An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0455
Sector:	Banking
Product / Service:	Credit Union Loan
Conduct(s) complained of:	Incorrect information sent to credit reference agency Dissatisfaction with customer service Failure to provide correct information Failure to implement payment terms
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant's complaint relates to the Provider's reporting and to the recording of missed repayments on the Complainant's loan account to the Central Credit Register (CCR) and the Irish Credit Bureau (ICB).

The Complainant's Case

In **2014**, the Complainant received a loan of €11,000 from the Provider in addition to an existing loan he already had, at the time, of €2,543.46, resulting in a total loan amount of **€13,543.46**.

The Complainant submits that in **2016** he requested a term extension/ restructure/alternative repayment arrangement (ARA) of his loan in order to reduce the loan repayments. He submits that, at the time, the Provider's employee told him "*that as* [he] *was living in* [European city] *it would be easier to reduce* [his] *repayments rather than go through a full restructure, if* [he] *could send her an email this would suffice*". The Complainant submits that he sent the email as requested by the Provider's employee.

The Complainant submits that, at the time of this communication with the Provider in 2016, he had already been waiting 6 months to apply for an ARA. He says he had been advised on an earlier occasion by another employee of the Provider to apply for an ARA due to his circumstances at the time.

The Complainant contends that he was misinformed by the Provider in **2016** and that he was not properly advised by it, in respect of the formal application process for an ARA and the potential consequences thereafter. The Complainant states that he did not understand the consequences/impact of not applying for an Alternative Repayment Arrangement and understood that simply reducing his repayments, which he says he was advised to do in 2016, as opposed to applying for an ARA, was appropriate and sufficient in that respect.

The Complainant contends that the Provider's employee did not inform him that his ICB record would be impacted by having missed repayments reported and recorded. He says that when he had mentioned any potential impact on his CCR profile it had informed him that it did not know how it was going to work, as the CCR was new and it was still learning.

The Complainant says that he contacted the Provider seeking an explanation in respect of the negative impact his reduced repayments had on his CCR and ICB records and why the information was incomplete and did not reflect the agreed/consented to reduced repayments, in particular in light of advices he says he received from the Provider's employee in 2016.

The Provider's Case

The Provider supplied the Complainant with a final response letter dated **28 February 2019** which stated that the Provider's Complaints Committee, having reviewed the matter, were satisfied that the Provider followed all internal processes and procedures and carried out its duties in accordance with its policy.

The Provider states that as previously noted in the findings of the complaint officer, the Provider agreed to accept reduced repayments on his loan account, but did advise him that this would result in arrears accumulating on his account and that whilst the Provider consented to temporarily reduced repayments, it was conveyed to him that this did not constitute a formal restructure of his loan.

The Provider states that the information provided to the ICB and the CCR accurately reflected the status of his loan account.

The Complaint for Adjudication

The Complainant's complaint is that the information reported by the Provider to be recorded on the CCR and ICB databases is not entirely accurate/complete, because there were missed repayments reported and recorded when, in fact, they were reduced repayments which had been consented to by the Provider.

The Complainant also says that the Provider failed to properly advise him in 2016 of the impact that the agreed reduced repayments would have on his profiles with the CCR and the ICB, or of the need to formally apply for an ARA.

/Cont'd…

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 **26 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

Prior to considering the substance of the complaint, it will be useful to set out certain provisions from the credit agreement entered into between the Complainant and the Provider dated **26 March 2014**, which includes the following provisions:

> *If you do not meet the requirements 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.*

I note that on **26 March 2014**, the Complainant entered a five-year Credit Agreement with the Provider. This Credit Agreement refinanced an existing loan of €2,543.46 and provided additional credit in the amount of €11,000 resulting in a total loan amount of **€13,543.46**. The Credit Agreement, which is signed by the Complainant, clearly provided for monthly repayments in the amount of €284.56.

The Complainant made the required monthly repayments (in the amount of €285) thereafter until February 2016, following which, on 01 March 2016, the Complainant emailed the Provider requesting a payment break.

/Cont'd…

The Provider has stated that the email requesting the payment break is unavailable "*due to time elapsed and records management procedures*". This is regrettable. There is however a record of a phone call which took place later the same day (01 March 2016) between the Complainant and the Provider. This record is in the form of internal 'Credit Control Notes' which is a contemporaneous record made by the Provider's agent and it provides as follows:

> *MEMBER EMAILED IN ASKING FOR A PAYMENT BREAK I RANG* [The Complainant] *ADVISED HIM WE DO NOT FACILITATE PAYMENT BREAKS BUT WE CAN ACCEPT INT ONLY FOR THE NXT 3 MNTHS* [The Complainant] *AGREED TO THIS. HE IS LIVING IN* [redacted] *AND EXPECTED TO GET A WAGE INCREASE IN APRIL. ADVISED* [The Complainant] *THAT ARRS WILL BUILD AS HE IS NOT MAKING FULL REPAYMENT.*
> *HE ACCEPTED THIS AND SAID HE WOULD CLEAR THEM EVENTUALLY. AMENDED DD TO 73 P/MNHT FOR 3 MNTHS AND* [The Complainant] *REQUESTED FULL PAYMENT TO RESUME IN JUNE. EMAILED* [The Complainant] *STATING DD AMENDED AND FULL PAYMENT TO RESUME IN JUNE.*

Thereafter, on **23 May 2016**, the Provider wrote to the Complainant to advise him of the return to full payments as and from 23 June 2016. This notification clearly prompted the Complainant to make contact with the Provider again leading to a further phone call in early **June 2016** which was also documented in the 'Credit Control Notes':

> [The Complainant] *RANG RE ACC WE HAVE AGREED TO ACCEPT INT ONLY UNTIL AUGUST*. [The Complainant] *WORKING FOR A MORG COMPANY AND HOPES TO RECEIVE AN INCREASE IN HIS SALARY IN THE NEXT 3 MONTHS*. [The Complainant] *IS FULLY AWARE ARREARS WILL RISE. HE WILL REPAY EXTRA WHEN HE RTNS TO FULL PAYMENT. CIARA ADVISED TO REDUCE DD AGAIN TO 73 EA MNTH*

In the event, the Complainant made interest-only payments for a period of eight months, before returning to full repayments in November 2016. Prior to the return to full payments (agreed during a phone call with the Complainant on **25 October 2016**), the Provider had written to the Complainant on **20 October 2016** noting that reduced payments had been accepted "*for some time*" and scheduling an appointment for a review. This letter set the following out in bold writing:

> ***Please note that arrears on your account may affect your credit rating, your eligibility for future credit and certain insurances with*** [the Provider]

In **June 2017**, the Complainant sought the agreement of the Provider to reduced repayments in the amount of €200 and this was approved. The record of the phone call during which this was discussed provides as follows:

> [The Complainant] *RANG HE REQUESTED TO REDUCE HIS REPAYMENTS TO 200 EA MNTH. HE IS LIVING IN* [redacted] *AND HIS CIRCUMSTANCES HAVE CHANGED HE MAY BE RETURNING TO IRELAND BUT HE WILL NOT KNOW FOR A COUPLE OF MONTHS. ADVISED MEMBER THAT ARREARS WILL CONTINUE TO BUILD ON HIS ACC ALSO ASKED* [The Complainant] *TO EMAIL ME WITH AN INSTRUCTION TO REDUCE HIS DIRECT DEBIT.*

/Cont'd…

Thereafter, the repayments remained at or around €200 until the account was cleared in December 2018, following the advance by the Provider of a new loan to the Complainant.

The Complainant takes issue with the fact that he was not advised to seek a formal alternative repayment arrangement. The Complainant also takes issue with the fact that his credit rating has been negatively affected in respect of a period during which the Provider had agreed to accept reduced payments. With regard to the latter, I note that a Central Credit Register Credit Report dated **03 December 2018** reflects that, as of **October 2018**, there were nine "*payments past due*".

I note that the earliest month specifically addressed in the report is **June 2017**, at which point there were five payments past due. It is clear that the entries relating to 'payments past due', date back to the period during which the Complainant was making less than the full payments which were contractually required from him, in accordance with his obligations under the Credit Agreement he had entered into. In this regard, in the absence of some sort of alternative repayment arrangement, an underpayment (ie less than €285) would have been recorded as a 'payment past due' or as a 'payment in arrears' on the Irish Credit Bureau system.

The issue here is that the Complainant maintains that it was never made clear to him that he would be the subject of negative credit reporting, arising from the arrears which had accumulated on his account. The Complainant does not say that he was unaware of the fact that those arrears were accumulating, rather simply that he did not believe that this would result in negative reporting, in light of the Provider's agreement to accept the reduced payments.

Having considered all of the evidence available, I cannot accept this. The terms of the Complainant's credit agreement clearly stated that credit rating can be impacted if the terms of the agreement were not met. It was at all relevant times made clear to the Complainant that the Provider's agreement to accept reduced payments would result in the accrual of arrears. It is difficult to understand how the Complainant could have understood that negative reporting would be avoided, even though arrears were accruing.

Whilst it would certainly have been preferable if each communication from the Provider (including the phone calls) had explicitly referenced the risk of negative credit reporting, I am satisfied that the warning regarding the accrual of arrears, implicitly conveyed the risk of negative credit reporting. This position is reinforced when one considers the terms of the credit agreement, which were effectively reiterated in the letter of **20 October 2016**. Indeed, the Complainant's email to the Provider of **09 November 2018** makes it clear that the Complainant knew of the arrears, but was nonetheless unperturbed:

> *"I remember this conversation well and was told it was easier just to reduce payments as I was living in* [redacted] *rather than just restructure it but arrears would build. At this time I didn't see myself returning to Ireland, so I didn't see this being too much of an issue…"*

/Cont'd…

The Complainant's phone call with the CEO of the Provider on 30 November 2018, wherein the Complainant states that he has *"been in banking for 13 years"* and that he "*is doing debt restructuring myself*", also makes clear in my opinion, that the Complainant had a certain level of knowledge and was aware that arrears were accruing on the account.

The other aspect of the Complainant's complaint is that he was not advised by the Provider to apply for a formal alternative repayment arrangement. There is some disagreement as to what was or was not discussed during various phone calls, however it is appears to be undisputed that the Complainant never formally applied for an alternative repayment arrangement and that he never, for example, sought the necessary documentation to make such an application.

In terms of written communications, each of the Complainant's emails addressing the matter (ref for example emails dated 25 May 2017 and 15 June 2017) refer simply to seeking reduced payments; there is no reference to any restructuring request, or to any request to recapitalise arrears. Equally, the Provider's contemporaneous notes of the various phone calls do not contain any refence to such matters.

I also note that the Complainant's reference, in his letter to this office of **24 July 2020**, to his "*first ARA application online on the 21/03/2017*" is not accurate, insofar as the application made online was, technically, an application for a new loan (in the amount of €1) which produced an automated decline due to his arrears. All such similar applications which were made online under the guise of new applications, cannot in my opinion be construed as applications for an Alternative Repayment Arrangement.

Similarly, insofar as the Complainant contends that comments included as part of online applications, should be construed as formal applications, I do not accept this. The Provider states, in any event, that a particular online application, which included comments, and on which the Complainant seeks to rely, failed due to technical reasons and thus prompted an automated text to the Complainant advising him to contact the Provider.

With regard to this, and similar failed applications, the Provider states that "*no comments are viewable by* [the Provider]". It is unclear why the Provider does not have access to such details but, in any event, in the absence of clear information to the customer suggesting otherwise, I do not accept that information expressed in a comments box constitutes a formal application for a restructure.

Since the preliminary decision of this office was issued in October 2021, the Complainant has made known his disappointment with the outcome of his complaint. He has expressed particular disappointment with the position taken by this Office, pointing out his opinion that "*you aren't protecting anyone here*". The role of the FSPO is not however to protect a complainant or a provider. Rather, this Office must act impartially in its consideration of the evidence available, to adjudicate on the particular complaint made concerning the conduct of the provider in question.

/Cont'd…

Accordingly, in circumstances where there is no adequate evidence that the Complainant ever formally requested an Alternative Repayment Arrangement, I am unable to identify any failing on the part of the Provider that would warrant this aspect of the complaint being upheld.

By way of final observation, it should be noted that if the Complainant had formally applied for and been granted some form of Alternative Repayment Arrangement, it would have been incumbent on the Provider to notify this fact to the relevant credit agencies. Therefore, I do not consider it appropriate to assume or to surmise that the Complainant's credit history/rating would have been entirely unaffected, if an Alternative Repayment Arrangement had in fact been put in place.

In light of the entirety of the foregoing, and in the absence of evidence of wrongdoing by the Provider or conduct within the terms of ***Section 60(2)*** of the ***Financial Services and Pensions Ombudsman Act 2017*** that could ground a finding in favour of the Complainant, I do not consider it appropriate to uphold the complaint.

Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is rejected.

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

MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

30 November 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.