



<u>Decision Ref:</u>	2021-0469
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Union Loan
<u>Conduct(s) complained of:</u>	Maladministration Errors in calculations
<u>Outcome:</u>	Rejected

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

This complaint relates to a credit union loan account and asserted maladministration.

The Complainant's Case

The Complainant had a loan account with the Provider. He states that the loan was paid out of the proceeds of a pension. He states that the loan repayments were €723 per month and therefore the balance of the proceeds of his pension were to be used towards payments into his wife's loan account which was also held with the Provider. The Complainant explains that when his wife's loan account was fully repaid, he instructed the Provider that the amounts that were being paid in against his wife's loan account of €253, should continue to be paid into his wife's savings. The Complainant explains that this arrangement was amended on 21 December 2018 and again on 1 May 2019 and continued without any reference or notice to the Complainant.

The Complainant explains that because of the wrongdoing or error on the part of the Provider, his wife was not in receipt of the monthly payment of €253 which was supposed to have been paid into her savings account.

The Complainant wants the Provider to clarify why, where and on whose authority the changes to his account were made. The Complainant wants the monies removed from his wife's account to be returned and he wants a letter of sincere apology from the Provider and the Complainant wants compensation.

The Provider's Case

The Provider accepts that errors were made between December 2018 and May 2019 in relation to the standing orders to be paid into the Complainant's loan account. It explains that due to an error in posting a standing order payment in December 2018, the Complainant's payment was set up to post automatically and as a result several standing order payments were credited to his account incorrectly. This occurred because when the automatic postings were set up, the Complainant's instructions were overlooked. The Provider has apologised and states that it rectified the incorrect postings as soon as it was brought to its attention, and it offered the Complainant a method of rectifying the error and the balances in his account and his wife's account.

The Complaint for Adjudication

The complaint is that the Provider failed to properly administer the Complainant's loan account by failing to follow his instructions to apply his pension to reduce the loan capital in line with his instructions.

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.

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

A Preliminary Decision was issued to the parties on 11 August 2021 outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the issue of my Preliminary Decision, the Complainant made a submission under cover of his e-mail to this Office dated 16 August 2021, a copy of which was transmitted to the Provider for its consideration.

The Provider advised this Office under cover of its e-mail dated 20 August 2021 that it had no further submission to make.

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

The material facts that have given rise to this complaint are not contested. The Complainant held a loan account with the Provider. The Complainant was in receipt of a pension and he set up an incoming standing order so that his pension income could be used to service his monthly loan repayments. His monthly pension income exceeded the monthly loan payments. The Complainant's wife also had a loan account with the Provider. The Complainant had initially instructed the Provider to transfer the balance of his pension income to his wife's loan account.

The Complainant then instructed the Provider that when his wife's loan account was cleared, the balance of his pension income that was being paid into his wife's loan account was to be paid into his wife's share account held with the Provider.

The Provider does not dispute or take issue that this is what occurred.

What occurred thereafter was that between December 2018 and May 2019 the Complainant's instructions were not adhered to. This occurred by the Provider paying the full amount of the Complainant's pension into his loan account and not paying the balance of the pension into his wife's account in accordance with his instructions.

Again, the Provider does not dispute or take issue that this is what actually occurred.

The Provider has explained in its submissions to this office that in the months leading up to December 2018, it was engaged in a process of migrating all remaining manually posted standing orders to an automated process. The Provider states that in December 2018, the Complainant's standing order was identified as one which could be automatically transferred to the account and therefore, the automation process was applied to his account. The Provider explains that once an account has been automated, staff have no further sight of the posting to the account unless the funds transferred vary which gives rise to a manual posting.

On 7 May 2019, the Complainant wrote to the manager of the Provider branch expressing his concern about recent changes made to his account. The Complainant says such changes were made without his instruction or consent and that he became aware of them on 4 May 2019.

The Complainant asserts in this letter that it appears that his debit arrangements as per his instructions, had been amended by the Provider and he requested, amongst other things, that the Provider furnish an explanation as to how these changes took place, who authorised them and why the Complainant was neither notified nor requested to provide consent.

On 14 May 2019, the manager of the Provider wrote to the Complainant and stated, among other things, that due to human error in posting a standing order payment in December 2018, the Complainant's payment was set up to post automatically and as a result a number of standing order payments were credited to his account incorrectly. The letter goes on to state that the matter was investigated as it had been brought to the Provider's attention and that the distribution of the payment error could be resolved by increasing the Complainant's loan by €1,275.28 and redistributing the funds in accordance with the Complainant's prior instructions. The Provider set out that it would require the Complainant to call to the office to sign some paperwork in relation to this and offered its apologies for the error.

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On 30 July 2019, the Complainant completed a complaint form and submitted it to the Provider. In his complaint he stated that his loan account was paid out of his pension. He explained that it was lodged to his account on the last banking day of each month and with the balance of his pension going into the account of his wife. The Complainant then states that for some reason, this arrangement was changed without reference to the Complainant.

By letter dated 28 August 2019, the Provider's complaints officer wrote to the Complainant. In that letter, among other things, the Provider explains that up to December 2018, postings from the Complainant's standing order to his account were set up manually. It was then explained that the error that occurred in December 2018 was that the Complainant's payment was set up for automatic posting and that a member of staff had set up the automatic posting without sight of the Complainant's instructions, assuming that the Complainant had increased his repayment amount. It was explained that instruction notes are not visible on all programs used in this process which meant therefore that it was possible to miss an instruction. The Provider undertook to review this process going forward. The Provider went on to explain that once the payment had been set up for automatic posting, staff members no longer had input into the process and the Provider was therefore unaware that the Complainant's payment was being posted incorrectly until such time as it was brought to its attention by the Complainant in May 2019. The Provider went on to explain that the funds can be redistributed between the accounts by increasing the loan amount by €1,275.28 and then distributing the funds in accordance with the Complainant's original instructions. It was explained again that the Complainant would be required to call to the office to sign paperwork in order to complete the redistribution transaction. The Provider explains that from May 2019 onwards, payments were posted in accordance with the Complainant's original instructions. The letter concluded by apologising if the Complainant felt that the Provider's level of communication with him was below the standard of member care that he would have expected from the Provider.

The Complainant has requested that the Provider clarify why, where and on whose authority the changes to his account were made. In my view, the Provider furnished a detailed and adequate explanation as to how this error occurred.

I accept from the evidence furnished that it wasn't a case of an individual authorising changes to the Complainant's account but rather this was a case of human and/or administrative error that arose in the process of transitioning the Provider system from manual to automated postings. The Provider has explained that when this transition was being applied to the Complainant's account, his instructions regarding how his pension was to be applied, were overlooked.

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The Complainant also wants the monies removed from his wife's account to be returned. Having regard to the evidence submitted, I believe that the Provider acted promptly in firstly rectifying the error made and secondly in offering the Complainant an immediate resolution to redistribute the funds that had been incorrectly paid into his loan account. Therefore, I accept that the Provider has put in place an adequate and speedy method of resolution to address the imbalances in his account and in his wife's account caused by the error.

The Complainant wants a letter of sincere apology from the Provider. Having reviewed the correspondence in May and in August 2019, I accept that the Provider has already offered a sincere apology and I note in its submissions to this office, that the manager of the Provider has offered to furnish a personal apology in relation to the error that was made, if the Complainant feels that the Provider's investigation was not carried out to his satisfaction and if he feels that the findings of the Provider's complaints officer was not to his satisfaction. In addition, the Provider has stated that at a future meeting of the Board of Directors, it can agenda an item which will formally minute the Board's apology to the Complainant if this would satisfy his wish for a sincere apology. As I have already stated, I accept that the Provider has already provided a sincere written apology and the additional offers of an apology to the Complainant are a matter for him to consider, and I note from the Provider's submission to this office that this offer appears to remain open until the Complainant responds to the Provider.

In my Preliminary Decision I stated that the Complainant has asked this office to consider the question of compensation.

The Complainant, in his post Preliminary Decision submission dated **16 August 2021**, states:

"The matter of compensation was introduced by your office."

In that regard I note the Complainant had stated in an email to the Provider dated **7 May 2019** that:

"...I am eager to have a speedy resolution and am happy to discuss this and any other options for redress with you at your convenience".

I accept that this Office then took "redress" to mean compensation and detailed in the Summary of Complaint that:

"The Complainant wants the Provider to:

1. Clarify who authorised the change to the instructions given by the Complainant to the Provider regarding the payments from his account;

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2. Sincerely apologise;
3. Offer compensation”

In response to the Provider’s formal response the Complainant detailed that:

“In relation to compensation, I wish it to be known that when this process started all I wanted was the truth and compensation was never an issue. [the Provider] annually make charitable donations locally and this appears in their audited accounts without explanation. A decree of compensation, if so judged, from your good Office would ensure the auditor's comment and in this way make the membership aware of the seriousness of these incidents. If, as a result of your judgement, compensation is awarded, I intend to make the donation to a local charity”.

While I believe it was reasonable that this Office considered the Complainant’s statement about ‘redress’ to include compensation, I am happy to record that the Complainant does not appear to be seeking compensation.

The Complainant also commented on the transaction which occurred on **21 December 2018**, in his post Preliminary Decision submission.

I note a response regarding this transaction was received by this office on **27 October 2020** by email.

The Provider in this email detailed that:

“Having reviewed all correspondence and examined the transactions on [the Complainant’s] account (Number 2612) I can only add that [the Complainant’s] Standing order pension receipt changed by a small amount which meant that the system did not disburse it but rejected it. We receive hundreds of standing orders every day. A small percentage of standing orders are either not recognised or if they change by even 1 cent the system will reject them and they are then manually posted by a member of staff.

[the Complainant’s] standing order on 21st December 2018 was €965.82 and not the €965.63 which had been set up to be recognised by the banking system and posted automatically.

It was therefore manually posted but not in the manner instructed by [the Complainant's] and not in the manner which the system was automated to.

These are the facts as I see them and I have endeavoured to bring further light on the situation however I am unable to shed any more light on it.

The resulting complaint has been very difficult and costly to resolve and as no resolution appears to be in sight I must regretfully request that your offices and the investigation team finalise your decision without further input from [the Provider]"

It is not disputed that through human and administrative error the Provider made a mistake in the allocation of the Complainant's money.

Mistakes such as has happened in this case are unfortunate and every effort should be made to avoid such errors. That said, they happen. What is important is how a financial service provider deals with an error when it occurs.

I note the Complainant wrote to the manager of the Provider on 7 May 2019 as follows:

"Dear [redacted],

As a longstanding credit union member who has experienced nearly 30 years of exceptional service with [Provider Branch], I am deeply concerned about recent changes made to my account without my instruction or consent. I became aware of these changes [redacted] 2019. It appears that debit arrangements per my instructions were amended.

I am requesting that you kindly provide an explanation, in writing, that gives a fuller picture of how changes to my debit arrangements took place, who authorised them, and why I was neither notified or requested to provide consent.

In addition, in line with the provisions set out in the section dealing with "unauthorised transactions! Under Regulation 53 of the [Provider Branch], I request that [Provider Branch] rectifies the errors made and restores my account to the state it would have been in, had the unauthorised transactions not have taken place.

I trust you will share my concern that changes to my account fall far short of the fiduciary duty that [Provider Branch] holds towards its members. I would hope that the above can all be completed within the 10 business days, the standard set out in Paragraph 11.

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I am eager to have a speedy resolution and am happy to discuss this and any other options for redress with you at your convenience.

Yours sincerely,

Complainant”

Seven days later on 14 May 2019, the manager of the Provider responded as follows:

“Dear Complainant,

Due to a human error in posting your standing order payment in [redacted] 2018 our payment was set up to post automatically and as a result a number of standing order payments were credited to your account incorrectly. As it is our policy to deal with errors as quickly and efficiently as possible, the matter was investigated as soon as you drew our attention to it. We can resolve the distribution of the payment error by increasing your loan by €1,275.28 and redistributing the funds as per your prior instructions, we will however require you to call to the office to sign some paperwork in relation to this transaction.

Our relationship with our members is extremely important to us, and we never want the level of service we provide to fall below what you would expect of us.

May I offer you our sincere apologies in relation to this matter, should you require any clarification, assistance or information please do not hesitate to contact me.

Yours sincerely,

Manager”

I note the Complainant’s request that the Provider *“rectifies the errors made and restores my account to the state it would have been in had the unauthorised transactions not have taken place”*.

It is clear from the letter issued by the manager one week later that the Provider took the matter seriously and suggested measures to remedy the accounts and do as the Complainant had asked, that is, put the accounts back in the position they would have been had the errors not occurred.

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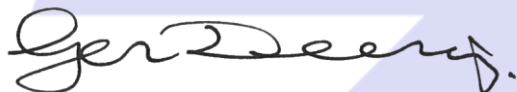
Given the Provider's prompt response, fulsome apology and willingness to rectify the matter and given that the Complainant did not suffer a financial loss, I do not believe compensation is merited.

For the reasons outlined in this Decision, I do not uphold this 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.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

2 December 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.

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