquiries relating to you by contacting your employers, accountants, mortgagees, landlords and credit referencing agencies and may also provide information to credit reference agencies concerning this application in the manner in which the account is conducted. For this [the Original Lender] requires your consent. Please note that if you do not consent [the Original Lender] may not be able to consider your application. Credit reference agencies will keep a record that a search has been made (usually for a year) and may disclose that fact and the information relating to you provided by [the Original Lender] to their other member. I/we authorise [the Original Lender] to make such enquiries as it deems necessary, to carry out credit reference searches against me/us, and to provide information concerning this application and the conduct of the account to credit reference agencies.”*

The Provider says that on **21 March 2005** the consent of the Second Complainant was provided.

The Provider says it is satisfied that the First Complainant’s credit history was correctly reported to the ICB from **2013** to date, on the basis that the First Complainant accepted liability for the existing debt. In line with industry practice, the Provider says it reports mortgage loan facilities at account level and therefore, once the First Complainant was transferred on to the facility, he inherited the repayment history of the loan. In respect of the Second Complainant, the Provider says the remaining original party was correctly reported to the ICB from **2013** to date.

The Provider says it did not agree to amend the reporting method for the Complainants from account level to individual level. The Provider says it was agreed to amend the account profile to show ‘T’ for terms amended when the TOE and term extension were completed, and a clear profile prior to the ‘T’. The decision to do this, the Provider says, was based on the acceptance that there were delays in finalising the TOE due to system restrictions following the introduction of the Provider’s core banking system. Furthermore, the Provider says during the initial meeting to discuss the TOE, a revised repayment amount of €1,200.00 was discussed which represented a new repayment assuming the TOE was completed and a term extension implemented. The Provider says the Complainants maintained this repayment despite no formal arrangement being put in place until **October 2015**. The Provider says this was recorded as part of the credit approval as is evidenced in the Credit Team’s contemporaneous account notes.

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The Provider says this was a highly unusual set of circumstances and in order to resolve the matter for the Complainants, the Provider sought to engage with the ICB to amend the historical record. The Provider says the submitted 'Emails' document demonstrates that this amendment was requested internally on **4 July 2019** and was processed on **5 July 2019** through its normal ICB amend system. The Provider says it was satisfied that the issue had been resolved. The Provider says it did not request the records be amended on an individual basis. However, from later correspondence, the Provider says it appears the surname of the Second Complainant may have resulted in two individual records being displayed by the ICB. The Provider says this is not a process it has control over and it is confident that the account was being reported at account level in line with standard practice.

In **September 2019**, the Provider says the First Complainant contacted it stating that the ICB was still incorrect. The Provider says it requested details of the ICB in order to verify the status. The Provider says it provided details of how the account was being reported and requested that the First Complainant provide details of the report he had secured. The Provider says that on **24 September 2019**, the Complainants provided evidence that the ICB was not displaying as previously confirmed.

The Provider says it reviewed the submissions from the First Complainant and began an internal investigation on **1 October 2019** only to conclude that it could not determine the reason why this was displaying differently from the ICB. On **15 October 2019**, the Provider says the matter was directed from the ICB to investigate. The Provider says the email correspondence provided evidences the ongoing contact between the Provider and the ICB in relation to this matter. On **17 October 2019**, the Provider says it reverted to the First Complainant by email to inform him that the matter had been referred to the ICB for further investigation.

Throughout **October 2019** to **April 2020**, the Provider says it sought to resolve this matter both internally and directly with the ICB. As previously mentioned, the Provider says it was suggested by the ICB that the surname of the Second Complainant may be the reason the reports were not syncing and the ICB suggested a name change be submitted which it was hoped would resolve matters.

The Provider says it regrets that it was not until **April 2020** when the matter was finally resolved but as is evidenced in the 'Emails' document, the matter was receiving ongoing attention and, at times, the Provider could not progress the matter without the assistance of the ICB.



On **13 December 2019**, the Provider says an ICB representative implied that the Provider did not provide a 'Change of Name' file. The Provider says that in this same correspondence, the ICB representative noted that the ICB no longer held on file the Provider's submissions from the relevant period when the 'Change of Name' file should have been received. The Provider says it wishes to clarify that it also no longer holds on file, records from this period and therefore, the root cause cannot be determined between the parties. The Provider says this was not highlighted by the ICB until some two months following the Provider's initial enquiry.

The Provider says it is not responsible for how the ICB display the information it provides, and that the Provider relied heavily on the ICB's assistance and information in order to resolve the matter.

The Provider says it appears that following its request to amend the ICB record for both Complainants to reflect that all repayments had been met, the ICB record for the First Complainant was amended to include 'T' but the Second Complainant's record was not amended. As is evidenced in its internal correspondence dated **4 July 2019**, the Provider says this is not what was requested or submitted through its ICB reporting system. It is important to note, the Provider says, that while it can request an amendment to an ICB profile, it has no control over how this is displayed by the ICB, which is independent from the Provider.

The Provider says the Second Complainant was informed by email dated **9 July 2019** that the ICB records had been amended to show a 'T' only, which represented the terms amended. As at **8 July 2019**, the Provider says it had been agreed to amend the ICB records to reflect a clear repayment history and a 'T' for Terms Amended. The Provider says it submitted the amendment through the normal ICB amend system to be uploaded to the ICB immediately. The Provider says it is satisfied that the amendment was submitted as set out in the internal emails dated **4 and 5 July 2019**.

In respect of the fourth paragraph of page two of a letter issued to the Complainants dated **8 May 2020**, the Provider says that having reviewed the wording of this letter, it was recounting a sequence of events, which was that on **16 October 2019** it would revert to the Complainants when it received an update from the ICB. The Provider says it appreciates the wording of this paragraph may imply that further information was outstanding which was not part of the case and it did not request that the Complainants submit further information on **16 October 2019**. As set out above, the Provider says it reverted to the First Complainant on **17 October 2019**.

As is evidenced in its internal correspondence, and its correspondence with the ICB, the Provider says it was at all times of the opinion that the account had been amended as initially requested in **July 2019**. The Provider says it agreed to amend the repayment history on an exceptional basis. The Provider says, referring to correspondence from the ICB, that the issue appears to stem from the necessity to amend the surname of the Second Complainant which, when amended, resolved the matter. The Provider says this was outside of its control and was determined by the ICB to be the root cause of the issue, following its investigation.

The Provider says it accepts that it did not respond to the First Complainant's email of **5 November 2019** and offered its sincere apology for this oversight which it wishes to reiterate. The Provider says it explained that its investigation was ongoing and that it was in continuous contact with the ICB in an attempt to conclude matters. The Provider says a goodwill gesture of €250.00 was offered in respect of its failure to respond to the First Complainant's email of November 2019.

The Provider says a complaint was originally received on **28 March 2019** and an acknowledgement issued on **2 April 2019**. Following its investigation, the Provider says it issued a response on **24 April 2019**. The Provider says this letter provided the conclusions following its investigation and informed the Complainants that they could request a Final Response Letter, should they wish to progress the matter. The Provider says a further submission was received on **8 May 2019** which was recorded as an ad hoc enquiry. The Provider says a telephone call was placed to the Second Complainant on **4 June 2019** in relation to this matter and a further discussion was held on **4 July 2019**. The Provider says email correspondence issued on **8 and 9 July 2019**, and the matter was considered closed. The Provider says it accepts that the matter continued until **April 2020** when the root cause of the issue was confirmed by the ICB and the credit profiles were finally amended. The Provider says there was ongoing contact with the Complainants until this point.

The Provider says the matter was escalated as a complaint to this Office in **January 2020** and that on **15 April 2020**, a request to issue a Final Response Letter was received. The Provider says it responded on **17 April 2020**, noting the response would issue within the timeframe specified and that a further update issued on **7 May 2020**. The Provider says a Final Response Letter then issued on **8 May 2020**.

### **The Complaint for Adjudication**

The complaint is that the Provider mal-administered the Complainants' mortgage loan account.

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## **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.

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 **6 October 2021**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

### ***Background***

I note that pursuant to an 'Amended Letter of Offer' dated **14 September 2005**, the Original Lender approved a mortgage loan facility in favour of the Second Complainant and her father in the amount of €220,000.00.

The 'Property to be mortgaged' in respect of this facility was both Property 1 and Property 2. A 'Form of Acceptance' was signed by the borrowers on **26 October 2005**.

The First Complainant signed a 'Transfer of Equity' application form dated **18 October 2013** ("the TOE application form") for the purpose of adding himself to the mortgage loan agreement the subject of this complaint.

On the third page of the TOE application form, it states, as follows:

*“Credit Reference Searching and Reporting*

*By signing this application form, you acknowledge that [the Provider] will [...] provide information to credit reference agencies concerning this application and the manner in which any resulting account is conducted. [The Provider] may also undertake searches with credit reference agencies from time to time during the period of any relationship with you. The credit reference agencies will keep a record of the search (usually for a year) and may disclose the fact that a search has been made, and information relating to you provided by [the Provider] to their other members. [...].”*

[Emphasis added]

By letter dated **24 September 2014**, the Provider wrote to the Complainants in respect of substituting the First Complainant onto the mortgage loan agreement in place of the Second Complainant’s father (“the Letter of Approval”), as follows:

*“Further to your recent request we [the Provider] (the “**Lender**”) are pleased to advise you that we have approved your application to revise the terms and conditions of the existing loan(s) on the above loan account (the “**Loan**”) to remove [the Releasing Borrower] (the “**Releasing Borrower(s)**”) as borrower of the loan; and add [the First Complainant] of [address] (the “**Additional Borrower(s)**”) as an additional borrower(s) of the Loan so that the Additional Borrower(s) and [the Second Complainant] of [address] (the “**Continuing Borrower(s)**”), will become the joint borrowers on the Loan. This approval is subject to the terms and conditions of this letter and the existing letter(s) of offer relating to the Loan (as amended from time to time) (together the “**Letters of Offer**”), the existing mortgage over the Property (as defined below), (the “**Existing Mortgage**”) and the New mortgage (as defined below) over the Property and the applicable mortgage conditions. [...].”*

In terms of the arrears on the loan account, clause 1.1 of the Letter of Approval states, as follows:

*“1.1 Item 1 (Amount of credit advanced) in the Particulars of Advance is the current amount outstanding on the Loan. Item 1 does not include the arrears balance of €8,374.56 on the Loan which is outstanding and which has not been capitalised and on which interest is continuing to accrue at the same rate(s) that applies to the Loan.”*

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Clause 2 of the Letter of Approval deals with suitability and states, as follows:

**“2. Suitability of the arrangement**

2.1 *Based on the information you have provided to us, our understanding of your current situation in relation to the Loan is:*

(a) *you have requested that we consent to the transfer (the “**Transfer**”) of all of the interests in properties at [addresses] (the “**Properties**”) held by the Releasing Borrower to the Additional Borrower and the Continuing Borrowers, so that the Releasing Borrower will have no interest in the Properties and all interests will be held by the Additional Borrower and the Continuing Borrower;*

[...]

(e) *you are aware of and understand the cost/implications of effecting the Transfer and, in the case of the Additional Borrower and the Continuing Borrower, assuming joint and several liability for the Loan;*

(f) *you are aware of and understand that the Additional Borrower and the Continuing Borrower:*

[...]

(iii) *will be jointly and severally liable for the Loan and for all other amounts payable and obligations arising under the Letters of Offer and under the New Mortgage;*

[Emphasis added]

[...]

(h) *the Additional Borrower and the Continuing Borrower have taken advice on and understand the obligations that arise under the Letters of Offer, the New Mortgage and, in the case of the Continuing Borrower, the Existing Mortgage.*

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2.2 *On the basis of the above and your current situation:*

(a) *in respect of the Additional Borrower and the Continuing Borrower we believe that the amendments meet your specific requirements as:*

[...]

(ii) *you accept and understand that the Consent is conditional on your assumption of joint and several liability for the Loan and for all other amounts payable and obligations arising for the Loan and for all other amounts payable and obligations arising under the Letters of Offer, and under the New Mortgage and the Continuing Borrower will continue to be liable under the Existing Mortgage;*

[Emphasis added]

[...]

(iv) *you understand (and consider that you can afford) the costs, liabilities and obligations which will arise as the sole borrower on the Loan.”*

Clause 4 of the Letter of Approval states, as follows:

**“4. What is the effect of this letter?**

4.1 *On the Effective Date, the:*

- (a) *Releasing Borrower will be released as a borrower of the Loan;*
- (b) *Additional Borrower will become an additional borrower on the Loan; and*
- (c) *Additional Borrower and the Continuing Borrower will both assume full liability for the Loan and all other amounts payable under the Letters of Offer and under the New Mortgage and for all other obligations and liabilities under the Letters of Offer and under the New Mortgage on a joint and several basis.*

4.2 *From the Effective Date all references to the “Borrower”, “Borrowers” or “you” in the existing Letters of Offer shall be read as if they refer to the Additional Borrower and the Continuing Borrower jointly and severally.”*

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At clause 5(m) of the Letter of Approval, it states, in respect of receiving independent legal advice that:

*“The availability of this offer is subject to the Lender being satisfied that the following conditions have been complied with and that the conditions referred to herein are received in a form and content satisfactory to us: [...]*

*(m) confirmation that the Continuing Borrower, the Releasing Borrower and the Additional Borrower have all received independent legal advice in relation to this transaction from separate legal advisors;”*

The Complainants and their solicitors signed the ‘Acceptance of the Additional Borrower and the Continuing Borrower’ at pages 13 and 14 of the Letter of Approval, which states, as follows:

*“I/We by signing below hereby:*

*1. represent and warrant that I am/we are capable of assessing and understanding the terms and conditions and risks of the Loan and the required security as set out in the Letters of Offer and am/are satisfied to agree to such terms and conditions and to assume such risks;*

*2. [...]*

*3. in addition to my/our confirmation above, confirm that I/we have read and understand the Letters of Offer including this amending letter and:*

*(a) in respect of the Continuing Borrower, I/we accept and agree to this amending letter on the terms set out herein; and*

*(b) in respect of the Additional Borrower, I/we confirm that I/we accept and agree to the Letters of Offer on the terms set out therein and herein;*

*[...]*

*6. agree that you, [the Provider] (and its successors and assigned) may:*

*(a) undertake searches with credit reference agencies (including the Irish Credit Bureau) from time to time while I/we have any loans outstanding to you or other relationship with you.*

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*The credit reference agencies may keep a record of the search for a period of time and they may disclose the fact that a search has been made and they may disclose to their other members information relating to me/us which was provided by [the Provider]; and*

*(b) use information received as a result of a search to make credit decisions in relation to me/us;*

7. *confirm that I/we understand that [the Provider] (and its successors and assigns) will submit details of my/our payment history to the Irish Credit Bureau at the end of each month and these details will remain on record for a period of five years and as such, any arrears may affect my/our ability to obtain future credit; [...].”*

[Emphasis added]

It appears that the First Complainant was substituted onto the mortgage loan agreement in in **October 2015**.

#### ***Correspondence between the First Complainant and the Provider***

By letter dated **27 March 2019**, the First Complainant wrote to the Provider stating that he wished to make a formal complaint, as follows:

*“The aforementioned was originally provided by [the Provider] in December 2005 to my wife [the Second Complainant] and my father in [law] however, the facility was the subject of a formal adjustment in October 2015 where, by way of transfer of equity, my father was removed from the facility and I became a joint borrower along with my wife.*

*The subject facility was subsequently discharged in full in August 2018 however, a significant issue has since arisen regarding my credit profile which I was advised was directly linked to the above exposure whereby having applied for credit I was declined on foot of a suggested defective profile.*

*The suggestion that I had a defective profile came as significant shock to me considering to the best of my knowledge I have never defaulted in any of my financial obligations and to conduct a review of the matter I ordered an updated copy of my credit report from the Irish Credit Bureau.*

/Cont'd...

*On assessment of same [...] is it clear that issue has arisen as a direct consequence of the aforementioned [Provider] facility whereby having become a party to the subject facility (by way of transfer of equity) where my ICB suggest I was a party to the facility from its original drawdown date in October 2005 (as highlighted overleaf) which is obviously not correct.*

*Obviously the ICB only record information that is provided to them by [the Provider] and clearly this is an error that the Bank must address whereby the ICB suggests I was a party to a facility with a defective profile which is simply not the case and as such I am requesting as part of this complaint that (i) the Bank urgently provide a commitment that they will correct the matter with the ICB without delay, (ii) provide an explanation as to how the Bank have incorrectly reported that I was named Borrower for the original facility when I only became a party to the facility in October 2015 and (iii) how the Bank intend to compensate me for the distress caused.*

*The issue, notwithstanding the embarrassment caused, is of particular concern to me as a serving member of [employer] and I would request that this matter is given immediate attention by the Bank to rectify same where I have clearly been unfairly prejudiced as a consequence.”*

The Provider issued a formal response to the First Complainant on **24 April 2019**. In the course of this letter, the Provider referred to certain of the terms of the Letter of Approval outlined above. Following this, the letter stated that:

*“We confirm that ICB profiles are reported at account level and are not specific to individuals. The report is a record of the transactional history on the account regardless of the named parties on the loan. We regret that we are not in a position to change the existing credit history on the account.*

*We can confirm that in October 2015 you replaced another party as a named party on this loan and the record with the ICB was amended to reflect a “T” (terms amended) at this juncture. The record continued to report at account level.*

*A new string opened on the 16<sup>th</sup> October 2015 and reported all ‘0’s (up to date) until September 2018 when it reported as ‘C’ = closed.”*

The First Complainant responded to the Provider on **7 May 2019** stating that “the response issued clearly did not understand the primary issue for consideration”.

/Cont’d...

The First Complainant continued, at paragraph four, as follows:

*“My wife was a party to a joint [Provider] facility with her father drawn down in December 2005 and this facility was the subject of some repayment difficulties and as such was the subject of restructure on a number of occasions (which relates to Account 1 Ref: [444/1] in my ICB credit profile submitted in support of the original complaint).*

*However, [...] it was decided that [the Second Complainant’s father’s] share in the facility and all supporting security would be legally transferred to me [...] and the facility was subsequently amended (consistent with Account 2 Ref: [444/1\_R1] in my ICB credit profile submitted in support of my original complaint).*

*However, for some unexplained reason, [the Provider] replaced me as a borrower in the original facility held jointly by my wife and her father which, given that exposure had a defective profile, has had a substantial adverse effect on my credit profile which of course should not be the case considering the facility I have been a party to has always been up to date and in order.*

*On the basis of the foregoing I am respectfully requesting the Bank urgently amend the ICB to reflect the actual borrowers attached to the original facility given the fact that was I not a party to same and was in fact never a party to any [Provider] exposure with a dislocated profile [...].”*

[Emphasis added]

The First Complainant contacted the Provider’s Complaints Department by telephone on **4 June 2019** as he had not received a response to his previous correspondence. During a conversation with one of the Provider’s agents, the First Complainant was advised that the Provider could not amend “*the ICB*” at the moment but the Provider was looking at ways to carry out an amendment because reporting to the ICB was done at account level. This was followed by a further discussion between the parties.

The First Complainant telephoned the Provider again on **3 July 2019** to speak with its Complaints Department. The First Complainant expressed his disappointment with the absence of a response from the Provider. A call back was arranged for the following morning. The First Complainant spoke with the Complaints Department on **4 July 2019**. The Provider’s agent apologised to the First Complainant for the delay in responding to him. The Provider’s agent further explained that the Provider had hoped to change its processes with the ICB but there were delays in doing this.

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The Provider's agent explained that the Provider was amending the Complainants' loan account on an exceptional basis with the ICB, for both Complainants. The Provider's agent advised that the account would show as 'T' for terms amended and that *"the late payments or anything showed would be all cleaned"*.

By email dated **8 July 2019**, the Provider wrote to the First Complainant, as follows:

*"We can now confirm that your report with the Irish Credit Bureau has now been amended as agreed."*

In response to a request for clarity on the amendments, the Provider wrote to the First Complainant by email on **9 July 2019**, as follows:

*"We can confirm that credit ratings for both yourself and [the Second Complainant] have been updated as agreed."*

*The adverse rating from 31.12.2013 to 31.10.2015 has now been amended. The "T" which was applied on 31.10.2015 once the Transfer of Equity was processed remains and this is correct.*

*The ICB was updated as of 05 July 2019."*

On **5 September 2019**, the First Complainant wrote to the Provider by email, identifying a further issue with the manner in which the loan was reported to the ICB, in relevant part, as follows:

*"I am sure you will empathise with my anger and annoyance as I now have received my credit rating and [the Second Complainant], on which it clearly stated that the "T" for amended terms has been applied to my credit documents and removed from [the Second Complainant's]. Please refer again to your own documents which clearly state that I was never on the mortgage at the time in question."*

The Provider responded to the First Complainant on **9 September 2019** advising that the Provider reports to the ICB at account level only and not by person. The Provider also requested that the First Complainant provide a copy of the Complainants' ICB records. The First Complainant responded to the Provider on **24 September 2019** and appears to have attached a copy of the relevant ICB reports, stating:

*"As you will see, the record that is there for [the Second Complainant] is what should be for me, and what is there for me is what should be for [the Second Complainant]."*

/Cont'd...

The First Complainant emailed the Provider again on **16 October 2019** enquiring as to whether the Provider received his previous email and if there was an update on matters. The Provider responded on **17 October 2019**, advising that the matter had been referred to the ICB for review. The First Complainant sought a further update on **5 November 2019**. By email dated **24 April 2020**, the Provider wrote to the First Complainant, as follows:

*“First we regret the time that has lapsed since you brought the ICB reporting issue to our attention. [...]*

*We have been working with the ICB to rectify this matter for you and unfortunately it has taken longer than we anticipated.*

*We are seeking permission from yourself and [the Second Complainant] to run an ICB report on you both to confirm the position which we believe is now rectified?”*

The requested permission was given by the Complainants by separate emails on **24 April 2020**.

A Final Response letter was issued by the Provider on **8 May 2020**, stating in relevant part, as follows:

*“The issue arose as a result of [the First Complainant] becoming a named party on mortgage reference [444/1] and where the ICB record which had previously been in existence prior to the addition of [the First Complainant] was then associated with [the First Complainant].*

*Within our complaint response of 24<sup>th</sup> April 2019, we explained that the signed Transfer of Equity documentation dated 28<sup>th</sup> February 2014 detailed that there was an arrears balance on the loan to which [the First Complainant] was to be added as a named party with [the Second Complainant]. We confirmed within our response letter that ICB profiles are reported at account level and that the ICB report is a record of the transactional history on the account regardless of the named parties on the loan.*

*As [the First Complainant] had replaced another party as a named party in October 2015 on this loan, the record with the ICB was amended to reflect a “T” (terms amended) at this juncture. The record continued to report at account level. A new string opened with the ICB on the 16<sup>th</sup> October 2015 and reported ‘0’s (up to date) until September 2018 when it reported as ‘C’(closed).*

/Cont’d...



*Following your response received on the 8<sup>th</sup> May 2019, we agreed to amend the ICB record for the account to report with no adverse rating applied to the account prior to 31 October 2015 as far back as 31<sup>st</sup> December 2013. A "T" would then remain for 31<sup>st</sup> October 2015, which was correct. [The Provider] notified you on the 9<sup>th</sup> of July 2019 that the amend to the ICB had taken place.*

*We note that you contacted [the Provider] on the 5<sup>th</sup> September 2019 having discovered a further issue relating to the reporting of your credit rating to the ICB where the ICB detailed a "T" in 2015 on the record of [the First Complainant] however a "T" was not recorded on the ICB record of [the Second Complainant]. [The Provider] replied to you on the 9<sup>th</sup> September 2019 and provided our confirmation with the ICB that the ICB record was recorded with a "T" for October 2015 and a "C" for September 2018 as previously confirmed at account level and not at account holder level.*

*The report which you had received directly from the ICB differed to the above and you provided this report to [the Provider] on the 24<sup>th</sup> September 2019. You contacted [the Provider] again on the 16<sup>th</sup> of October 2019 and we confirmed that we would provide an update once this had been received.*

*We note that you did not receive a reply from [the Provider] to your email dated 5<sup>th</sup> November 2019 and we would like to take this opportunity to apologise most sincerely to you in this regard. We of course accept that this must have been most frustrating for you however we would reassure you that we continued to review this matter at [the Provider] during the following months and indeed were in continuous contact with the ICB with a view to resolving this issue. We confirm that after ongoing communications with the ICB, the issue was corrected.  
[...]*

*We confirm that the ICB record for [the First Complainant] now details "C" for September 2018. The ICB record also details a "T" for [the Second Complainant] for October 2015 and a "C" for September 2018. [...]."*

### **Internal Communication**

It appears that an internal email was sent to the Provider's Credit Check Reporting section on **23 April 2019**, with the following query:

*"TOE done back in October 2015 and a "T" was added to the ICB when [the First Complainant] was added to the loan and [Provider redaction] removed*

*Does this create a second string on the ICB – i e all zeros from November 2015?"*

/Cont'd...

A response to this query was received the same day, as follows:

*“Correct, when a T is applied it opens a new string so T applied in Oct 2015 and its current string is closed*

[Screenshot]

*New string opened on the 16<sup>th</sup> of Oct 2015 and reported all 0 s until Sep 2018 it reported as C = closed*

[Screenshot].”

By email dated **4 July 2019**, the following request was made by a Complaints Associate to the Credit Check Reporting section to amend the profile on the Complainants’ loan account:

*“There is a “T” applied to the account on 31.10.2015 which is correct*

*Can the record before the “T” (going back to 31.12.2013) please be amended to all zeros with immediate effect”*

This amendment was confirmed on **5 July 2019**.

Referring to the above amendment, by email dated **6 September 2019**, the following query was raised:

*“We have received the attached email from [the First Complainant] (borrower) where he indicated that both borrowers ICBs are showing different – T appearing on [the First Complainant’s] ICB but removed from [the Second Complainant]”*

In an email dated **9 September 2019**, it states, as follows:

*“From our records, all appears to be in order. As provided by [Provider redaction] previously (below), customers ICB was amended to show a T record for both borrowers in 2015 with the facility then being reported until the R1 until closure in August 18.*

*As customer has not provided the document he refers to, all we can do is go off the information that we can see on ICB Direct [...].”*

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The Credit Check Reporting section sent an email on **10 September 2019** with images of the information reported to the ICB in respect of the loan account. In a later email to the Credit Check Reporting section on the same date, it was stated that:

*"[B]elow shows no different to what was provided last time. If customer still disputes that they see something different, they will need to provide a copy of their documentation for review."*

In an email to the Credit Check Reporting section on **1 October 2019**, it is stated that:

*"Borrowers have provided the attached ICB report for both [the Second Complainant and the First Complainant] which appear to be different.*

*[The First Complainant] was only added to the account in 2015 so I'm not sure why he is appearing from inception and [the Second Complainant] only appears to be added in 2015"*

In an email dated **2 October 2019**, it was suggested that there could be an error on the part of the ICB.

### **ICB Correspondence**

By email dated **15 October 2019**, the Credit Check Reporting section wrote to the ICB quoting the above paragraphs from the **1 October 2019** email, stating:

*"This looks ok from our side i.e applications etc shoes (sic) [the Second Complainant] being the main account holder from the start [of] the loan.*

*Any advice you could provide as to why this could have happened would be appreciated."*

The ICB responded on **16 October 2019**, as follows:

*"Looking at these and the way accounts/account holders are stored in the database, there are 2 separate accounts from our system's point of view which is why the information is different.*

*With the account the account reference number has to be unique and you can add any number of account holders to the account information – but all of them will simply inherit the account ref information. There is no field to show – Account Holder added "dd-mm-YYYY", it will just show the date the account was opened and the latest balance date."*

/Cont'd...

On **6 November 2019**, the Credit Check Reporting section wrote:

*“the customers have complained to us regarding this and they state that [the First Complainant] was only added to the ICB account in 2015 and [the Second Complainant] was there from the beginning but they state their ICB shows this the opposite way [the First Complainant] from the start and [the Second Complainant] from 2015 and their data is incorrect [the First Complainant’s] ICB shows a ‘T’ and [the Second Complainant’s] doesn’t [...].”*

Responding the same day, the ICB explained, as follows:

*“I checked the system and it is reporting as per the credit report you attached. The 2 accounts are marked as joint but only [the First Complainant] appears on the 2 of them. [...].”*

Following some investigations, the ICB wrote to the Credit Check Reporting section on **13 December 2019**, as follows:

*“Looking at the New Business file which was sent as the restructure – on 27 Nov 2015 [...] and processed on 27-NOV-2015 17:36:19 both parties were present.*

*However, I am afraid that in line with our data retention policies we don’t have the original file that was sent to us. [...]*

*It should also be noted that she has a different surname on both accounts – one is the same as his and the other is [surname] (from the 2006 record). Is it possible she never quoted her maiden name if she got her own credit search? This is a result of [the Provider] not supplying Change of Name files.”*

An internal Provider email dated **9 January 2020**, indicated that an agent in the ICB suggested that a change of name file would resolve matters and that the Provider’s agent would engage with the ICB in respect of this.

It appears from internal Provider email exchanges that followed, that the Provider was seeking to engage with the ICB to progress matters. In an email dated **21 April 2020**, it was stated that a change of name request was sent to the ICB on **5 March 2020**. In a further internal email on **21 April 2020**, it is stated that:

*“The change of name solution maiden name – married name [...] can not be seen on ICB Direct.”*

/Cont’d...

The Provider emailed the ICB on **22 April 2020**, as follows:

*"[The Complainants] have told us that their ICB report is wrong, the mortgage drew down with only [the Second Complainant] on it alone in 2005 and [the First Complainant] was added to it in 2015 from our records.*

*The attached report you can see its reporting the other way around [the First Complainant] first in 2005 & [the Second Complainant] being added in 2015 and this is incorrect.*

*We need to change this to reflect opening date for [the Second Complainant] to 1-december-2005 & [the First Complainant] only being added to the mortgage in 2015."*

The ICB responded the same day, as follows:

*"There are 2 accounts here – [444/1] & [444/1\_R1].*

*The opening date for account [444/1] is 16-OCT-2015.*

*The open date for account [444/1\_R1] is 15-DEC-2005.*

*[The First Complainant] is associated with both accounts.*

*You want him to be associated with account [444/1] only.*

*For account [444/1\_R1], this account is registered in the names of [the First Complainant] & [the Second Complainant maiden name] [...].*

*Is this now [the Second Complainant]?*

*So you want [the First Complainant] removed from this account?"*

Following a further email exchange, the ICB confirmed the changes to the Complainants' ICB profile later the same day.

### **Analysis**

In considering the Provider's reporting of the mortgage loan account to the ICB following the release of the Second Complainant's father from the mortgage loan agreement, regard must be had to the terms on which it was agreed that the First Complainant would become a party to the mortgage loan agreement as set out in the Letter of Approval.

At clause 1.1, the Provider identified an outstanding arrears balance on the loan account in the amount of €8,374.56. At clause 2.1(e), it was acknowledged that the First Complainant would be assuming joint and several liability for the loan and, at clause 2.1(f), that the First Complainant would be jointly and severally liable for the loan and all other amounts payable arising under the 'Letters of Offer', which included the Amended Letter of Offer dated **14 September 2005**.

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Similar acknowledgments are also set out at clause 2.2(a)(ii). Further to this, at clause 4.1(c), it was acknowledged that both Complainants would assume full liability for the loan and all other amounts payable under the Letters of Offer and for all other obligations and liabilities under the Letters of Offer on a joint and several basis.

At clause 4.2, it was acknowledged that all references in the 'Letters of Offer' to the terms 'Borrower', 'Borrowers' and 'you' shall be read as a reference to the First and Second Complainants.

In the 'Acceptance of the Additional Borrowers and the Continuing Borrower', the Complainants acknowledged at clause 7 that they understood the Provider would submit their payment history to the ICB which would remain on the record for a period of five years and that any arrears may affect the Complainants' ability to obtain future credit.

Accordingly, it is my opinion that by signing that Letter of Approval, the Complainants accepted that each of them would be assuming responsibility for the loan, which included the loan account balance maintained prior to the addition of the First Complainant. The purpose of the Letter of Approval was not to create a new mortgage loan agreement or a new loan account but rather to allow the existing loan agreement and loan account to remain in place but with the First Complainant being substituted for the Second Complainant's father. The effect of the Letter of Approval was that the First Complainant would assume responsibility for the loan status as it was, and into the future.

In terms of the Provider's reporting of information to the ICB regarding the mortgage loan account, I am satisfied that it is reasonable for reporting to be done by reference to the loan account rather than by reference to the Complainants (as individuals). Nevertheless, if the Provider's reporting of the loan account/the account history in respect of the First Complainant was not to be confined to or to begin from the point at which he became a party to the loan, this ought to have been set out in the clearest terms.

I note that the Transfer of Equity application contained a heading entitled "*Credit Reference Searching and Reporting*", and this referred to information being given to credit reference agencies regarding "*the manner in which any resulting account is conducted*", which in my opinion does not suggest that the First Complainant would be reported and linked to arrears on an account for a historical period when he was not a loan owner.

Following the addition of the First Complainant to the loan in **October 2015**, it appears that for the purpose of reporting this loan account to the ICB, the loan was split into two 'strings'.

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The first string is called 'Account 1 (Ref No. [444/1])' ("Account 1") and reports the loan account from the date the First Complainant became a party to the loan, **16 October 2015**.

The second string is called 'Account 2 (Ref No. [444/1\_R1])' ("Account 2") and reports the loan account from the date of drawdown to the date the First Complainant became a party to the loan (**15 December 2005 to 16 October 2015**).

The Complainants have provided a copy of an ICB credit report dated **2 May 2018** in respect of the First Complainant. The loan account the subject of this complaint is reported at page 8 as Account 1 and Account 2. In respect of Account 1, the 'Opening Date' is recorded as **16 October 2015**. The 'Payment History' section records the payment history in respect of the previous 24 payments. For Account 1, a payment profile code of 'v' has been inserted in respect of the previous 24 payments, signifying that each of these payments are up-to-date. In respect of Account 2, the 'Opening Date' is recorded as **15 December 2005** and the 'Scheduled Removal Date' is recorded as **16 October 2020**. The 'Amount / Latest Balance Date' is recorded as '0.00 (EUR) / 16-October-2015'. In terms of the 'Payment History' the most recent payment profile code is recorded as 'T', meaning terms revised. The payment profile codes which precede this, record a number of missed payments in respect of Account 2.

Based on the available evidence, I am satisfied that the information reported to the ICB in respect of Account 1 was correct. In respect of Account 2, I note that at the time of the Letter of Approval, a certain number of repayments appear to have been missed or not made in full, resulting in the accumulation of arrears. Further to this, the terms of the loan account had been revised by virtue of the Letter of Approval but I don't believe that it was unreasonable for the First Complainant to have believed that this historical position would not affect his historical credit profile. I am not satisfied that the information reported to the ICB in respect of the loan account insofar as concerned the First Complainant, was an accurate reflection of his credit history at the time of the above credit report.

Following certain communication between the First Complainant and the Provider, it was agreed that the Provider would amend both Complainants' ICB profiles in respect of the loan account to 'T' for terms revised and that the adverse payment profile would be amended to report repayments as being up-to-date.

It appears that the Provider amended the Complainants' ICB profile around **5 July 2019**. An internal Provider email dated **5 July 2019** contains a screenshot of its ICB reporting system and the information reported to the ICB in respect of the loan. In respect of Account 1, the 'Account Holder Name' was recorded as the First Complainant and the Second Complainant.

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The account Opening Date was recorded as **16 October 2015** and the Payment Profile was recorded as 'C' followed by 'O' in respect of each of the remaining 23 payment profile codes. In respect of Account 2, the 'Account Holder Name' was recorded as the First Complainant and the Second Complainant. However, the surname used for the Second Complainant appears to have been her maiden name. The Opening Date was recorded as **15 December 2005** and the Latest Balance Date was recorded as **16 October 2015**. The Payment Profile was recorded as 'T' followed by 'O' in respect of each of the remaining 23 payment profile codes.

A further internal email dated **10 September 2019** with a similar screenshot of the Provider's ICB reporting system shows the same information as being reported to the ICB as that shown in the **July 2019** screenshot.

On **5 September 2019**, the First Complainant informed the Provider that the payment profile code of 'T' had been applied in respect of his credit history but removed from the Second Complainant's credit history. The Complainants appear to have forwarded certain pages from their ICB credit reports to the Provider dated **11 July 2019** in respect of the First Complainant and dated **22 July 2019** in respect of the Second Complainant.

In terms of the First Complainant's credit report, the information reported in respect of Account 1 is essentially identical to the that recorded on the **May 2018** credit report with the exception of the most recent payment profile code in the Payment History section. In the **July 2019** credit report, this was recorded as 'C' for 'Completed account' to reflect that the loan account was cleared in **September 2018**. In respect of Account 2, the information recorded is essentially identical to that recorded on the **May 2018** credit report with the exception of the payment profile codes in the Payment History section. As with the **May 2018** credit report, the most recent payment profile code is recorded as 'T'. However, the remaining payment profile codes were recorded as 'V', reflecting that payments were up-to-date.

In terms of the Second Complainant's credit report, the parties have furnished page 5 of 6 of this report. This part of the Second Complainant's credit report appears to record only one string in respect of the loan account, Account 1. In respect of Account 1, the 'Opening Date' is recorded as **16 October 2015**. The Payment History section records the most recent payment profile code as 'C' for 'Completed account' to reflect that the loan account was cleared in **September 2018**, and the remaining payment profile codes were recorded as 'V'. As a result, as Account 1 represented the active string in respect of the loan account once the First Complainant was added to the loan, I am satisfied that the information reported to the ICB in respect of Account 1 as it related to the Second Complainant was correct.

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However, based on the available evidence, it does not appear that any information was recorded on the Second Complainant's credit report in respect of the second string of the loan account, Account 2. In this respect, I note that the Second Complainant's surname, as stated on the credit report, matches the First Complainant's surname and does not contain her maiden name. As a result, it appears from the evidence that because the Second Complainant's surname as on her ICB profile did not match the surname recorded on the Provider's internal reporting system in respect of Account 2, no information in respect of Account 2 was recorded on the Second Complainant's ICB credit report.

In the ICB's email of **13 December 2019**, it was stated that:

*"It should also be noted that she has a different surname on both accounts – one is the same as his and the other is [surname] (from the 2006 record). Is it possible she never quoted her maiden name if she got her own credit search? This is a result of [the Provider] not supplying Change of Name files."*

However, I note that neither the Provider nor the ICB hold the credit reporting files from **November 2015**, when the restructure took place on the loan account.

In terms of the change to the Second Complainant's surname from her maiden name (which was the name recorded on the Amended Letter of Offer dated **14 September 2005**) to her present surname, I note that the Second Complainant's present surname is correctly recorded on the Letter of Approval dated **24 September 2014**. Consequently, it would appear that the Provider was aware of the Second Complainant's correct name from at least the date of this letter.

In terms of the Provider's ICB reporting system or its 'ICB Direct' system, it appears that the Provider inserts the relevant information into this system which is then transmitted to the ICB. As a result, it would appear that the Provider has control over the information that is entered on its ICB reporting system, including account holder names. In these circumstances, it is not clear why the Provider did not update its own system to reflect the change to the Second Complainant's surname nor it is clear why the Provider did not identify at the time the loan account was restructured in **October/November 2015** that the Second Complainant's surname had changed.

Further to this, it is not clear why the Provider did not notice in **July 2019**, when it agreed to amend the Complainants' ICB profile, that there was a mismatch between the Second Complainant's surname for Account 1 and Account 2. It seems from the evidence that the Provider failed to identify this error again in **September 2019** and during its subsequent investigations.

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It is my opinion that the Provider failed to correctly record the Second Complainant's name in respect of the second string of the loan account, Account 2, on its ICB reporting system. It is also my opinion that this failure led to the reporting of incorrect account information in respect of the Second Complainant to the ICB. This, in turn, appears to have resulted in the omission of Account 2 from the Second Complainant's ICB profile, thereby causing or contributing to an incomplete credit report in respect of the Second Complainant.

Although I have formed this view, I am not satisfied that the Provider's conduct had an adverse impact on the Second Complainant's credit history or that the Second Complainant's ability to obtain credit was adversely affected.

In terms of the Provider's engagement with the First Complainant, having considered the First Complainant's email of **7 May 2019**, I am of the view that it was reasonable to expect the Provider to have issued a reply to this email. However, having considered the evidence, it does not appear that this email was responded to.

While an exchange of emails took place in **September** and **October 2019**, I note that the First Complainant wrote to the Provider on **5 November 2019** requesting an update. However, the Provider does not appear to have responded to this email. In this respect, I note the follow passage in the Provider's Final Response Letter, the Provider acknowledged and apologised for not responding to the **5 November 2019** email. In the concluding paragraphs, the Provider stated, as follows:

*"We of course accept that you have been required to follow up on this matter with [the Provider] and were dissatisfied in terms of both your service experience and the impact of an adverse credit rating being recorded on your ICB record.*

*In this regard, we wish to offer you our reiterated apologies and by way of resolution of this matter, we would like to offer you a goodwill gesture of €250.00 in full and final settlement of your complaint."*

I note that following the First Complainant contacting the Provider regarding the Complainants' credit profile, there were certain delays in responding to the First Complainant, although the Provider was working towards resolving the issue. I am satisfied that reasonable efforts were made overall by the Provider to investigate the issue which the First Complainant raised, and to resolve the matter both internally and through its engagement with the ICB. Regrettably, this process took quite a considerable period and the absence of a communication from the Provider to the First Complainant, no doubt contributed to the inconvenience which he suffered.

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For those reasons, I consider it appropriate to partially uphold this complaint. I am not satisfied that the redress of €250 offered by the Provider to the Complainants was reasonable or adequate in the circumstances outlined, and accordingly, to mark my decision, I consider it appropriate to direct pursuant to **Section 60(4)(d)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Respondent Provider pay the sum of €1,000.00 to the Complainants, to conclude the matter.

### 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 ground prescribed in **Section 60(2)(b)** as the Provider's conduct complained of was unreasonable in its application to the Complainants, and on the ground specified 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 Complainants in the sum of **€1,000**, 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 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

29 October 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—

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- (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.**

