



<u>Decision Ref:</u>	2021-0504
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Maladministration (mortgage) Dissatisfaction with customer service Incorrect information sent to credit reference agency Failure to process instructions
<u>Outcome:</u>	Rejected

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

This complaint relates to the asserted failure of the Provider to update its internal records regarding the first Complainant's address, and to provide this updated information for the first Complainant's Irish Credit Bureau and Central Credit Register Reports. The second complaint also relates to the Provider allegedly using an inaccurate address for the second Complainant's account with the Provider.

The Complainants' Case

The Complainants hold two joint mortgage loan accounts with the Provider.

In an email to this office of **13 February 2020**, the first Complainant explained that he entered into an arrangement with a Personal Insolvency Practitioner (PIP) in **June 2018**. This related to a Judgment secured against the first Complainant for the breach of a conveyancing contract from **2008**. The first Complainant exited the PIP process on **12 September 2018**. The Complainants noted that the second Complainant was not a party to the PIP process, and that the Provider was not involved in this process.

On **22 December 2018**, the Complainants received their annual mortgage statements from the Provider, which stated that their address was "*c/o Personal Insolvency Unit*". The first Complainant immediately contacted the Provider to have this error corrected.

On **31 January 2019**, the first Complainant received his Irish Credit Bureau (ICB) Credit Report. This report listed his address as "*CO Personal Insolvency Unit*". The first Complainant contacted the Provider, and the Provider's Agent assured him that the matter would be corrected. The first Complainant received a Credit Report from the ICB on **15 February 2019**, and this showed his correct address.

On receipt of the corrected report, the Complainant applied to four financial providers for credit. Each of the applications was denied. The first Complainant submitted that his financial adviser "*could not understand why as he believed my earnings, security and repayment capacity all stood up.*"

The first Complainant was advised by a mortgage broker to obtain a copy of his Central Credit Register (CCR) Credit Report in **November 2019**. On receipt of this report, the first Complainant learned that his address had been reported by the Provider as "*C/o Personal Insolvency Unit*", almost a year after the first Complainant had contacted the Provider to correct its records.

The first Complainant contacted the CCR to have this information amended, noting in particular that his address had last been updated on "*31/12/2019*", and that the Complainant had permanently lived at one address since 1988. The CCR informed the first Complainant that the address was furnished by the Provider, and could only be corrected on the instructions of the Provider. The first Complainant contacted the Provider to have this record corrected. He received a response which indicated that the Provider had already amended the first Complainant's details. Following this, the first Complainant requested another CCR Credit Report, dated **28 January 2020**, and his address had not been changed.

The first Complainant stated:

"This false reporting by [the Provider] is total negligence and defamation of my character. Their actions are blocking my access to new credit. It has cost me way more than I can calculate."

In reply to the Provider's submissions, the Complainants' authorised representative wrote to this office by way of emailed letter, dated **30 March 2021**. He noted that the Complainants were bringing separate and distinct complaints. He submitted that the second Complainant had not applied for a protective certificate, and her address was changed by the Provider without her knowledge. He stated that the Provider had failed to "*recognise this fact*" in its reply.

The representative submitted that the Provider's submissions regarding the timeline of when the Provider made the amendments, was "*wholly inadequate and disingenuous*". He noted that the Provider had admitted to delaying in updating its internal database, and that the Complainants had to repeatedly follow up on their request to ensure that the amendment was made.

The representative stated that:

"[The Provider] knew or ought to have known that by amending their internal database to have my Client's (sic) managed c/o the Insolvency Unit that this would have implications with the information registered with the Central Credit Register ("CCR"). Notwithstanding this when the Bank belatedly took steps to update their records they made no attempt to update the CCR record."

The representative submitted that the Provider incorrectly informed the first Complainant that it could not take steps to amend the CCR report. The representative stated that this action was always within the power of the Provider.

He submitted that, in addition to the stress caused to the Complainants, the Provider's conduct had the effect of impeding the first Complainant's access to credit. The representative outlined that the first Complainant personally applied to two institutions for credit, and that:

"a further application for facilities was made by a limited liability company that [the first Complainant] is employed by. He is a former shareholder and director of this company. These loan applications were made between the 30th January and the 23rd February 2019 and each of the applications was summarily refused."

A goodwill offer of €1,000 (one thousand Euro) was made to the Complainants by the Provider. This figure was rejected, and the Complainants' representative submitted that an increased offer, which reflects the stress suffered by the Complainants, should be made.

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The Provider's Case

The Provider states that the first Complainant did not enter into a Personal Insolvency Arrangement. It further states that a Protective Certificate has been issued on **11 June 2018** in respect of the first Complainant.

The Provider explained that where a Protective Certificate is granted to a customer, the Provider must ensure that it takes steps to comply with the **Personal Insolvency Act 2012**. This includes making operational amendments to ensure that the customer does not receive correspondence concerning arrears, or letters of legal threat and demand.

On receipt of notice for the first Complainant's Protective Certificate, on **15 June 2018**, the Provider amended the addresses on the first Complainant's accounts. The Provider notes that the updated addresses would have been displayed to the ICB and the CCR on the next reporting schedule for those mortgage accounts.

The Provider submitted that it was informed by the PIP on **24 October 2018** that the first Complainant's Protective Certificate had expired. It stated that "*[u]nfortunately due to oversight, the required amendments to the account were not completed immediately after the instruction was issued.*" The Provider states that it corrected the Complainant's address on the accounts on **2 January 2019**.

The first Complainant contacted the Provider on **13 February 2019** to advise that the ICB reports showed the address of the Personal Insolvency Unit. The Provider contacted the ICB to have this amended on **14 February 2019**.

With regard to the CCR reports, the Provider submits that its system sends a monthly report to the CCR with the address that is currently on the account. It states that the CCR report would have been updated on the next monthly report after **2 January 2019**, when the amendment was made on the first Complainant's account. It states that due to GDPR restrictions, the Provider does not have access to CCR reports, and would not be able to see what any particular report showed.

The Complainant contacted the Provider on **15 November 2019** to advise that his CCR report showed the Personal Insolvency Unit address. The Provider states that on receipt of the CCR report, the first Complainant was referring to this address being noted as a historical address. This was not reported as his current address. The Provider made enquiries as to whether it could facilitate the first Complainant's request to have this amended, and sent a request to the CCR on **26 November 2019** to have the historical address deleted. This request was complied with on **13 February 2020**.

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In response to the first Complainant's submission that that his CCR report shows the last update for his current address as "31/12/2019", the Provider states that this matter should be taken up with the CCR, as it relates to CCR operations and data recording.

The Provider was asked by this office if it was satisfied that it had complied with the Errors and Complaints Resolution provisions of the **Consumer Protection Code 2012** (CPC). It was asked to show compliance in this regard.

In response, the Provider acknowledged that there was an initial delay in amending the Complainant's address in its internal records. It noted that the ICB report was not successfully updated until the first Complainant contacted the Provider on **30 January 2019**. As such, the Provider stated that there was a delay in correcting this error. It apologised for this delay, and made a goodwill gesture to the Complainants of €1,000, in full and final settlement of the matter.

The Provider submitted that it met its obligations under Provision 10.9, and continues to meet its obligations under 10.10 CPC.

In relation to its customer service, the Provider references Provision 2.8 CPC, acknowledging its initial delay and apologised for this error.

In a letter to this office of **14 April 2021**, the Provider further submitted that the second Complainant's details were not changed at any point. The first Complainant's address was automatically included on their mortgage statements, as he was the first borrower.

The Provider argues that the Complainants failed to establish a causal link between the conduct complained of in this complaint, and the subsequent refusal of the first Complainant's loan applications. It states that there was no evidence provided to support this contention. The Provider is of the view that both the ICB and CCR reports were accurate at the time of the making of those applications.

The Complaint for Adjudication

The complaint is that the Provider has maladministered the Complainants' accounts, which included the delayed amending of the first Complainant's data on his Irish Credit Bureau and Central Credit Register Reports.

The Complainants want the Provider to apologise and to compensate them “*for the financial loss suffered*” and to correct the first Complainant’s records with the Central Credit Register.

Decision

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

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

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

A Preliminary Decision was issued to the parties on 18 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.

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Evidence

In response to the first Complainant's email of **15 November 2019**, requesting the provider to amend the CCR record, the Provider stated in an email of **19 November 2019**:

"I have consulted with our Credit Bureau Reporting Department and they advise that they cannot make amendments to personal data such as name, address, Date of Birth etc.

...

Unfortunately based on the above, I cannot make any amendment to a previous address of C/O Personal Insolvency."

On **10 December 2019**, the Provider emailed the first Complainant:

"Please accept my apologies for not being in contact sooner, I was out of the office on sick leave the last two weeks.

I have received confirmation that the deletion request to remove the C/O Personal Insolvency address was sent to the Central Credit Register on 26 November 2019. We are currently awaiting confirmation that this has been completed by the Central Credit Register Operator."

The **Consumer Protection Code 2012** states as follows:

"GENERAL PRINCIPLES

A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

...

2.8 corrects errors and handles complaints speedily, efficiently and fairly;

...

ERRORS AND COMPLAINTS RESOLUTION

ERRORS

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10.2 A regulated entity must resolve all errors speedily and no later than six months after the date the error was first discovered, including: a) correcting any systems failures; b) ensuring effective controls are implemented to prevent any recurrence of the identified error; c) effecting a refund (with appropriate interest) to all consumers who have been affected by the error, where possible; and d) notifying all affected consumers, both current and former, in a timely manner, of any error that has impacted or may impact negatively on the cost of the service, or the value of the product, provided, where possible

...

COMPLAINTS RESOLUTION

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10.9 A regulated entity must have in place a written procedure for the proper handling of complaints. This procedure need not apply where the complaint has been resolved to the complainant's satisfaction within five business days, provided however that a record of this fact is maintained. At a minimum this procedure must provide that:

a) the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received;

b) the regulated entity must provide the complainant with the name of one or more individuals appointed by the regulated entity to be the complainant's point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further;

c) the regulated entity must provide the complainant with a regular update, on paper or on another durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made;

d) the regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; where the 40 business days have elapsed and the complaint is not resolved, the regulated entity must inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the complaint and must inform the consumer that they can refer the matter to the relevant Ombudsman, and must provide the consumer with the contact details of such Ombudsman; and

e) within five business days of the completion of the investigation, the regulated entity must advise the consumer on paper or on another durable medium of:

- i) the outcome of the investigation;*
- ii) where applicable, the terms of any offer or settlement being made;*
- iii) that the consumer can refer the matter to the relevant Ombudsman, and*
- iv) the contact details of such Ombudsman.*

10.10 A regulated entity must maintain an up-to-date log of all complaints from consumers subject to the complaints procedure. This log must contain:

- a) details of each complaint;*
- b) the date the complaint was received;*
- c) a summary of the regulated entity's response(s) including dates;*
- d) details of any other relevant correspondence or records;*
- e) the action taken to resolve each complaint;*
- f) the date the complaint was resolved; and*
- g) where relevant, the current status of the complaint which has been referred to the relevant Ombudsman.*

10.11 A regulated entity must maintain up to date and comprehensive records for each complaint received from a consumer."

Analysis

This office does not have jurisdiction to consider the first Complainant's allegations of defamation against the Provider. This Preliminary Decision is limited to the Complainants' assertion against the Provider of maladministration of the joint accounts.

In relation to the first Complainant's complaint, the Provider acknowledges that it failed to comply with Provisions 2.8 and 10.2 CPC insofar as it delayed in amending the first Complainant's address on its internal records. The consequence of this delay was that the Complainants received an annual mortgage statement with the incorrect address, and the ICB held an incorrect address for the first Complainant until **February 2019**. It would appear that the CCR also held this incorrect address as the first Complainant's then-current address until the Provider updated its internal records.

The first Complainant further complains that the Provider delayed in amending the first Complainant's address with the CCR until **February 2020**. As noted by the Provider, the Personal Insolvency Unit was noted as the first Complainant's 'historical' address on the CCR report. As the Provider was previously obliged to use this address for correspondence with the first Complainant, this reporting to the CCR was accurate. The first Complainant has not made submissions to the effect that this address should never have been reported to the CCR.

When the first Complainant's address was corrected on the Provider's records, the CCR report was updated to reflect the Complainant's current address. The first Complainant complains that the Personal Insolvency Unit was retained as a historical address on his record.

I do not consider that the CCR's record at this point was inaccurate. Additionally, as the Provider did not have access to the CCR record and could not see its contents, I do not believe that it had an obligation to contact the CCR to have the address deleted. However, the Provider was then specifically requested by the Complainant to make this amendment.

On **19 November 2019**, the Provider informed the Complainant that it would not be able to give effect to this instruction. However, on **26 November 2019**, it requested that the CCR make this amendment, and informed the Complainant of this action on **10 December 2019**. The CCR completed this amendment in **February 2020**. As such, insofar as the Provider made an error in informing the Complainant that it would not be able to make the amendment, it did not delay in taking steps to rectify this error. In those circumstances, I do not believe that the Provider subsequently failed in its obligations regarding the amendment of the first Complainant's address with the CCR.

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In relation to the second Complainant's complaint, I accept the Provider's explanation that the Personal Insolvency Unit address appeared on the annual mortgage statement as the first Complainant was the first borrower for those joint accounts. The Provider maintains that it did not change the second Complainant's address on its internal records at any point, and the second Complainant has not adduced any evidence to rebut this contention.

Having regard to the above, I do consider that the Provider failed in its obligations under the CPC in delaying to amend the first Complainant's address. The Provider has acknowledged this and offered a goodwill gesture of €1,000. I do not believe that the Provider further failed in relation to the reporting of the address to the CCR. Additionally, I do not believe that the Provider maladministered the joint accounts in relation to the second Complainant.

As I believe the Provider's goodwill gesture of €1,000 to be reasonable in the circumstances of this complaint, I do not uphold this complaint.

Conclusion

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

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



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

13 December 2021

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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.