



<u>Decision Ref:</u>	2021-0492
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Overdrafts
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service Maladministration
<u>Outcome:</u>	Substantially upheld

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

The complaint concerns the Complainant's two current accounts, in particular the overdrafts in place on these accounts, and the level of service received from the Provider.

The Complainant's Case

In her Complaint Form, the Complainant refers to a letter of complaint dated **8 January 2018** as outlining the overall issues she experienced with the Provider from **July 2017** to **December 2017**. The Complainant also refers to correspondence received from the Provider in response to her complaint and emails sent by her to the Provider in response, which the Complainant says have not been responded to.

In the Complainant's letter of **8 January 2018**, she states, as follows:

"The situation to date with the lending facilities on my account has been dealt with by [the Provider] in a very concerning way which has caused a significant amount of worry and has led to a potential impact to my personal credit history. As a non-homeowner I am very dependent on my credit history with a view to starting the mortgage application process in the coming year. This will now not be possible

along with having security of a clean credit profile due to the actions taken by [the Provider].

I have also paid a significant amount of unnecessary interest that would not have been payable had [the Provider] allowed me to clear the over-drafts as I initially proposed. More concerning is the anomaly's in terms of balances that have been happening more frequently on my account since entering into clearing down my overdrafts with [the Provider] back in July 2017.

I have noted the situation briefly to date in bullet point below which is confirmed in previous correspondence and available on transaction history. There were also a number of phone calls that can be pulled to confirm the situation

- *Overdraft facility obtained on both personal accounts*
- *Significant amount of money being transferred into the accounts monthly*
- *One transfer was taken out of personal account*
- *Contact initiated by Myself with [the Provider] requesting to reduce and clear overdraft limit*
- *Banks proposal was to set up an agreed payment each month on each account until OD were cleared down (Aug 2018) [...]*
- *During the first phone call with the banks representative I clearly asked 'would this affect my credit history entering into this agreement' where upon I was told no*
- *Guaranteed by [the Provider] that the collection would not show on my credit profile and would be visible internally only until the amount was cleared*
- *I agreed to the proposal with the relevant person in [the Provider]*
- *I then received another phone call from the same representative a week later saying that she had made an error made in terms of the amounts that needed to be cleared each month on the overdraft and it needed to be amended. She went through T&C's again which this time were difference as it stated that this could affect my credit history*
- *When I queried this with her that these were not information relayed to me on the first phone call I was passed to a manager*
- *I was advised at that stage my credit history would be affected and I was in collections leaving me no choice but to enter into this agreement as advised by the manager if I did not pay it would be show up as a missed payment on my credit history*

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- *I demanded an investigation into the 1st phone call made and information given and in the meantime continued clearing the overdrafts*
- *[The Provider] investigated further but based the investigation on the last phone call made by the representative and did not take the previous correspondence or phone call under investigation [...]*
- *Continued clearing Overdrafts along with €70/80 in interest each month which was not advised by any one in [the Provider]*
- *On the 11/12/17 I checked my balance to find that both Overdrafts had been reinstated and my available balance (although not correct) was more than what it should be.*
- *At 12.29 on the 11/12/17 I called the [Provider] on [phone number] which connected into a department in Dublin. I explained the situation to the representative who could not understand what had happened and transferred [me] through to another department.*
- *I spoke to another department who again could not assist me and then transferred me through to collections.*
- *After 26 minutes of being transferred to different departments I then got speaking to someone in collections who put me on hold and came back and said that the reason I the overdraft was reinstated was because I was not out of collections after successfully paying each month. I explained that this was not due to expire until August 2018 and also that the balances did not add up on the account. If the overdrafts had been reinstated that I should have had more money than what was currently in my account*
- *The call was then disconnected during my conversation with her and to date no one from [the Provider] has contacted me back*

As you can appreciate, this is very confusing and concerning for me so much so that I am now considering legal advice around this situation. But in the interim whilst all of the above is being clarified I have advised my company not to lodge my salary into this account until further notice. I will continue to pay the agreed amount to clear down the Over Drafts until I get further clarity for fear this may further impact my credit history. Please advise as to how this can be paid now that my salary is not being lodged to this account.

I will require a full investigation into both the overdraft issue including advice given and clarity as to why they were reinstated even though the letter attached clearly states different. Along with a full review on debits and credits from both accounts as from what I can see I am missing personal money from each bank account.

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I am willing to discuss the situation further with [the Provider] providing a resolution is reached regarding my Credit history and interest being charged along with clarity on my personal funds. If no resolution is found I will be left with no option but to seek legal direction."

In resolution of this complaint, the Complainant states, in her Complaint Form, as follows:

"Overdraft facility to be cleared and account to be closed with [the Provider]. Confirmation that this is not on my credit history Investigation into the initial call made by me to [the Provider] in June 2017 where by the representative clearly stated 'this would not affect me credit history' a copy of that call that [the Provider] have not been able to supply me. Investigation into why my available balance fluctuated between July 2017 and December 2017 at times when I had not debited any funds"

The Provider's Case

In its response, the Provider states that the Complainant had an agreed overdraft facility of €3,000.00 on account ending 874 and an agreed overdraft facility of €3,700.00 on account ending 841 before financial arrangements were put in place in **June 2017**.

The Provider explains that when a customer indicates a desire to clear an overdraft facility, the customer completes an Income and Expenditure assessment with its Collections Department and based on the information gathered, a repayment arrangement is considered and implemented as appropriate.

In respect of Provision 4.23 of the **Consumer Protection Code 2012** ("the Code"), the Provider says it is satisfied that the implications of the Complainant missing scheduled repayments was highlighted during the telephone calls on **7 June** and **14 June 2017**, and in the Arrangement Letter dated **20 June 2017**.

With respect to the 'first' telephone call referenced by the Complainant and her question regarding any impact the arrangement would have on her credit rating, the Provider says it understands this to be a reference to a telephone call between the Complainant and the Collections Department on **7 June 2017**. During this call, the Provider says, the repayment arrangement agreed with the Complainant was that she would pay €200.00 per month in respect of account 874 and €240.00 per month in respect of account 841 to the Collections Department on the 25th day of every month. The Provider says it was agreed that the first payment would fall due on **25 July 2017**.

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The Provider says the Complainant was advised that if the arrangement was not maintained, the accounts would transfer to its Recoveries department and that this may have an impact on her credit report for up to six years. The Provider says a full prescribed script was called out to the Complainant during this call.

During the next call on **14 June 2017**, the Provider says the agent called out the same prescribed script as that outlined on **7 June 2017**. In addition, the Provider says the agent advised that under the Credit Reporting Act 2013, lenders are obliged to provide information regarding credit applications and credit arrangements of amounts over €500.00 to the Central Credit Register (“the CCR”). The Provider says the Complainant’s rights under the CCR were outlined to her. The Provider says it was at this point that the Complainant raised dissatisfaction.

The Provider says it is entitled to alter its script regarding credit reporting in the event that changes, external to the Provider, are forthcoming or have been made, which would require such amendments in the provision of information to affected customers to be made. In this regard, the Provider says it wishes to draw attention to the then forthcoming date of **30 June 2017** which would require the Provider, under regulation, to report information on all customer loans/borrowings over €500.00 to the CCR from that date onwards.

On receipt of the Complainant’s letter of **8 January 2018**, the Provider says a complaint was logged under complaint reference ending 918. In its response letter to the Complainant, the Provider says she was advised of the outcome of the complaint, which included the following information:

“... It was found (after your telephone call of 7th June 2017 was listened to), that you were advised before arrangements were put in place that putting arrangements in place on your current accounts may affect your credit rating. When you spoke with a manager in our Collections & Recoveries Department on 15 June 2017, she confirmed the impact on your credit records.”

Prior to the call of **7 June 2017**, the Provider says that on **23 May 2017** the Complainant contacted the Provider through its Contact Centre and spoke to one of its agents. During this telephone call, the Provider says the Complainant was advised that if a repayment schedule was entered into and maintained, then this would not be reported (externally) to a credit reference agency. However, if any such arrangement was not maintained, this may affect a customer’s information reportable to a credit reference agency.

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The Provider states that at this point in time (pre-regulatory reporting of all customer borrowings over €500.00 to the CCR which came into effect for current account overdrafts as of **30 June 2017**) the information provided to the Complainant was correct.

The Provider says if it was the case that the Complainant had first contacted it regarding payment arrangements on borrowings over €500.00 arranged *after 30 June 2017*, in that scenario she would have been advised of the Provider's obligations to report this to the CCR. However, the Provider says the Complainant's contact regarding such arrangements were *prior* to the applicable timeframe for such reporting to the CCR.

In respect of the Complainant's position that she initially proposed that the Provider allow her to clear her overdrafts, the Provider says its records show that the Collections & Recoveries Department put financial arrangements in place to allow the Complainant reduce her overdraft facilities gradually over an agreed period of time. Initially, the Provider says correspondence issued to the Complainant on **14 June 2017**. The Provider says members from its Collections Department spoke with the Complainant on **14 and 15 June 2017** as amended repayment schedules needed to be put in place.

The Provider says the amended repayment arrangement had to be put in place because due to debit interest and charges applied to the Complainant's account on **9 June 2017**, the accounts exceeded their agreed limits of €3,000.00 and €3,700.00 (which were put in place before the inception of the financial arrangements).

During the telephone call on **14 June 2017**, the Provider says amended repayment arrangements were outlined for both accounts and letters issued to the Complainant advising of the new arrangements on **20 June 2017**. The Provider says the Complainant agreed to make the following monthly reductions to her overdrawn balances:

- €195.00 per month on account 874
- €235.00 per month on account 841

The Provider says repayments were due on the 22nd day of each month for 16 months from **22 June 2017 to 22 September 2018**.

The Provider says there is no record available to indicate that the Complainant offered to clear her overdrafts in full. Had the Complainant proposed this, the Provider says it would not have refused any such offer and refers to wording to this effect in the arrangement confirmation letter issued to the Complainant.

During the telephone call which the Complainant had with the Collections Department in **June 2017** where Income and Expenditure information was gathered and documented, the Provider says the Complainant stated that she did not have savings accumulated. The Provider says this indicates that the Complainant did not have funds available to clear the overdrawn balances on both accounts at that time, which totalled approximately €6,791.00 on **14 June 2017** (€3,049.00 on account 874 and €3,742.00 on account 841). Therefore, the Provider says it does not agree that the Complainant “initially proposed” that the Provider allow her to clear her overdrafts.

The Provider says it is important to note that the Complainant could have cleared her overdraft at any point had she wished to do so, without penalty or objection from the Provider. Indeed, the Provider says, during the conversation on **7 June 2017**, its agent advised the Complainant that if she was able to clear the account balances before the scheduled repayment date than that was in order.

The Provider says its correspondence outlining the terms of the arrangement advised that:

“You can terminate this overdraft agreement at any time by repaying all amounts owing to us and notifying us at the address set out above that you no longer require an overdraft facility.

We may terminate this overdraft agreement at any time subject to applicable legal requirements. Where we do this, you will be immediately required to repay the whole overdraft.”

The Provider says the Complainant’s accounts were still active during the period in which the arrangements were in operation. The Provider says the accounts were required by the Complainant as working accounts while the arrangements were in place. The Provider says this is evidenced from the account statements.

While overdraft facilities remained on the accounts during the period in which the arrangements were in operation, the Provider says the specific arrangements as communicated to the Complainant were that the overdraft facilities would reduce on a month by month basis in line with the scheduled payments on each account.

Due to the fact the arrangements were broken, the Provider says the overdraft facilities reverted to their original, pre-arrangement positions as of **December 2017** of €3,000.00 on account 874 and €3,700.00 on account 841. Then, in **September 2018**, the Provider says the accounts were transferred to the Recoveries Department, at which time all overdraft facilities were removed from the accounts.

In this case, the Provider says a complete and immediate withdrawal of the overdraft facilities was not deemed to be a suitable option for the Complainant. The Provider says the Complainant's case was managed by the Collections Department because the Complainant was understood to be experiencing financial difficulty, while at the same time she needed to continue to operate the accounts while in a financial arrangement. Therefore, the Provider says a scheduled reduction of overdraft limits was deemed the most suitable for the Complainant's particular circumstances.

The Provider says the arrangements which were incepted allowed for the overdrafts to automatically reduce every month by the amounts agreed within the repayment arrangements over a 16 month period and this was done to assist the Complainant in clearing her overdrawn balances in a structured and timely manner. The Provider says it is its responsibility that the scheduled reducing overdraft was put in place correctly and that this was done further to the telephone discussion with the Complainant on **14 June 2017**. In doing so, the Provider says it is allowed to exercise its commercial discretion in putting in place a suitable repayment arrangement for its customers who require assistance with the repayment of their borrowings.

The Provider says it was the responsibility of the Complainant to ensure that she adhered to the terms of the financial arrangement. Specifically, the Provider says it was the Complainant's responsibility that funds were available to ensure the account was within its reducing limit by the date agreed. In this regard, the Provider says, the accounts would need to be credited by the Complainant through a regular payment such as a salary or state benefit, or surplus funds must remain in each account on a monthly basis in line with the terms of the arrangement.

The Provider says that up to and including **24 November 2017**, the Complainant had arranged for her salary to be paid directly into her account ending 841 and that the Complainant ceased this arrangement after that date. The Provider says the Complainant also had Social Welfare payments credited directly to account 841, which was typically for €280.00 per month during the first week of every month. The Provider says these payments continued to be lodged to the account after **November 2017**.

The Provider says account statements will show that the Complainant transferred funds on a monthly basis from account 841 to account 874, for various amounts during the time the financial arrangements began in **June 2017** up to **24 November 2017**, at which point those account transfers also ceased.

The Provider says the repayment arrangements were broken in **November 2017** and as a result the overdraft facilities reverted to their original level pre-arrangement. When the monthly credits of €280.00 were insufficient to repay the terms of the arrangements (€195.00 and €235.00, totalling €430.00 per month) the Provider says the account were transferred to the Recoveries Department in **September 2018** and consequently, all overdraft facilities were removed.

The Provider says it was expected that had the Complainant adhered to the terms of the arrangement then the overdrawn balances on both accounts would be repaid at the end of the scheduled repayment term – **22 September 2018**. As the arrangements did not run their scheduled term, the Provider says an outstanding balance of €3,453.00 remains overdrawn, without an authorised overdraft facility, on account 874.

The Provider advises that account 841 was brought into credit on **2 July 2019** and subsequently closed on **11 October 2019**. The Provider notes that this is the account which had the automated credit of €280.00 applied from the Department of Social Welfare on a monthly basis.

In the Complainant's letter of **8 January 2018**, the Provider says the Complainant advised that she had requested for her employer to cease paying her salary to her Provider account and asked how she could make the agreed repayments to her account due to the fact that her salary was no longer being credited. The Provider says that ceasing to have her salary mandated to her Provider account was entirely the Complainant's decision. In the complaint response letter of **14 March 2018**, the Provider says the Complaints Consultant advised the Complainant to contact the Collections & Recoveries Department to discuss putting an arrangement in place to reduce her overdraft facilities. The Provider says this was also recommended in its letter of **17 April 2018**. The Provider says the Complaints Consultant considered that the Collections Department would be best placed to discuss the payment options available to the Complainant in the absence of her salary being credited to her Provider account.

The Provider says it is important to highlight that the various payment options were advised to the Complainant during the initial telephone call on **7 June 2017**. Such options included, the Provider advises, calling to branch or telephone the Collections Department and make payment via card or set up a standing order. The Provider says, the Complainant made card payments to both of her accounts on **27 July 2017**. The Provider submits this shows that the Complainant was aware, from the beginning of the financial arrangement period, that card payments were available to her as a payment method. In this respect, the Provider refers to the Complainant's account statements and its Debt Management System notes.

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In terms of fluctuations in the Complainant's account balances between **July** and **December 2017**, the Provider says this was because the Complainant continued to transact on her accounts, which she was entitled to do conditional to ensuring sufficient surplus funds were in the account to adhere to the structured reduction of the overdraft facilities on a month by month basis. When the repayment arrangement deals were broken in **November 2017**, the Provider says the overdraft facilities reverted to their original levels pre-arrangement. Therefore, because the overdraft facilities were higher than the scheduled reduced overdraft facilities while the Complainant was adhering to the financial arrangements, this had the effect of increasing the available balances on her accounts from **November 2017** onwards. The Provider has apologised for any confusion or misunderstanding this may have caused the Complainant.

However, the Provider says it rejects the Complainant's assertion that she had not "debited any funds" on her account between **July** and **December 2017**. The Provider says the account statements clearly show that the Complainant debited funds from both accounts on a very frequent basis during this period of time. As mentioned previously, the Provider says, the Complainant operated both accounts as working accounts during the period of the financial arrangements.

The Provider refers to a telephone conversation on **7 November 2017** during which the impact of transactions on the Complainant's available balance was discussed, particularly the second call on this date. The Provider says during that telephone call, its agent confirmed a pending transaction of €123.98 was being held on the Complainant's account with a date of **24 October 2017**. The Provider says it was established that this pending transaction was from a hotel booked by the Complainant on an online booking website for an upcoming hotel stay. The Provider says it was considered this was most likely in relation to a holding fee applied on the hotel booking. The Provider says its agent advised the Complainant to contact the relevant company should she need to query this further and the Complainant appeared to be satisfied with this information.

During the course of the complaint investigation, the Provider says the Complaints Consultant arranged for account statements to be sent to the Complainant so that she could review the transactional history on her accounts. The Provider says the Complaints Consultant explained in the letter of **14 March 2018**, as follows:

"When you checked the balance on both current accounts on 11 December 2017, the balance on account [874] was €2,398.78 Debit, while the balance on account [841] was €3,010.75 Debit. The available balance had increased because the arrangements that had been in place ceased in November 2017 and your overdraft facilities reverted to previous amounts as detailed above."

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In the letter of **17 April 2018**, the Provider says the Complaints Consultant advised, as follows:

“As advised in my letter of 14th March 2018, when you checked the balance on both current accounts on 11 December 2017, the balance on account [874] was €2,398.78 Debit, while the balance on account [841] was €3,010.75 Debit. The available balance had increased because the arrangements that had been in place ceased in November 2017 and your overdraft facilities reverted to previous amounts.”

The Provider says it regrets the Complainant continues to contend that it did not explain the situation to her, however, the Provider says, based on the above, it is satisfied it made efforts to clarify this matter.

Regarding the Complainant’s credit profile, the Provider says there is a record of the telephone call between the Complainant and its agent on **23 May 2017** in which the Complainant was exploring options for reducing the overdrawn balances on her two accounts. The Provider says the agent advised the Complainant that her accounts were not within the management of the Collections & Recoveries Department at that point, an arrangement could be ‘keyed’ and if the Complainant maintained the arrangement, the account would not show on her credit report externally. The Provider says this was before the arrangement being keyed onto the Complainant’s accounts and therefore, it was before the inception of the CCR.

At the time of this telephone call, the Provider says the Irish Credit Bureau (“the ICB”) was the only credit referencing agency in operation and as per the information contained on the ICB website, current accounts are not reported to the ICB. This is what the agent would have been referring to when advising that the Complainant’s overdraft facilities were not reported externally, the Provider says.

At this point, the Provider says it is important to highlight the following:

Central Credit Register

With effect from **30 June 2017**, loans of €500.00 or more are reported to the CCR in line with the Credit Reporting Act 2013. This includes the reporting of overdraft facilities of €500.00 or more.

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Irish Credit Bureau

Overdraft agreements, with the exception of overdraft agreements that are the subject of legal proceedings, were not reported to the ICB.

The Provider says that as current accounts were not reported to the ICB, it has not notified the ICB of any changes to the Complainant's credit information.

The Provider says it is important to highlight that the Complainant's borrowings would have been automatically reported to the CCR with effect from **30 June 2017**, regardless of whether or not she entered into financial arrangements on her accounts, due to the fact that her level of borrowing fell within the reportable criteria.

The Provider has set out the manner in which it calculated the monthly reductions/payments in respect of the Complainant's financial arrangements in its Complaint Response. The Provider says that interest was not incorporated into the monthly payment arrangements, which were based on affordability, determined during the Income and Expenditure process. The Provider says it was highlighted to the Complainant that the current accounts would continue to accrue debit interest based on the debit balances. The Provider says it was not in a position to confirm how much debit interest would be applied to the account on a monthly basis (as this would depend on the operation of the account) but advised the Complainant that she could telephone the Provider on a monthly basis to establish this figure if so required. The Provider says the Complainant also had access to internet banking which allowed the opportunity to see the application of monthly debit interest and charges, without the need to contact the Provider.

In terms of the status of the overdraft facilities during the arrangements, the Provider says it was not a case that the overdraft facilities were 'frozen' while the financial arrangements were in place. Rather, the Provider says that it, with the Complainant's agreement, structured the overdraft facilities in such a way as they would reduce gradually over the term of the arrangements, in line with the expected payments under the arrangements.

The Provider says while it contends that correct information was provided to the Complainant during the telephone call of **7 June 2017** regarding credit reporting, it is important to highlight that clarifications on this matter were discussed with the Complainant on subsequent telephone conversations on **14** and **15 June 2017**. On receipt of these clarifications, the Provider says the Complainant proceeded with the financial arrangements on her two accounts. The Provider contends that the Complainant did so in full knowledge of the impact of her credit reporting.

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The Provider says the Plan Letter issued to the Complainant on **20 June 2017** gave the following prominent information at the beginning of the letter:

“NOTICE: Under the Credit Reporting Act 2013 lenders are required to provide personal and credit information for credit applications and credit arrangements of €500 and above to the Central Credit Register. This information will be held on the Central Credit Register and may be used by other lenders when making decisions on your applications and credit agreements.”

The Provider says this is the same information provided to the Complainant on **14 June 2017**, when the amendment to the financial arrangement was discussed.

The Provider says it is entitled to alter the script regarding credit reporting in the event that changes, external to it, are forthcoming or have been made, which would require such amendments in the provision of information to affected customers to be made. In this regard, the Provider says that from **30 June 2017** it would be required to report all customer loans/borrowings over €500.00 to the CCR from that date onwards.

In the pre-default letter to the Complainant dated **12 July 2018**, the Provider says it advised the following:

“About credit reference reporting

Certain personal and credit information regarding your account will be shared with the Irish Credit Bureau (ICB), the Central Credit Register (CCR) or any other Credit Reference Agency. Included in this is information about any default on your contractual repayments, such as arrears, missed payments or bankruptcies. Your credit rating will remain on record with the ICB for a period of up to seven years. Your information on the CCR will be held for a period of five years after the account has been fully repaid. It is important to be aware that arrears or continued non-payment may adversely affect your credit rating with licensed credit reference agencies and may limit your ability to access credit and loans in the future.”

The Provider submits that the Complainant’s credit information has not been incorrectly reported or adversely impacted by any of the circumstances of this complaint. On a detailed consideration, the Provider says it considers that the information provided to the credit referencing agency is correct and a true reflection of the operation of the Complainant’s current accounts.

The Provider says it is entitled to exercise its internal processes in implementing financial arrangements for its customers and in ceasing such arrangements if it deems that the terms of the arrangements have not been adhered to. In this case, the Provider says it is satisfied that it implemented its processes correctly in relation to the financial arrangements put in place and in the subsequent termination of these arrangements. However, the Provider says it regrets any confusion or misunderstanding on the Complainant's part with regard to this.

The Provider says it has searched its records in relation to the Complainant's contention that she continued to correspond with the Complaints Consultant after the Final Response letter and located emails from the Complainant to the Customer Care Department dated **3 April** and **24 April 2018**. The Provider says the Complaints Consultant responded to the Complainant by letter dated **17 April 2018** and, further to that, nothing more could be added to the matter. The Provider says the Complainant had received the Provider's formal response and had the right to refer her complaint to this office.

In the telephone conversation with the Collections Department on **10 September 2018**, the Provider says the Complainant advised she would leave her family benefit of €280.00 lodged to account 841 each month to offset against the overdraft whilst she gathered more information on calls and lodged her complaint with this Office. During this call, the Provider says the Complainant refers to being in contact with its Complaints Handler, but as advised above, the Provider says there is no record of this. Having said this, the Provider says it must be highlighted that €280.00 per month was insufficient to meet the terms of the financial arrangements which the Complainant entered in **June 2017** – whereby repayments totalling €430.00 per month were agreed. After the Complainant ceased her salary credit from **November 2017**, the Provider says no credits other than the previously mentioned €280.00 per month was received. Therefore, the Provider says this ultimately caused the Complainant's accounts to be transferred to the Recoveries Department on **10 October 2018**.

The Complaints for Adjudication

The complaints are that the Provider:

Failed to investigate the information provided to the Complainant regarding her credit rating during telephone conversations with the Provider;

Failed to administer the Complainant's overdrafts in the agreed manner;

Failed to properly manage the Complainant's current accounts;

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Reported incorrect information regarding the Complainant's credit history to credit referencing agencies; and

Proffered poor communication and customer service.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The 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 16 November 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.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

In **May/June 2017**, the Complainant held two current accounts with the Provider ending in 874 and 841. Each of these accounts had overdraft facilities in the amount of €3,000.00 on account 874 and €3,700.00 on account 841.

The Complainant telephoned the Provider on **23 May 2017** in respect of a letter she received "*some time back*" in relation to an offer on the part of the Provider to put a payment arrangement in place in respect of her overdrafts. The Provider's agent advised the Complainant that the Collections Department "*can set up a payment say where money can come back in each month*".

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The Complainant asked if such an arrangement would stop interest accruing on the overdrafts. The Provider's advised that the Complainant would still pay interest but not at the same rate as she was currently paying each month and each time the Complainant paid money towards her overdrafts, the interest would go down.

The conversation then proceeded as follows:

Complainant: Internally obviously it's down on the Collections, but externally in terms of my credit history does that go on Collections, is that down on my credit history as well?

Agent: You're not in Collections at the minute, so you're not.

Complainant: But if I was to enter into this agreement would that show on my credit history as being in Collections?

Agent: No.

Complainant: No. So it's only internally within the bank, is it?

Agent: It's only internally within the bank. It's not in, if it went into Collections where there was no money being paid and the account remained overdrawn the way it is.

Complainant: Yeah.

Agent: Then yes it will fall into Collections eventually.

Complainant: Yeah sure. Yeah

[...]

Agent: But it's only if the account itself falls into Collections then it will go onto the credit.

The Provider's agent arranged for a call back with the Complainant for between 10am and 1pm the following morning to discuss putting an arrangement in place.

It appears from the Provider's system notes that the Complainant's accounts were transferred to the Collections Department around **25 May 2017**.

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It appears the Provider wrote to the Complainant on **26 May 2017**. In its Complaint Response, the Provider advises that the certain correspondence at Appendix I is in template form and the Complainant's name is not noted.

The Provider's system notes indicate that the following correspondence issued to the Complainant on **26 May 2017**: 'LCR052L LR – Contact Us Letter'. The corresponding template 'LCR052', states, as follows:

"You have recently notified us that your current financial circumstances have or will be changing. Your account has now been transferred to our Collections department.

In order to discuss this further please contact us on the above number, where a member of staff will be happy to help you. [...]

The Bank may use its legal right of set off to clear outstanding loan arrears by transferring funds from your servicing account should they become available. [...]

You can make payments into your account(s) using a debit or credit card and our secure payment website [...]."

The Complainant telephoned the Provider on **7 June 2017**. When the Provider's agent completed the account security protocol, she advised the Complainant that there were no arrears on her account. Early in the conversation, the Complainant referred to the telephone conversation she had with the Provider's agent on **23 May 2017** to inform the Provider that she wished to put an arrangement in place to reduce her overdraft balances each month. The Complainant advised that she was away the previous week with work and when she returned home, she had received a letter from the Provider to advise that she was in 'Collections'. The Provider's agent advised that this is where the Complainant's account will be managed if the Complainant was looking to enter a repayment plan. The Complainant enquired if this would go on her credit history. The Provider's agent responded, as follows: *"No it shouldn't cause it's a current account so you should be alright with that."* The Provider's agent advised that the parties would have to go through an income and expenditure process to assess the Complainant's affordability. The Provider's agent advised the Complainant that she would have to be transferred to a colleague for the purpose of carrying out the assessment and putting a repayment plan in place. The Provider's agent enquired as to whether the Complainant wished to put an arrangement in place on both current accounts. The Complainant said it was for both accounts and added that *"it's whatever the best way I suppose to reduce the interest rate is. I don't know whether it is better to tackle one of them first or do it over two. I don't know"*.

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The Provider's agent stated it was probably best that the Complainant put an arrangement in place in respect of both accounts depending on the kind of affordability on each account so that both accounts could be dealt with together rather than when coming to the end of the term of one arrangement, the Complainant would not have another arrangement to deal with.

When transferred to another of the Provider's agents, the parties completed an income and expenditure assessment. Having completed the income and expenditure assessment, the Provider's agent advised that there was an income surplus of €613.00 per month. In respect of account 874, the Provider's agent advised that an arrangement could be put in place on this account in the amount of €200.00 per month for 15 months to expire on **14 August 2018**. In respect of account 841, the Provider's agent advised that an arrangement could be put in place on this account in the amount of €240.00 per month. The Provider's agent explained that as soon as credits were received into the accounts, the interest on the accounts would automatically decrease, but interest would continue to be applied to the accounts and the more the Complainant repaid, the more the interest would reduce. The Provider's agent advised that the interest was high due to the extent of the overdrafts. The Complainant then enquired as to roughly how much interest she would be paying each month as she would need to take this into account in considering the above payment arrangements. Having checked the matter with a manager, the Provider's agent advised that there was no way for the Provider to calculate the interest, however, the Complainant could telephone the Provider each month to obtain the interest amount. The Complainant enquired if she could pay €150.00 to each account. The Provider's agent advised that, unfortunately, this was not possible as the arrears were quite high. Noting the Complainant's concerns about the interest amount, the Provider's agent advised that interest would gradually decrease as repayments were made.

The Complainant indicated that she wished to proceed with the arrangements. The Provider's agent advised that she would then read a disclaimer to the Complainant. During this part of the conversation, the Provider's agent advised that both arrangements would last until **14 August 2018** and to telephone the Provider if the Complainant wished to enter another arrangement. The Provider's agent advised the Complainant that if she was able to clear the balance then that was fine. In terms of payments methods, the Provider's agent advised the Complainant that she could set up a standing order, make a branch payment, call the Provider to make payment or make payment with a debit card. The Complainant enquired as to whether she could set up a standing order but as she did not hold a current account other than the two overdrawn accounts the subject of this complaint, this option was not available.

/Cont'd...

The Complainant stated that she would telephone the Provider each month and make the relevant payments over the phone. It was indicated that the Complainant would make the payments on the 25th day of each month and that the first payment would be made in **July 2017**. The Provider's agent then advised the Complainant, as follows:

"If you fail to keep to this arrangement it could [inaudible] in the arrangement coming to an end.

This will lead to further contact by letters. If the outstanding arrears are still left unaddressed it will be transferred to our Recoveries Department. This means that all banking facilities are withdrawn [...] and may have an impact on credit for up to six years. If you are self-employed it may have an effect on you applying for credit for your business. If you are a student it may affect your ability to take out a mobile phone contracts and you may be declined for further re-mortgages, rental agreements or other borrowing applications including credit cards. All of this information will be sent out to you in the post."

On **14 June 2017**, the Provider's agent from the second call on **7 June 2017** telephoned the Complainant in respect of the above arrangements to advise that the arrangement had been broken because interest had been added to the accounts and the arrangements were not starting until **July 2017**. The Provider's agent advised that in respect of account 841, the payment amount would now be €235.00 and for account 874, the payment amount would be €195.00. The Provider's agent also advised that the terms would have to be extended to 16 months to ensure that if there was any further interest, that this would not knock off the arrangement.

The Provider's agent advised the Complainant that she would have to read the disclaimer again and stated, as follows:

"If you fail to keep to this arrangement it would result in the arrangement coming to an end. This will lead to further contact by letters. If the outstanding arrears are still left unaddressed it will be transferred to our Recoveries Department which means that all banking facilities are withdrawn [...] and this will may have an impact on any credit for up to six years. If you are self-employed it may affect you applying for credit for your business. If you are a student it may impact your ability to take out a mobile phone contracts and you may be declined for further re-mortgages, rental agreements, other borrowing applications including credit cards.

Under the Credit Reporting Act 2013 lenders are now required to provide personal account information for credit applications and credit agreements of €500 and above to the Central Credit Register and may be used by other lenders when making decisions on your credit applications and credit agreements.”

Once the Provider’s agent finished the disclaimer, the Complainant queried whether the arrangements would appear on her credit history if she made the monthly payments. The Provider’s agent advised that the arrangements can have an impact on the Complainant’s credit, but because the Complainant was in arrears it would already have impacted her credit. The Complainant stated that she enquired about this on the last occasion and asked if the arrangement was now reflected on her credit history.

The Provider’s agent advised that the Complainant was already in arrears and that her credit history was affected. The Provider’s agent advised the Complainant that she would have to download an ‘ICB’ report to find out about her credit history and that a customer’s credit is affected if they are in arrears.

The Complainant then enquired as to what the Provider’s agent meant when she referred to ‘arrears’. The Provider’s agent explained this related to the Complainant’s current account as the Complainant was ‘over’ her overdraft facility at that time and this would affect her credit. The Complainant stated that she had asked this agent on their previous call if the arrangement would be on her credit history, to which the agent responded ‘no’. The Provider’s agent advised that she would ask her manager to review the call and referred to the disclaimer read to the Complainant on that call. At this juncture, I would note that this particular agent did not advise the Complainant that the arrangement would not appear on her credit history during their conversation on **7 June 2017**. It appears that a query along these lines was raised by the Complainant with the first Provider agent the Complainant spoke with on **7 June 2017**. The Complainant agreed for the agent’s manager to review the relevant call. Following this, the Complainant advised that each time she spoke with the Provider she asked if the arrangement would affect her credit history and she was told it would not. The Provider’s agent also advised the Complainant of her right to log a complaint if she was dissatisfied with the information conveyed during their previous call.

The Provider’s agent asked if the Complainant wished to proceed with the arrangements. In response, the Complainant asked:

“If you apply that to my account now it’s on my credit history. If you don’t apply it to my account, is it on my credit history?”

/Cont’d...

The Provider's agent responded by stating that she could leave the arrangement and when the Provider telephoned the Complainant back, the parties could discuss what was discussed on the previous call and if the Complainant still wanted to apply the arrangement, she could do so.

It appears the Provider wrote to the Complainant on **14 June 2017** by way of template letter 'LCR087' to advise that she had exceeded her overdraft limits and to request that she contact the Provider. The Provider's system notes indicate that the following correspondence issued to the Complainant on **14 June 2017**: 'LCR087L Letter Sent'.

The following information is included in this template letter:

"About credit referencing agencies

We've sent you this letter because you've missed a payment on your loan and/or you've gone over your agreed current account limit. We may have to report this to the credit reference agencies, who will record this information. If you don't do anything, it could mean you find it difficult to borrow money in the future and it could affect your credit rating.

[...]

About credit reference reporting

Certain information and credit information regarding your account will be shared with the Irish Credit Bureau (ICB), the Central Credit Register (CCR) or any other Credit Reference Agency. Included in this is information about any default on your contractual repayments, such as arrears, missed payments or bankruptcies. Your credit rating will remain on record with the ICB for a period of up to seven years. Your information on the CCR will be held for a period of five years after the account had been fully repaid. It is important to be aware that arrears or continued non-payment may adversely affect your credit rating with licensed credit reference agencies and may limit your ability to access credit and loans in the future.

[...]

Why you should act now

If you become overdrawn or go over an agreed limit without arranging it with us first, we'll charge surcharge interest at 9% each year.

/Cont'd...

The surcharge interest rate is higher than your overdraft interest and is in addition to it. [...] You might also have to pay an irregular account charge of €4.44. We charge this every time a payment debits your account while you're over your account limit. [...]."

The same agent from the previous day's telephone conversation telephoned the Complainant on **15 June 2017** to advise that her manager had listened back to the call and at no stage did the Complainant ask if her credit rating would be affected. The Provider's agent advised that on this call, the parties went through the Complainant's income and expenditure and that a disclaimer was read to the Complainant.

The Complainant disagreed with the Provider's agent, stating that she did ask her a question as to whether the arrangements would be on her credit history. The Complainant stated that all of the telephone conversations she had with the Provider would require to be reviewed starting with her original call. The Complainant said she asked this question on numerous occasions. The Provider's agent asked if the Complainant wished to log a complaint. The Complainant responded saying that she wanted a copy of the telephone conversations. The Provider's agent advised that the Complainant would have to request a copy of call transcripts in writing and there would be a €6.35 charge. The Complainant requested to speak with a manager, expressing that she was "*utterly disappointed*" with how the matter was being handled.

The Complainant was then transferred to a team supervisor. When speaking with the team supervisor, the Complainant expressed her dissatisfaction with the information given to her during previous telephone conversations, saying that someone was lying in relation to the information that had been given to her. The Complainant then set out the background to her contact with the Provider. Following this, the team supervisor apologised for any inconsistency with the information given to the Complainant. The team supervisor then explained the requirement to make a customer aware that when entering a plan or arrangement of the possibility that it may affect their credit rating. The Complainant stated that on the first conversation she was advised that if she did not adhere to the arrangements, it may affect her credit history; and on the second conversation she was advised that the arrangement was already on her credit history. The team supervisor advised that the call the Complainant was referring to regarding her credit history may not have been the one originally identified and that the matter would be further looked into. The Complainant then queried the reference to arrears. The team supervisor explained there was a shortfall on her account and that the account was overdrawn. The team supervisor explained that in such circumstances, the Provider puts in place a forbearance plan to help get the balance back to zero.

/Cont'd...

The Complainant sought clarity as to whether her credit history had been affected, to which the team supervisor responded that the matter would be investigated. The Complainant also stated that had the arrangement been put in place a number of weeks previously, this present situation would not have arisen. The Complainant posed the question of why she would enter an arrangement if it was going to affect her credit history and that she would rather pay off the overdraft and that there was no need to enter into an arrangement that was going to affect her credit history when it was not affecting her credit history in the first place. The team supervisor advised that the shortfall on her account would have an impact on her credit history. The team supervisor advised that Complainant that the arrangements had not been 'keyed' onto the system and that if the Complainant was in a position to clear the overdrafts, the accounts could be updated to reflect this.

Towards the end of this call, it was agreed to put the arrangements in place, that the Provider would conduct further investigations into what the Complainant had discussed during the previous calls, that the Provider would give the Complainant a call back to inform the Complainant of this and, to facilitate further investigation, that a complaint would also be raised.

It appears the Provider issued a 'Plan Letter' to the Complainant on **20 June 2017** in respect of the overdraft payment arrangements. The corresponding template letter, 'BC011 v5.5', contains the following notice:

"NOTICE: Under the Credit Reporting Act 2013 lenders are required to provide personal and credit information for credit applications and credit agreements of €500 and above to the Central Credit Register. This information will be held on the Central Credit Register and may be used by other lenders when making decisions on your applications and credit agreements."

By letter dated **9 August 2017**, the Provider's Complaints Handling Centre wrote to the Complainant, as follows:

"I confirm that I have contacted our Collections Department in respect of the telephone call you had with them on 7th June 2017. The call was listened to and it was found that you were advised that putting arrangements in place on your current accounts may affect your credit rating.

Our Branches would not assist in repayment plans and so your accounts were transferred to our Collections Department.

/Cont'd...

I am sorry that I am unable to provide you with dates of previous calls you had with our Collections Departments. When we spoke you requested transcripts of the calls that took place. In order to complete a Subject Access Request please provide dates of the calls when requesting this information from our Subject Access Request Team; [...]

I acknowledge that it may have taken us longer to issue you with a response to your complaint than we would have intended. In that regard, I appreciate that you have spent some time in raising these issues with us and I am grateful to you for taking the time to do so and also for the patience you have shown us in allowing you (sic) to respond to respond to your complaint. As a gesture of goodwill, I would like to offer the amount of €106.35 to you.

This amount is in respect of the delays in resolving your complaint and any costs incurred e.g. telephone/postage, cost of a subject Access Request application. [...].”

The Complainant telephoned the Collection’s Team on **7 November 2017** in respect of account 841 and told the Provider’s agent that she was having issues with her accounts over the past number of months. The Complainant explained that on the day of this call, she ‘logged on’ and there was credit of €280.00 to account 841 but she only had an available balance of €160.00. The Complainant further explained that the overdraft balance before the credit was €2,810.00, with the overdraft limit being €2,820.00. The Complainant explained this had happened on a number of occasions.

The Provider’s agent advised the Complainant that €280.00 was credited to her account on **6 November 2017**, on **7 November 2017** there was a point of sale €9.50 and a cash withdrawal of €150.00. Following a further brief discussion, the Complainant explained her account was showing a balance of €6.00. The Provider’s agent placed the Complainant on hold and when he returned to the call, advised the Complainant that there were other pending transactions on the account but he was unable to see what they were at that point in time. The Provider’s agent suggested that these might relate to other point of sale transactions or direct debits. The Complainant advised that there were no pending transactions and that she had not used the card associated with the account since **31 October 2017**. The Provider’s agent then advised the Complainant of a pending transaction from **24 October 2017** for €123.98 but the Provider’s system could not tell the agent what the transaction related to. The Provider’s agent advised the Complainant this was why her account was showing a balance of €6.35. The Complainant queried why the transaction was pending on her account.

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The Provider's agent advised the Complainant that he did not know why this was the case and told the Complainant that she would need to visit her branch to obtain further details regarding the transaction. The Complainant responding saying that if there was a transaction on her account from two weeks ago and was not visible on her account statement, it was the Provider's responsibility to tell her what the transaction was. The Provider's agent told the Complainant that he was in the Collections Team and did not deal with that side of things and that the Complainant would need to attend her branch. The Provider's agent gave the Complainant the time and date of this card transaction and stated that as it was the Complainant's card, she should know what the transaction was and where it had taken place. The Complainant indicated that she would attend her branch. The parties then discussed the balance outstanding on the Complainant's other current account and the call appears to have ended at this point.

The Complainant telephoned the Provider's Branch Support Team on **7 November 2017** and explained that she had just telephoned what she thought was the Provider's 'online number' to raise a query in respect of her account and that she had spoken with "*a very rude man in Collections*". The Complainant later described the Collections agent from the previous call as being "*extremely rude*". The Complainant explained to the Provider's agent that she had an automatic credit to her account of €280.00 but she only had an available balance of €160.00. The Complainant then referred to the pending transaction from **24 October 2017**. Just as the Complainant was giving the Provider's agent her account details, the Provider's agent explained that in certain instances 'fees' would be held in her account. Giving an example of a hotel stay, the Provider's agent explained that a hotel would take a deposit "*for just-in-case or insurance*", and if ever that happened, the hotel would hold the money to the side of the Complainant's account, which she would not be able to see, that it is only ever held for 10 working days and after the 10 working days, the money would be released back into the account. The Provider's agent advised the Complainant that there was €6.35 available on her account. The Provider's agent advised the Complainant of the €150.00 cash transaction and a pending transaction of €123.00 from **24 October 2017**. The Provider's agent told the Complainant that the pending transaction was held by a hotel company. The Complainant explained that this was a booking made with an online hotel booking website which had no up-front payment with free cancellation. The Complainant explained that she made the relevant booking approximately three weeks prior to **24 October 2017** in respect of hotel booking for **November 2017**. The Provider's agent advised the Complainant that a 'holding fee' of €123.98 had been placed on her account. The Provider's agent explained that hotels generally place a holding fee as a type of insurance and it would be released after 10 working days. The Provider's agent advised the Complainant that if she wished to query the transaction that she could contact the hotel as it was the hotel that was holding the fee.

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The Complainant queried why the transaction only showed on her account/in the available balance on **7 November 2017**. In response, the Provider's agent advised that it should have showed, that it was listed on its system from **24 October 2017** and that it went through on **24 October 2017**. The Provider's agent suggested that as the €150.00 transaction came out on **7 November 2017**, that this might explain the difference in the available balance. The Complainant indicated that she would query the matter with the hotel.

The Complainant telephoned the Provider on **11 December 2017** and told the Provider's agent that she had an arrangement in place in respect of her overdraft and that the overdraft limit on her account had reverted to its original limit. The Complainant also told the Provider's agent it seemed that some money had been put back into her account, explaining that *"its like as if they have refunded me the money that I've paid, less some of the money"* and that the balances on her accounts were not making sense to her.

The parties briefly discussed the transactions on the Complainant's accounts, with the Provider's agent advising that she could not see anything out of the ordinary on the accounts in terms of debit card or pending transactions. The Provider's agent then transferred the Complainant to the Overdrafts Team.

When transferred to the Overdrafts Team, the Complainant outlined the payment arrangements in place on her accounts and explained to the Provider's agent that when she logged on to her accounts, the overdraft amounts had reverted to the originally sanctioned overdraft amounts. The Complainant also explained that there was money in her account that should not be there because the available balance had increased to the amount it had been at prior to entering the repayment arrangement. The Complainant explained that she could not work out how she had the amounts that were in her accounts.

The Provider's agent explained to the Complainant that she had *"come out of Collections contact strategy"* due to the fact that the arrangement previously in place to reduce the overdraft had come to an end and that she was now in her overdraft facility. This was followed by a further discussion in respect of the Complainant's accounts, the arrangements on her accounts and the overdrafts. The call recording appears to have prematurely ended at this point.

The Complainant wrote to the Provider on **8 January 2018**. This letter has been set out in detail above. The Provider's Senior Complaints Consultant acknowledged the Complainant's complaint by letter dated **16 January 2018**.

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The Senior Complaints Consultant wrote to the Complainant again on **6 February 2018** to advise that her complaint was still being investigated. In a further letter dated **6 March 2018**, the Senior Complaints Consultant advised the Complainant that her complaint was still being investigated but the Provider hoped to provide a response by **19 March 2018**. This letter also advised the Complainant of her right to make a complaint to this Office.

The Senior Complaints Consultant issued a Final Response letter to the Complainant dated **14 March 2018**. This letter set out the Provider's response to the complaint, as follows:

"As an outcome of your previous complaint [...] it was found (after your telephone call of 7th June 2017 was listened to), that you were advised before the arrangements were put in place that putting arrangements in place on your accounts may effect your credit rating. When you spoke with a manager in our Collections & Recoveries Department on 15 June 2017, she confirmed the impact on your credit records.

Please refer also to the Bank's letters of 20th June 2017 which confirmed details of your overdraft facility and notified you of the impact on your credit rating;

[...]

To clarify, I have been unable to uphold this aspect of your complaint that you were unaware of the impact on your credit rating.

In your letter you advised that you had paid unnecessary interest because you previously proposed completely clearing off the overdrafts. I have been unable to find any evidence of such a proposal. You could have made lodgements to your accounts to clear the overdraft completely, at any time.

[...]

Our records show that after you contacted our Collections & Recoveries Department to put arrangements in place to make monthly reductions to your overdraft facilities. Correspondence was issued to you in this regard on 13 June 2017. A staff member spoke with you on 14th and 15th June 2017 as regrettably, the overdraft limits had not been correctly put in place for you. Letters were issued to you advising of your new arrangements on 20 June 2017. I am very sorry for the delays you incurred.

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You agreed to make monthly reductions of €195.00 per month to your overdraft facility on account [874] on 25th of each month until 25 October 2018. You also agreed to make monthly reductions of €235.00 for sixteen months on account [841].

In your letter, you advised that you were not aware that interest would continue to be charged on your overdraft facilities while reductions were in place.

When you checked the balance on both current accounts on 11 December 2017, the balance on account [874] was €2,398.78 Debit, while the balance on account [841] was €3,010.75 Debit. The available balance had increased because the arrangements that had been in place ceased in November 2017 and your overdraft facilities reverted to previous amounts as detail above.

During calls with staff members in our Collections & Recoveries Department, you were advised that the arrangement would be broken if it was not adhered to. In order for the arrangement to have been adhered to, you would have needed to credit the exact amount owed to each account on the due date.

Your accounts are now being managed by the account holding branch [...]. If you would like to put arrangements in place to reduce your overdraft facility, you will need to contact our Collections & Recoveries Department [...].

In your letter you have advised that you are no longer paying your salary into your current accounts. I have enclosed a copy of the Bank's 'Personal Banking Terms and Conditions' and draw your attention to page 16, 5 Overdrafts where it stated 'An account must fluctuate to credit for a minimum of thirty days in any twelve month period'.

I wish to apologise for our service shortcomings, in particular incorrect information you received that your overdraft facility was no longer being managed by Collections & Recoveries, as you had completed your monthly repayments. I have taken into consideration in the amount offer for your complaint any confusion that arose about your arrangements, that you did not receive the assistance you required when you called the Bank on 11 December 2017, the duration of the call and that the call was disconnected.

[...]

/Cont'd...

I have upheld that when your arrangements were put in place initially, the limits were not put in place correctly which was corrected on 20 June 2017 and that you received differing information about your arrangements when you enquired about them previously. I accept that confusion arose when your previous overdraft arrangements were replaced on your account, however you would have been aware that any withdrawals you made from your account increased the overdrawn balance.

[...]

I would like to offer the amount of €250.00 to you for this complaint. This amount is in respect of the service you received, any distress or inconvenience caused, and costs incurred e.g. telephone costs. [...].”

In response to this letter, the Complainant emailed the Provider’s Customer Relations Department (marked for the attention of the Senior Complaints Consultant) on **3 April 2018** expressing her disappointment with the Provider’s response to her complaint, as follows:

“The bank have yet to explain to me why the overdraft was reinstated on my account in December 2017 even though the arrangement had been put in place for monthly payments to clear the overdraft until 2018? You reference in your letter to me [...] “the available balance had increased because the arrangements that had been in place ceased in November 2017 and your overdraft facilities reverted to previous amounts as detailed above’ Why did these arrangements cease? Please supply correspondence from [the Provider] stating why?”

You also reference in the next paragraph

“During calls with staff members in our Collections & Recoveries Department, you were advised that the arrangements would be broken if it was not adhered to. In order for the arrangement to have been adhered to, you would have needed to credit the exact amount owed to each account on the due date” – Is [the Provider] stating that the exact amount was not credited? which phone calls are you referring to with [the Provider] staff members?”

I would also like to highlight in the letter sent to the complaints department in January 2018 that I requested information on how I would continue paying the overdraft while the complaint was being investigated given that I had withdrew my salary from the bank [...] To date I have had not had any correspondence or advice on the same.

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In relation to the phone calls had in June 2017 I can categorically state that the initial phone call T&C's that were supplied to me by phone with one of your representative was not the same as the T&C's supplied a week later on the 7th of June. As you can see from the letter sent by the [Provider] on the 9th of August the bank was unable to supply me with the dates of previous calls made in order for me to request the transcripts so essentially my original complaint was not handled. This situation has caused me a great deal of stress to date and the ongoing worry of my credit history being affected by this is even more worrying and needs to be resolved.

I am currently in the process of receiving details from my network provider to supply me with the date / times of the calls relating to June of last year and will be requesting copies of these calls in due course. [...]

In the meantime, again I would like to request by what means I should clear down the overdraft each month (as originally agreed) given that my salary is no longer been credited to the account each month? I would appreciate a response on this point as soon as possible given the potential impact to my credit history. [...]."

By letter dated **17 April 2018**, the Senior Complaints Consultant wrote to the Complainant advising that this letter and the letter of **14 March 2018** were the Provider's final response. Regarding the cessation of the overdraft arrangements and the re-instatement of the overdraft limits, the letter stated, as follows:

"There was no correspondence issued to you in this regard however it was brought to your attention during calls with staff members in our Collections & Recoveries Department for example in the call of 7th June 201[7], you were advised that the arrangement would be broken if it was not adhered to. In order for the arrangement to have been adhered to, you would have needed to credit the exact amount owed to each account on the due date. As the exact amounts agreed in your arrangements were not received on each due date, the arrangements were broken."

The letter continued, as follows:

"In my letter of 14th March 2018, I confirmed that it is part of the terms and conditions to ensure that your account fluctuates to credit for a minimum of thirty days in any twelve month period. In my letter of 9th April 2018, I requested that you contact our Collections Department with your repayment proposals or to facilitate card payments to your account.

/Cont'd...

To clarify, you were aware before you entered arrangements with our Collections Department from your phone call of 7th June 2017 that putting arrangements in place may effect your credit rating. This was confirmed to you again by a manger in our Collections & Recoveries Department on 15th June 2017.”

In respect of the Complainant’s efforts to identify the time and dates of her telephone conversations with the Provider, the letter stated that:

“I am sorry that I am unable to provide you with dates of previous calls you had with our Collections Department. When we spoke you requested transcripts of the calls that took place. In order to complete a Subject Access Request please provide dates of the calls when requesting this information from our Subject Access Request Team; [...].”

The Complainant emailed the Provider’s Customer Relations Team on **24 April 2018** (marked for the attention of the Senior Complaints Consultant) and responded, as follows:

“You reference in your letter

“the available balance had increased because the arrangements that had been in place ceased in November 2017 and your overdraft facilities reverted to precious (sic) amounts.” you go onto to say “in order for the arrangements to have been adhered to, you would have needed to credit the exact amount owed to each account on the due date. As the exact amount agreed in your arrangements were not received on each due date the arrangements were broken”.

I am very confused by this statement as my salary was being lodged into the account each month on the same day and it was set up, by the bank, that the available balance would automatically reduce each month by the agreed amount on the same day my salary was lodged. This was also confirmed by phone by one of your representatives. How then could the arrangements have been broken if the bank was automatically reducing the available balance each month when my salary was lodged?

Also you reference “to clarify you were aware before you entered arrangements with our collections department from your phone call on the 7th of June 2017 that putting arrangements in place may effect your credit rating. this was confirmed to you again by a manger in our collections & recoveries department on the 15th of June 2017”

/Cont’d...

I had no choice but to enter into that arrangement as explained by your collections manager at the time due to the arrangements already in place from the previous call. She explained that it had already went to collections and if I did not enter into this in (sic) would, in fact have an adverse effect on my credit history.

In relation to contacting the collections department, I am afraid I will not be doing that given the bullying nature of the response I had from one of the team on my last call to them. I will leave my family benefit payment of €280.00 lodged to the account each month to offset against the OD whilst I gather more information on calls and lodge the complaint.

I must say again the banks efforts to side step the issues I have raised in nothing short of discrasful (sic). When all relevant proof supporting the calls I referred to is gathered I will be in contact.”

The Complainant emailed the Provider’s Customer Relations Team on **25 August 2018**, as follows:

“It is with great disappointment that I am again contacting you regarding my account due to the intimidation I have been subjected to by the [Provider]. Please see attached 3 letters attached from the [Provider] in relation to my overdraft account which was sent over a 4 week period for the 25th of June to the 31st of July 2018.

As stated in the letters according to [the Provider] you are giving a formal notice to take action to recover the debt and are claiming that you have been trying to contact me.

[...] This is not the case? [...] I had already informed you in the previous emails that I withdrew my salary from the [Provider] due to the fluctuating available balances that could not be reconciled on my current account and the issues stated in my complaint regarding the overdraft agreement

As per my previous mail sent to you on the 24th April 2018 I stated that I would leave a payment in the bank each month whilst I gather information regarding the calls made to [the Provider] in 2017 to which I have adhered to. I have also not received any correspondence from you since my last mail on the 24th April after advising you that I would not deal with the collections department, only to your directly by mail.

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Again I would like to reference the previous mail on the 3rd of April in which I state the ongoing issues and the situation dating back to 2017 which has yet to be resolved [...] I would also like to highlight that after a significant amount of time and effort in which I had to contact my employees HR department to retrieve my phone records I now have both dates and times of multiple calls made to the [the Provider] and will be requesting transcripts in the coming days.

As a long term customer of [the Provider] I have to say this situation and how the bank are handling it is nothing short of appalling. [The Provider's] approach towards me in this situation has caused me a significant amount of stress and worry along with a great deal of embarrassment when I was left with no choice but to explain the situation to my employer in order to obtain my phone records because [the Provider] would not supply me with the dates and times of the calls, even though these would be logged on your system.

My personal time has been invaded through logging each of these mails and trawling through phone records to get the details needed to prove that the bank are in fact lying. More concerning are consistently threatening both my personal credit profile and status due to this issue which could have a negative impact on future borrowing ability.

Again I am stating that I will leave the payment of 280.00 per month in my current account whilst this continues, when I have received a copy of the transcripts for all calls made to the [Provider] I will be logging a formal complainant (sic) with the Financial Ombudsman and passing the details to my solicitor [...]

I will take any further letters from the collections department in relation to this as an additional form of bullying and harassment and will not be subjecting myself to any further harm dealing with them. Having said that if you would like to contact me directly by mail, as I have previously stated I would be willing to correspond directly with you. Also can you please advise as to how I request the transcripts the letter provided only gives an option for details of 1 call and I have transcripts of multiple calls that I want to obtain?"

The Complainant telephoned the Provider on **10 September 2018** in respect of a letter she received from the Provider. The Complainant told the Provider's agent that the Provider keeps sending her letters but she was dealing with the Senior Complaints Consultant and had been forwarding these letters to the Senior Complainants Consultant along with her responses. The Complainant added that she had not received any response.

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The Complainant said she told the Senior Complaints Consultant in her first email that she would allow her family allowance payment to come into the account each month and that it could be dispersed in whatever way fit, on both accounts to reduce the overdrafts and this had not been done. The Complainant queried whether she could send this correspondence to someone in the Collections Department. The Complainant also remarked that she stated in her correspondence that she would not be speaking to anyone by phone based on the experience she had in the past. The Provider's agent advised the Complainant that the Provider did not communicate over email as it was not secure and the Provider did not have the means to communicate in this matter. The Provider's agent advised the Complainant that as her accounts were with Collection Control and it was only this department that could deal with the Complainant. The Complainant explained she engaged with the Senior Complaints Consultant as part of a complaint. The Provider's agent advised that even if this was the case, the Senior Complaints Consultant would not be able to make any decisions on the Complainant's accounts.

The Provider's agent explained that if the Complainant had not communicated with the Collections Department, then nothing would be put in place on the accounts. The Provider's agent explained that the €280.00 family allowance would need to have been put on an arrangement. The Complainant explained to the Provider's agent, referring to recent correspondence, that she would continue to send this correspondence back to the Senior Complaints Consultant and continue paying €280.00 to her account until her complaint was handled. The Provider's agent advised the Complainant that her account was "*sitting at formal demand*" and there was nothing at the agent's end regarding a complaint. The Provider's agent advised the Complainant that the next step would be for the accounts to go to 'Recoveries'. The Complainant then asked if the Provider could distribute the €280.00 between the two accounts each month, to which the Provider's agent responded that if the Complainant wanted to enter an arrangement, the Provider would need to follow its protocol.

Analysis

The Credit Reporting Act 2013 commenced on **27 January 2014** ("the Credit Reporting Act"). The Credit Reporting Act provided for the establishment of the Central Credit Register ("the CCR") and imposed certain credit reporting obligations on financial services providers such as the Provider. In this respect, section 11(1)(b) of the Credit Reporting Act requires the Provider to report certain personal and credit information in respect of a 'qualifying credit agreement'.

The term 'credit agreement' is defined at section 2(1) as:

“an agreement made between a credit information provider and another person for the provision of credit for the other person”

Section 2(1) further states that a 'qualifying credit agreement' *“has the meaning given by [section 11 \(5\)](#)”*.

In essence, section 11(5) and 11(6) state that a credit agreement is a qualifying credit agreement if the amount of the credit agreed to be provided is at least the amount provided for by subsection (6), being €500.00.

In **September 2016**, the Credit Reporting Act 2013 (Section 11) (Provision of Information for Central Credit Register) Regulations 2016 were introduced (“the Credit Reporting Regulations” or “the Regulations”). The Credit Reporting Regulations were stated to come into operation on **30 June 2017**.

In the context of this complaint, Regulation 7(b) requires the Provider to report the information specified in Schedule 2 of these Regulations in respect of:

“any qualifying credit agreement made by the credit information provider, whether before or after the date of commencement of these Regulations and in force on or after that date”

Regulation 9(1)(a) states that the reporting of this information was to begin at any time after the commencement of the Regulations (**30 June 2017**) and before **31 December 2017**. Further to this, Regulation 2(1) states that the term 'qualifying credit agreement' is to have the same meaning as that assigned to it by section 11(5) of the Credit Reporting Act.

Accordingly, I accept that the overdraft facilities in place on the Complainant's current accounts are qualifying credit agreements for the purposes of the Credit Reporting Act and the Credit Reporting Regulations.

In terms of the information provided to the Complainant regarding the provision, or reporting, of information to credit referencing agencies, the evidence indicates that the Complainant first discussed this matter with one of the Provider's agents on **23 May 2017**. At the time of this conversation, there does not appear to have been any credit reporting obligations in respect of the overdraft facilities on Complainant's current accounts.

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Having considered the telephone conversation which took place on **23 May 2017** and each of the telephone conversations which took place on **7 June 2017**, I accept that the information provided to the Complainant surrounding the reporting of her overdrafts and the payment arrangements to credit referencing agencies was correct.

Subsequent to these conversations, having had the disclaimer to read to her during the telephone conversation on **14 June 2017**, the Complainant noted that the disclaimer contained additional information regarding credit reporting requirements under the Credit Reporting Act which were not contained in the disclaimer read to her during the telephone conversation on **7 June 2017**.

The Provider's position is that the disclaimer read to the Complainant on this occasion was updated to reflect the changes brought about by the Credit Reporting Act. As noted above, from **30 June 2017**, the Provider was required to report certain information regarding the Complainant's overdrafts to the CCR. In light of the upcoming changes to the Provider's credit reporting obligations, I accept that the Provider was required to update its disclaimer in order to inform customers, such as the Complainant, about its credit reporting obligations.

While the credit reporting information communicated to the Complainant prior to **14 June 2017** differed to that communicated to her on **14 June 2017**, I do not accept this means that the information previously communicated to the Complainant was incorrect or wrong. Further to this, I do not accept that the Provider was required to advise the Complainant as to the upcoming changes to its credit reporting obligations prior to **14 June 2017**.

It is important to note that the Credit Reporting Act and the Credit Reporting Regulations imposed credit reporting obligations in respect of the Complainant's overdraft facilities regardless of whether the overdraft limits had been exceeded/in arrears or whether a payment arrangement was in place. The Provider's reporting obligation arose from the very existence of a qualifying credit agreement in the form of an overdraft, in excess of €500.00, on the Complainant's accounts. However, exceeding an overdraft limit/being in arrears or entering a payment arrangement would appear to affect the type of information reported to the CCR.

In respect of the telephone conversation which took place on **14 June 2017**, I note the Provider's agent informed the Complainant that the payment arrangement would be subject to credit reporting requirements and further indicated that arrears on the overdraft facilities would impact her credit history. In this instance, I consider that the Complainant was correctly advised.

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However, I note the Provider's agent also told the Complainant that because her overdraft was in arrears, her 'credit' had already been affected. It appears that the Provider's reporting obligations were not scheduled to commence until **30 June 2017**. It also appears from the information reported to the CCR at Appendix F of the Schedule of Evidence that the Provider did not begin to report information regarding the Complainant's overdrafts to the CCR until **30 June 2017**. As such, as there does not appear to have been any reporting obligations in effect at the time of this conversation or any information provided to the CCR in respect of the Complainant's overdrafts, it seems the Provider's agent incorrectly advised the Complainant that, as her overdrafts were in arrears, her credit rating has already been impacted.

Further to this, the Provider's agent was not in a position to explain why a change in the disclaimer had occurred nor was this agent in a position to explain to the Complainant that new credit reporting requirements were being introduced by virtue of the Credit Reporting Act and subsequent regulations. In light of the very recent change to the disclaimer and the introduction of credit reporting for overdraft facilities above €500.00, I am of the opinion that the Provider's agent should have been in a position to explain to the Complainant that new credit reporting requirements were being introduced in respect of overdraft facilities that were not previously in place.

I also note that the Complainant's overdraft facilities do not appear to have been subject to any credit reporting requirements in respect of the Irish Credit Bureau ("the ICB"). However, the Provider's agent nonetheless advised the Complainant to download an ICB report to obtain information in respect of her credit history. As this conversation was in the context of the Provider's credit reporting in respect of the Complainant's overdrafts and as the Complainant had been advised that her overdrafts being in arrears had already impacted her credit history, I am not satisfied that the Complainant was correctly informed when advised to download an ICB report nor do I see the relevance of such a suggestion when the Complainant's overdrafts were not reported to the ICB.

When speaking with the team supervisor on **15 June 2017**, the Complainant explained the conflicting credit reporting information she had received. In particular, the Complainant told the team supervisor that on one occasion she was told her credit rating may be affected if she did not adhere to the payment arrangements and, on another occasion, she was told that the payment arrangement was already reflected on her credit history. The conflict in the information noted by the Complainant appears to have arisen from the new credit reporting requirements imposed by the Credit Reporting Act and the Credit Reporting Regulations. However, the team supervisor did not identify this as being an issue when discussing the matter with the Complainant.

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I believe the Provider's agents, particularly someone at team supervisor level should have a sufficient understanding of the Provider's credit reporting obligations, particularly the then upcoming credit reporting requirements that would be coming into effect on **30 June 2017**. In this instance, while the team supervisor was aware of and explained at a general level that the Provider must adhere to certain credit reporting requirements, I believe that the team supervisor should have been in a position to better explain these requirements. For instance, this telephone conversation presented a good opportunity to explain to the Complainant that regardless of the status of the overdraft facilities or whether any payment arrangement was in place, as the Complainant's overdraft facilities were in excess of €500.00, they were required to be reported to the CCR and, because of this, the existence of the payment arrangements would also be reported. It appears the Complainant understood from this conversation, and previous conversations, that because there were arrears on her overdraft or that payment arrangements were being put in place that these were the reasons for the credit reporting, which could be avoided if she cleared the overdrafts. However, this was not the case. I believe this confusion could have been avoided if the team supervisor and the agent the Complainant spoke with on **14 June 2017** had better explained the Provider's credit reporting obligations.

Accordingly, I am not satisfied that the Provider's agents with whom the Complainant spoke on **14 and 15 June 2017** demonstrated a sufficient understanding of the Provider's credit reporting requirements, did not give a proper explanation of the credit reporting requirements associated with the Complainant's overdraft facilities or clarify precisely what gave rise to the credit reporting obligation, nor did the Provider's agents identify that the source of the Complainant's confusion could have been the change to the Provider's credit reporting requirements. As there do not appear to have been any credit reporting requirements in respect of overdraft facilities prior to this, I would consider this to have been something that the Provider's agent should have identified.

Given the significant impact that credit reporting and credit recording have, I would expect the Provider to furnish absolute clarity on credit reporting obligations and impacts.

Section 24 of the Credit Reporting Act imposes an obligation to provide certain information at the time of making a 'qualifying credit application' in respect of qualifying credit applications and qualifying credit agreement. In furtherance of this, the Credit Reporting Act 2013 (Section 24) (Notices) Regulations 2016 requires the following notice to be included on forms for the making of qualifying credit applications:

"NOTICE: Under the [Credit Reporting Act 2013](#) lenders are required to provide personal and credit information for credit applications and credit agreements of €500 and above to the Central Credit Register.

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This information will be held on the Central Credit Register and may be used by other lenders when making decisions on your credit applications and credit agreements.”

As can be seen, the above notice is in line with the notice contained in the disclaimer read to the Complainant on **14 June 2017** and is identical to the notice contained in the letter of **20 June 2017**.

Therefore, having considered the matter in detail, I accept that reasonable efforts were made to inform the Complainant that her overdraft facilities, including the payment arrangements, would be subject to certain credit reporting pursuant to the Credit Reporting Act.

Separate from any payment arrangements, it appears the Provider also wrote to the Complainant on **14 June 2017** to advise that she had exceeded her overdraft limit(s). This letter also advised the Complainant that the Provider may have to report this information to credit referencing agencies. As such, the Provider sought to inform the Complainant that exceeding her overdraft limit could also result in adverse credit reporting.

In terms of the conversation with the team supervisor on **15 June 2017**, I note the team supervisor assured the Complainant that further investigation into the previous conversations would be conducted and that the Complainant would receive a call back to advise her as to what was discussed during these conversations. However, despite these assurances, it does not appear that the Complainant received the promised call back.

Additionally, the team supervisor advised the Complainant that a formal complaint would be logged to facilitate further investigation into the previous telephone conversations the Complainant had with the Provider's agents. In a timeline at Appendix B of the Provider's Schedule of Evidence, it is stated that a complaint acknowledgment letter issued to the Complainant on **21 June 2017**. The Provider subsequently issued a formal response to the complaint on **9 August 2017**.

Having considered the conversation between the Complainant and the team supervisor and the letter of **9 August 2017**, I am not satisfied that the Provider properly investigated this complaint. For instance, the language of the letter suggests that only one call on **7 June 2017** was listened to, that being the call with the Provider's Collections Department. However, as the Complainant had a conversation with one of the Provider's agents prior to her conversation with the Collections Department (which is recorded on the Provider's system notes), I am of the view that a proper investigation into this complaint would have entailed a review of this call also.

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However, this does not appear to have occurred. If the Provider had reviewed the earlier conversation, it would have been apparent that the Complainant was advised during this conversation that entering a payment plan would not affect her credit history. The Provider also advised the Complainant that it was unable to provide the dates of previous telephone calls with the Collections Department. This would further suggest that it was only the conversation with the Collections Department on **7 June 2017** that was reviewed by the Provider as part of its investigation. Further to this, having considered the information provided by the Complainant during conversation with the team supervisor and the matters discussed, I am also of the view that the Provider's investigation should have included the earlier telephone conversation which took place on **23 May 2017**, particularly as this conversation was referenced by the Complainant during her first telephone conversation on **7 June 2017**. However, there is no evidence of this conversation forming part of the Provider's investigation.

Similarly, having considered the Provider's Final Response letter dated **14 March 2018**, it does not appear that the conversation on **23 May 2017** or first conversation which took place on **7 June 2017** were considered as part of the investigation into this complaint.

As noted above, in the letter of **9 August 2017**, the Provider advised that it was unable to provide the Complainant with the date of previous calls with the Collections Department. The Provider does not appear to have given any reason as to why it was unable to provide this information nor is it clear why the Provider was unable to do so. However, in the same paragraph, the Provider advised the Complainant that in order to complete a Subject Access Request, to provide dates of telephone calls when making such a request.

In the Complainant's email of **3 April 2018**, she noted that the Provider was unable to provide her with the dates of previous telephone conversations. The Complainant also advised that she was engaging with her telephone network provider to obtain details of these calls. In the Provider's letter of **17 April 2018**, the Provider repeated the comments made in its letter of **9 August 2017** regarding call details.

Having considered this matter, there does not appear to be any reasonable justification for the Provider's inability (and in effect, refusal) to provide the Complainant with dates of previous telephone conversations. I believe that the Provider should have assisted the Complainant by providing her with the dates of her telephone conversations. I am particularly disappointed with the Provider's conduct in this regard because the Provider was refusing to provide telephone call dates yet advising the Complainant that if she wished to make a subject access request, she was required to provide the call dates. In a submission dated **18 September 2020**, the Complainant says that during the telephone call on **23 May 2017**, she queried the best way to clear her overdrafts. The Complainant also says she did not want a negative impact on her credit history.

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The Complainant further suggests that had she been aware of the impact the payment arrangement would have on her credit history, she would have *“tackled clearing the OD’s in a different manner.”*

As noted above, I am satisfied that from the telephone conversation on **14 June 2017**, the Complainant was aware that her overdraft facilities and the payment arrangements would be subject to credit reporting requirements. As such, if the Complainant wished to tackle the overdraft facilities in a manner other than by means of the payment arrangements, I am satisfied that she was free to do so.

Further to this, during the telephone conversation on **7 June 2017**, when the Provider’s agent asked how she could assist the Complainant, the Complainant referred to a letter she received a number of months previously:

“in relation to reducing my overdraft down, they were going to arrange a payment to reduce the overdraft down each month and when I called in at the time I said no look I’m just gonna try and pay it off and do it that way”.

These comments suggest that the Complainant considered clearing her overdraft facilities prior to any payment arrangements being put in place but, for whatever reason, did not do so. When transferred to another of the Provider’s agents during this call, for the purpose of completing an income and expenditure assessment, I note the Complainant was asked if she had any savings, to which the Complainant responded, *“No. I have no savings at the minute”*. The Provider’s agent then asked: *“So you don’t save at all?”*. The Complainant responded *“No”* to this question. While not determinative, the absence of any savings and the absence of a current saving capacity it is not clear what other means the Complainant could have employed to clear the overdraft facilities.

Later into the above conversation on **7 June 2017**, the Provider’s agent advised the Complainant of the option of clearing the overdraft balances in full. The option of clearing the overdraft balances in full was also discussed during the telephone conversation with the team supervisor on **15 June 2017**. I also note that at the bottom of the second page of the letter dated **20 June 2017**, it stated, as follows:

“Duration and Termination

You can terminate this overdraft agreement at any time by repaying all amounts owing to us and notifying us at the address set out above that you no longer require an overdraft facility.”

Accordingly, at the time the payment arrangements were entered, I am satisfied that the Complainant was aware that the overdraft balances could be cleared without the requirement for any payment arrangements.

In the Complainant's letter of **8 January 2018**, she states that she paid a significant amount of unnecessary interest that would not have been payable had the Provider allowed her to clear the overdrafts as she initially proposed. However, the Complainant has not identified the specific proposal(s) she made regarding the clearing of the overdrafts and, having considered the evidence, I am not satisfied that any particular proposal(s) was made by the Complainant in respect of clearing the overdrafts. In fact, the evidence indicates that the Complainant was seeking the Provider's advice as to the most appropriate way of reducing the overdrafts. It was open to the Complainant to clear the overdrafts at any stage should she have the means and wish to do so.

In a submission dated **17 July 2020**, the Provider says the payment arrangement was broken in **November 2017** due to a pending transaction of €123.98 on the Complainant's account.

In the Plan Letter of **20 June 2017**, the Provider advised that *"we have set up a reducing overdraft facility on the account as shown above to enable you to repay the excess borrowing."* I note that the parties also agreed that repayment dates would be the 25th day of the month.

It is my understanding that separate arrangements were entered in respect of each of the Complainant's overdraft facilities in **June 2017**. I note that in each of the disclaimers read to the Complainant during **June 2017**, the Complainant was advised that failure to adhere to the terms of the arrangements would result in them coming to an end. However, this does not appear to have been explained in the letter of **20 June 2017**. It appears to me then that so long as the agreed amounts were lodged to the accounts, the Complainant would be adhering to the respective payment arrangements. Although the arrangements were described as a reducing facility, it does not appear to have been a term of the arrangements that if the Complainant's overdraft facilities did not continually reduce, did not reduce by a particular amount each month, or that the overdraft balance on the accounts increased that the arrangements would be broken.

In this respect, I note the account statements for account 874 indicate that funds in excess of the agreed €195.00 payment was lodged to this account up to and including **November 2017**. The account statements for account 841 indicate that funds in excess of the agreed €235.00 payment was lodged to this account up to and including **November 2017**, which comprised the payment from the Department of Social Protection and the Complainant's salary.

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The Provider's position is that due to a pending transaction of €123.98 (which appears to have been in respect of account ending 841) the arrangements were broken. However, I find it difficult to understand how the Provider could regard a pending transaction as breaking the payment arrangements. For instance, the very fact that the transaction was *pending* necessarily means that it had not been completed and may not complete, thereby not affecting the balance on account 841. Further to this, I note the Provider's Branch Support Team agent told the Complainant during the telephone conversation on **7 November 2017** that the transaction should release around **12 November 2017**. In this respect, the account statements for account 841 show that the transaction does not appear to have completed. As such, the Provider appears to be relying on a pending transaction which did not complete as the reason it deemed the payment arrangements broken.

Having considered the matter, I cannot see how an uncompleted pending transaction such as the one referenced by the Provider constitutes a failure to adhere to the payment arrangements in place on both account 841 and 871, particularly where the Complainant's account statements indicate that the payment arrangements were being adhered to.

Further to this, I cannot see how any purported default in respect of one account would entitle the Provider to deem the arrangement in place on a separate account to have been broken.

Therefore, I do not accept that the payment agreements in place in respect of the Complainant's overdraft facilities were broken by virtue of a pending transaction nor do I accept that this gave rise to an entitlement to deem the payment arrangement in place on an unaffected account to have been broken. I consider such conduct to be most unreasonable. I believe that if the Provider was seeking to assist the Complainant in reducing her overdraft facilities, it would not have regarded the above pending transaction as a breach of the payment arrangements.

However, it also appears that following the transfer of the Complainant's salary to account 841 on **24 November 2017**, her salary was no longer mandated to this account after this date. The reason advanced by the Complainant for doing this was set out in her letter of **8 January 2018**, where the Complainant expressed dissatisfaction regarding certain matters relating to her accounts. While the Complainant was dissatisfied with the administration of her accounts, I do not consider it helpful or appropriate for the Complainant to have ceased the transfer of her salary to account 841 without making prior arrangements to facilitate the payment of the amounts payable under the payment arrangements or giving prior notice to the Provider in circumstances where the Complainant's salary was the primary source of funds for accounts 841 and 874.

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I note the Complainant wrote to the Provider on a date after ceasing the transfer of her salary and after the **December 2017** payments were due seeking instructions as to how to make payments in the absence of her salary being lodged to the account 841. It is my opinion that if the Complainant wanted to adhere to the agreement, before taking this course of action, the Complainant should have sought to put an alternative payment method in place.

That said, I also note that the Complainant expressly indicated in her letter that she wished to continue with the payment arrangements and, as noted above, requested details as to how this could be facilitated now that her salary was no longer being mandated to account 841. While the Provider treated this letter as a complaint, in light of the arrangements in place on the Complainant's account and given the nature of the request, I believe that the Provider should have engaged with the Complainant in respect of this aspect of her correspondence outside of the complaints process in an effort to facilitate the continuation of the payment arrangements. Equally however, I do not accept that the Complainant's ability to adhere to the payment arrangements was necessarily dependent on a response to this aspect of her letter. I am of the view that it was reasonable to expect the Complainant to have made the relevant payments to her accounts without the need for any guidance from the Provider.

Although a number of lodgements totalling approximately €687.00 were made to account 841 during **December 2017**, I note that the amounts paid out of this account largely exceeded these lodgements. Similarly, in the months that followed, the amount paid into the account was not sufficient to cover the payment arrangement amount of €235.00. I also note that no lodgements were made to account 874 in **December 2017** or the months that followed. As such, I accept that the Complainant's conduct had the effect of breaking the payment arrangements in place on accounts 841 and 874 from **December 2017**.

Therefore, in the circumstances of this complaint, it appears that the Provider prematurely deemed the payments arrangement as being broken in **November 2017**. However, I accept that the payment arrangements were broken by the Complainant following the non-payment of the payments which were due on **25 December 2017**.

In a submission dated **30 June 2020**, the Complainant says the Provider did not identify when the arrangements were broken nor did she receive correspondence to advise her that the overdraft limits were being reinstated. In a submission dated **17 July 2020**, the Provider refers to a text message sent to the Complainant on **3 December 2017** advising that the payment arrangement was broken. In a further submission dated **18 September 2020**, the Complainant says, amongst other matters, that this text message was not received. I have no reason to doubt the Complainant's recollection in this regard.

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In the Provider's system notes, it states on **3 December 2017** that "*Broken Pymt Text Sent*". A copy of this text message has not been provided, however, in a submission dated **2 October 2020**, the Provider describes the text message as "*a generic text message sent with the intention to encourage the customer to contact the Bank.*" From the outset, I do not accept it is appropriate to inform the Complainant by text message alone that the repayment arrangements had been broken. I am not satisfied that a full and complete explanation as to why the arrangements were broken or the consequences this would now have for the Complainant could reasonably be expected to be communicated in a text message. I am of the opinion that it is reasonable to expect the Provider to have followed the text message with a letter or telephone call to confirm with the Complainant that the payment arrangements had been broken, particularly as the purpose of the text message was to encourage contact and, in this instance, no contact was made on foot of the text message.

While the Provider states that a text message was sent on **3 December 2017**, I note that when the Complainant spoke with the Provider's agents on **11 December 2017**, she did not mention receiving a text message and appears to have been unaware that the payment arrangements had been broken. I also note that the Provider's agent on the Overdrafts Team did not mention that a text message had been sent to the Complainant.

It appears it was during this conversation that the Complainant first became aware that the arrangements had been broken. Although it was apparent that this was the first time the Complainant became aware of this, the Provider's agent did not seek to explain why the arrangements were considered to have been broken. While this call appears to have prematurely terminated, I believe there was sufficient opportunity to explain how and when the agreement was broken to the Complainant.

Prior to this however, I note that the Complainant discussed the pending transaction which the Provider relies on as breaking the payment arrangements with a Collections Team agent and a Branch Support Team agent on **7 November 2017**. If it was considered that this pending transaction had broken the payment arrangements, I do not understand why the Provider's Collections Team (who would appear to be best placed to discuss such matters) or the Branch Support Team did not inform the Complainant that the arrangements had been broken. It is my opinion that if the pending transaction was visible on the Provider's system since **24 October 2017** (as stated by the Branch Support Team agent), the Provider should have sought to inform the Complainant during this conversation, and well in advance of the **3 December 2017** purported text message, that the payment arrangements had been broken.

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Further to this, there is no evidence of the Provider informing the Complainant that the overdraft limits had been reinstated on her accounts. In terms of the re-instatement of the overdraft limits on the Complainant's accounts, the Plan Letter of **20 June 2017** states, as follows:

"We may at our discretion vary the Overdraft Limit subject to giving you prior written notice in accordance with all applicable legal requirements."

The Provider has also furnished a copy of the 'Personal Banking Terms and Conditions' applicable to the Complainant's accounts. In particular, I note section 5.4 states, as follows:

"We may, at our discretion, amend the overdraft limit on the Account, subject to giving You prior written notice in accordance with applicable law. [...]"

While the Provider maintained a discretion to vary the Complainant's overdraft limits, it can be seen that this was conditional on prior written notice being given to the Complainant. As noted above, there is no evidence of the Provider writing to the Complainant to inform her that the overdraft limits on her account were being varied. I also note that the absence of any correspondence being issued in this regard is acknowledged by the Provider in its letter of **17 April 2018**.

Accordingly, I accept that there was a very poor level of communication on the part of the Provider in respect of informing the Complainant that the payment arrangements had been broken. I also accept that the Provider failed to properly notify the Complainant that the original overdraft limits had been reinstated on her accounts.

As noted above, it appears that it was not until **December 2017** that the Complainant became aware that the payment arrangements were considered broken. However, at this time, the Complainant does not appear to have received any explanation as to why the arrangements were considered broken. Further to this, I note the Provider's communications in this regard were vague and lacked detail.

For instance, in the Provider's letter of **14 March 2018**, the Complainant was advised, as follows:

"The available balance had increased because the arrangements that had been in place ceased in November 2017 and your overdraft facilities reverted to previous amounts as detail above."

During calls with staff members in our Collections & Recoveries Department, you were advised that the arrangement would be broken if it was not adhered to. In order for the arrangement to have been adhered to, you would have needed to credit the exact amount owed to each account on the due date.”

In the Provider’s letter of **17 April 2018**, the Complainant was advised, as follows:

“In order for the arrangement to have been adhered to, you would have needed to credit the exact amount owed to each account on the due date. As the exact amounts agreed in your arrangements were not received on each due date, the arrangements were broken.”

The position communicated in the **March** and **April 2018** correspondence indicates that the reason for non-adherence to the arrangements was a failure to credit the correct amounts to the Complainant’s accounts on the due date. However, as the Complainant’s salary and Department of Social Protection payment were both mandated to account 841, I cannot see how this could be the case. I also note that these letters did not identify the date on which the relevant payments were not received in respect of each of the accounts.

Strangely, it was not until the **17 July 2020** submission that the Provider referred to a pending transaction as the reason for the payment arrangements being broken. However, it was not clear why this information was not communicated to the Complainant, nor it is clear why it was not until the date of this submission that the Provider advanced this reason.

At Appendix F of its Schedule of Evidence, the Provider set out the information reported to the CCR from **30 June 2017** to **31 May 2020** in respect of the Complainant’s overdraft facilities. The information reported is set out under three headings: Date, Balance Reported, and Credit Limit. However, in light of the information required to be reported to the CCR as set out in Schedule 2 of the Credit Reporting Regulations, I am not satisfied that the information provided at Appendix F represents a complete picture of the information reported to the CCR in respect of the Complainant’s overdraft facilities. Further to this, as I am satisfied that the Provider prematurely considered the payments arrangements to have been broken in **November 2017** as opposed to when the **December 2017** payments were not met, I believe that incorrect information may have been reported to the CCR in **December 2017**. Furthermore, I am not satisfied that it was reasonable for the Provider to begin reporting the increased overdraft limits to the CCR from **December 2017** in circumstances where the Provider had not given written notice to the Complainant regarding the increase in the overdraft limits.

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In the Provider's Final Response letter of **14 March 2018**, the Complainant was advised to contact the Provider's Collections & Recoveries Department if she wished to put arrangements in place to reduce her overdraft facilities. When responding to this letter by email on **3 April 2018**, the Complainant stated, as follows:

"[A]gain I would like to request by what means I should clear down the overdraft each month (as originally agreed) [...]?"

While this aspect of the Complainant's email does not appear to have been responded to by the Provider in its letter of **17 April 2018**, I accept that it was clear from the letter of **14 March 2018** that the payment arrangements were no longer in place and that the Complainant should contact the Collections & Recoveries Department to discuss putting arrangements in place regarding her overdraft facilities. Accordingly, I accept that if the Complainant wished to discuss the payment arrangements or make further payment arrangements she should have contacted the Collections & Recoveries Department as opposed to sending further emails to the Provider's Customer Relations Teams in **April** and **August 2018**.

In the Complainant's letter of **8 January 2018**, she referred to anomalies in her account balances as far back as **July 2017**. The Complainant further stated that she was *"missing personal money from each account."* It appears that the Complainant first mentioned anomalies in her accounts during telephone conversations with the Provider's Collections Team and Branch Support Team on **7 November 2017**. Having considered these conversations, the particular anomaly on this occasion appears to have been associated with a pending transaction. The source of this transaction was a hotel the Complainant intended to stay in that month which she had booked in **October 2017**. In the circumstances, I am not satisfied that the Provider was responsible for a pending transaction presenting on the Complainant's account. I am of the view that this is a matter for the Complainant and the merchant (the hotel) that placed the transaction on the account.

During the telephone conversation on **11 December 2017**, the Complainant noted an increase in her account balances. However, as can be seen, the balances on the Complainant's accounts increased due to the re-instatement of her original overdraft limits. The Provider's conduct insofar as concerns the re-instatement of the overdraft limits has been considered above.

While the Complainant has referred to anomalies on her accounts since **July 2017**, the Complainant does not appear to have identified precisely what these anomalies were, when they occurred or the account which was affected by each specific anomaly.

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Therefore, I have no evidence that there were any anomalies on the Complainant's accounts outside of the pending transaction discussed above and re-instatement of the overdraft limits.

During the telephone conversation on **23 May 2017**, the Provider's agent arranged for a call-back to the Complainant for the following day to discuss putting an arrangement in place in respect of her overdraft facilities. However, having considered the evidence, it does not appear that this call-back took place.

In respect of the telephone conversation with the Collections Team on **7 November 2017**, the Complainant subsequently described this agent as being extremely rude. However, having considered the conversation with the Collections Team agent, I believe that the relevant agent was professional and courteous towards the Complainant. Towards the end of the conversation however, the Complainant expressed her dissatisfaction when the Provider's agent was unable to offer an explanation as to why the pending transaction was not visible on her account. However, I do not accept that the agent's response was in any way rude, nor do I accept that the Provider's agent responded in an inappropriate manner.

It was during the telephone conversation with the Branch Support Team on **7 November 2017** that the Complainant described the Collections Team agent as being extremely rude. However, despite this, I note that the Branch Support Team agent did not ask if the Complainant wished to make a formal complaint in respect of the Collections Team agent's conduct. In light of the Complainant's comments regarding the conversation she had with Collections Team agent, I am of the opinion that the Branch Support Team agent should have made such an enquiry and given the Complainant the opportunity to have the matter investigated through the Provider's formal complaints process.

The Provider issued a Final Response letter dated **14 March 2018**. This letter invited the Complainant to contact the Senior Complaints Consultant if there were any aspects of the complaint that were not addressed or not considered. This letter also advised the Complainant of her right to refer a complaint to this Office. The Complainant responded to this letter by email on **3 April 2018**.

The Provider wrote to the Complainant on **17 April 2018** advising that the Provider was now issuing its final response. The letter further advised that it, together with the letter of **14 March 2018**, was the Provider's final response. This letter also advised the Complainant of her right to refer a complaint to this Office. The Complainant responded to this letter by email on **24 April 2018**. This email does not appear to have been responded to by the Provider. The Complainant emailed the Provider again on **25 August 2018** noting, amongst other matters, the absence of a response to her previous email. This email does not appear to have been responded to by the Provider.

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The matters raised in the Complainant's correspondence of **24 April** and **25 August 2018**, in essence, relate to matters raised as part of the Complainant's complaint in **January 2018**. As can be seen, the Provider informed the Complainant that it had issued a final response to her complaint and also advised the Complainant of her right to refer a complaint to this Office. Therefore, I accept that the Provider's conduct in not issuing a response to this correspondence was unreasonable or wrong.

Goodwill Gesture

A Summary of Complaint was issued by this Office to the Provider on **30 March 2020**. The Provider wrote to this Office by email on **29 April 2020**, with the following offer in an effort to resolve the complaint:

"...

- We amend the CCR on the Complainant's Current Accounts, ending 5841 and 8874. Her CCR record will show that she had borrowings of over €500 on each account, which we are obliged to report as factual to the Central Credit Register. However, under our proposal, her record will not show that she was outside her borrowing limits or in default with the Bank on those accounts. Note: There is no requirement to amend information on the ICB, as Current Account overdrafts are not reported to the ICB and we apologise to the Complainant for any misleading information provided to her previously in this regard.*
- We credit sufficient funds to clear / zeroise the current outstanding balance on account ending 8874 as of today's date – which is showing as €3,390.65 overdrawn. We will also include a credit of an additional €15.00 in recognition of debit interest of €13.00 and account charge of €2.00 which is being accrued but not yet applied on the account.*
- We Refund debit interest of €88.59 which was applied to Current Account ending 5841, by way of gesture of goodwill payment*
- We make a compensation payment of €500.00 in recognition of stress and inconvenience which this matter has caused the Complainant.*

We would like to apologise to the Complainant for our delay in proposing this resolution, which remains open to her indefinitely while she takes the time to consider our offer. [...]."

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Having had the opportunity to consider the Provider's offer, by email dated **12 May 2020**, the Complainant advised this Office that she was declining the offer.

In its Complaint Response of **8 June 2020**, the Provider stated that:

"We wish to apologise to the Complainant for any service issues she may have encountered in her dealings with the Bank regarding the subject matter of this complaint. As a gesture of goodwill, we would like to offer the Complainant compensation in the sum of €1,500 which remains open to her indefinitely."

Following a further series of additional submissions, the Complainant indicated in an email dated **1 March 2021** that the Provider's goodwill gesture *"would not assist with the impact this has caused to my personal life."*

In this email, the Complainant also referred to the amendment proposed by the Provider in the first bullet point in its email of **29 April 2020** (above), stating that:

"I'm not sure why this is something that cannot be actioned by the bank, regardless of me pursuing my complaint with the FSPO."

In an email dated **10 June 2021**, the Provider set out the following updated offer:

"Our offer is as follows:

- *We credit sufficient funds to clear / zeroise the current outstanding balance on account ending 8874 – which is today €4,224,39 overdrawn.*
- *With the Complainant's agreement, we close account ending 8874 once the overdrawn balance has been zeroised.*
- *We refund debit interest of €88.59 which was applied to Current Account ending 5841, by way of gesture of goodwill payment – payment to be made to a nominated account in the Complainant's name.*
- *We make a compensation payment of €500.00 in recognition of stress and inconvenience which this matter has caused the Complainant – payment to be made to nominated account in the Complainant's name.*
- *Note: No amendments to be made to Central Credit Register."*

This offer was declined by the Complainant on **11 June 2021**.

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In light of the findings of the investigation into this complaint, I do not consider that the most recent goodwill gesture offered by the Provider on **10 June 2021** constitutes sufficient redress or compensation in respect of the conduct complained of, particularly given its withdrawal of the offer to amend the Central Credit Register. Accordingly, I substantially uphold this complaint.

In the circumstances, I make the following directions:

that the Provider credit sufficient funds to clear/zeroise the current outstanding balance on account ending 874.

that the Provider amend the information reported to the Central Credit Register in respect of the Complainant's current account ending 841 such that the information reported will not show that this account was:

- (i) outside of the overdraft limit in place from **November 2017** to the date of account closure;
- (ii) in default of the payment arrangement entered in **June 2017**.

that the Provider amend the information reported to the Central Credit Register in respect of the Complainant's current account ending 874 such that the information reported will not show that this account was:

- (i) outside of the overdraft limit in place from **November 2017** to the date of the outstanding balance on this account being cleared/zeroised as directed above;
- (ii) in default of the payment arrangement entered in **June 2017**.

I also direct that the Provider pay compensation in the amount of €1,000 to the Complainant.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2)(b)** as the conduct complained of was unreasonable in its application to the Complainant, on the ground specified in **Section 60(2)(f)** and on the ground specified in **Section 60(2)(g)**.

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Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to rectify the conduct complained of by:

crediting sufficient funds to clear/zeroise the current outstanding balance on account ending 874.

amending the information reported to the Central Credit Register in respect of the Complainant's current account ending 841 such that the information reported will not show that this account was:

- (iii) outside of the overdraft limit in place from **November 2017** to the date of account closure;
- (iv) in default of the payment arrangement entered in **June 2017**.

amending the information reported to the Central Credit Register in respect of the Complainant's current account ending 874 such that the information reported will not show that this account was:

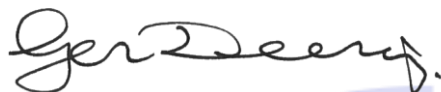
- (iii) outside of the overdraft limit in place from **November 2017** to the date of the outstanding balance on this account being cleared/zeroised as directed above;
- (iv) in default of the payment arrangement entered in **June 2017**.

paying compensation in the amount of €1,000 to the Complainant, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

8 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.