



<b><u>Decision Ref:</u></b>	2021-0549
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Interest Only
<b><u>Conduct(s) complained of:</u></b>	Incorrect information sent to credit reference agency
<b><u>Outcome:</u></b>	Partially upheld

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

The complaint relates to the reporting made by the Provider to the Irish Credit Bureau (**ICB**) in respect of the Complainant's account with the Provider.

**The Complainant's Case**

The Complainant opened a mortgage loan account with the Provider in April 2006, account number \*\*\*\*\*305, (the "Loan"). The Complainant fell into significant arrears on the loan. On the **15 June 2018** the Provider agreed to the Complainant's request to amend the term of the Loan, reduce the interest rate and capitalise the arrears. This was implemented with effect from **01 July 2018**.

Following the revised repayment arrangement being put in place the Complainant wrote to the Provider on **7 September 2018** and requested that:

*'In all the circumstances, where the account is fully performing in the agreed manner if [the Provider] could immediately arrange to have [the Complainant's] ICB report corrected to reflect the revised position'.*

On **2 October 2018** the Complainant wrote a letter to the Provider stating that he had received an up-to-date ICB report and was:

*'somewhat surprised at the content, as it does not reflect [the Complainant's] relationship status with [the Provider] over the last 24 months'.*

The Complainant requests in this letter that the Provider:

*'immediately arrange to have [the Complainant's] ICB report corrected to reflect the actual position'.*

The complaint is that the Provider sent erroneous reports on the Complainant's Loan to the ICB in the period 2016 to 2018.

The resolution the Complainant seeks is to:

*"have [the Complainant's] ICB report reconciled to reflect [the Complainant's] relationship with [the Provider]".*

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

The Provider, in its Final Response Letter of **09 October 2018**, to the Complainant states that:

*[the Provider] reviewed [the Complainant's] ICB report and confirm that [the Provider] are not in a position to amend it as it accurately reflects the operation of [the Complainant's] mortgage account over the last 24 months'.*

In considering the Complainant's complaint the Provider states that it reviewed the operation of the Complainant's Loan account between the period of **01 January 2016 to 30 September 2018** and notes that during this period the Complainant entered into two Alternative Repayment Agreements ("ARA") as follows:

- The First ARA commenced **January 2017** and was terminated in **March 2017** *"as the contractual monthly repayments were not received as expected"*,
- The Second ARA was in place from **July 2017** to **December 2017**.

Following successful completion of the second ARA and an assessment of the Complainant's Standard Financial Statement in **March 2018**, the Provider set out that it offered the Complainant an 8-year extension to the Loan term, capitalisation of the outstanding arrears and an interest rate reduction to 3% Variable Rate.

According to the Provider, this restructure was not accepted by the Complainant. The Provider states that it offered the same restructure again in **May 2018** and it was accepted by the Complainant on **08 June 2018**. The Provider acknowledges that the Complainant has maintained the Loan account fully up to date since the commencement of this restructure.

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## **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The 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 27 November 2020, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the issue of my Preliminary Decision, the Provider made a submission under cover of its e-mail to this Office dated 18 December 2020, a copy of which was transmitted to the Complainant for his consideration.

The Complainant has not made any further submission.

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

Prior to considering the substance of the complaint, it will be useful to set out certain of the terms and conditions of the Complainant's mortgage account.

## Account Terms and Conditions

The Complainant signed the following separate sections of the application form on 01 February 2006:

### ***Credit reference researching and reporting***

*I / We hereby consent to [the Provider] making any enquiries it considers necessary including references to employers, accountants, mortgagees, landlords or credit reference agencies and any other parties it may deem appropriate to support this application. I / We authorise [the Provider] to seek and provide credit references (searches), to record details of any transaction which may result from this application with the Irish Credit Bureau (ICB) and ICB to record, retain and disclose to its members details of such searches for a period of one year.*

*I / We acknowledged that [the Provider] and / or ICB are permitted to disclose any material misstatement of fact contained in the application for financial accommodation to its members and relevant bodies I / We consent to any such application being processed recorded and retained by ICB.*

## Analysis

It is clear from the evidence that the Provider is contractually entitled to report the status of the Complainant's account to the ICB. However this entitlement comes with an obligation to ensure that any report made to the ICB is accurate and that if it is not then it should be amended by the Provider.

The Complainant seeks to have his "ICB report reconciled to reflect [his] relationship with the [Provider]". It is therefore necessary to examine the status of his account, during the reporting period, including the alternative payment arrangements agreed between the parties.

I note an agreement was reached in June 2018 to restructure the loan. This offer to restructure was communicated to the Complainant in a letter dated 30 May 2018 which enclosed an 'Alternative Repayment Arrangement Offer' document. The offer entailed an offer to capitalise arrears (then standing at €13,436.71), to reduce the interest rate, and to extend the term of the loan. The 'Alternative Repayment Arrangement Offer' document was signed by the Complainant on 8 June 2018 and returned to the Provider, the Complainant thereby communicating his agreement to the offer (I will refer to this as the 'June 2018 agreement'). The 'Alternative Repayment Arrangement Offer' document included the following condition at number 9 on page 7 of the document:

*[The Provider] will report to the Irish Credit Bureau and/or the Central Credit Register or any other credit reference agency as required by law and in accordance with relevant requirements (as may be varied from time to time); (a) that your mortgage is restructured, and (b) the arrears position or such profiles as may be required.*

/Cont'd...

*You should note that the existence of an adverse payment profile could impair access to future credit from other institutions.*

However, the Complainant identifies, as the period to which his complaint relates, not just the period beginning with the June 2018 agreement, but “*the last 24 months*” prior to October 2018. In the two years up to October 2018, there were two alternative repayment arrangements agreed between the Complainant and the Provider prior to the June 2018 agreement, specifically an agreement signed by the Complainant on 23 November 2016 and a further agreement signed on 29 May 2017.

The November 2016 agreement comprised an agreement whereby the Provider would accept reduced repayments for a period of 6 months beginning in January 2017. This agreement included the following condition at number 8 on page 3:

***Credit Bureau Reporting***

*All members of the Irish Credit Bureau (ICB), including [the Provider] are obliged to report the status of all loan accounts to the ICB at the end of every month.*

*Any credit bureau reporting will be subject to and in accordance with the relevant requirements (as may be varied from time to time) on the consent provided by you or as required by law. Please note that the existence of an adverse payment profile on your account could impair your access to future credit from other institutions*

The November 2016 agreement was terminated in March 2017 in circumstances where the Complainant had failed to maintain the payments as required by the November 2016 agreement.

The Complainant was notified of this failure, and of its consequences in the event of a failure to bring the payments up to date, in correspondence of 20 February 2017. The payments were not brought up to date.

The May 2017 agreement comprised an agreement whereby the Provider would accept reduced repayments for a period of 6 months beginning in July 2017. This agreement included the following condition at number 11 on page 6:

*[The Provider] will report to the Irish Credit Bureau or any other credit reference agency as required by law and in accordance with relevant requirements (as may be varied from time to time) for the duration of the agreement, an ‘M’ profile indicating that an ARA is in place or such other profiles as may be required. You should note that the existence of an adverse payment profile could impair access to future credit from other institutions.*

The Provider has furnished a table of the information it recorded with the ICB in respect of the relevant period as follows wherein 'M' denotes that an alternative repayment arrangement has been put in place, 'P' denotes 'Pending Litigation', and a number denotes the number of payments in arrears.

October 2016	P
November 2016	P
December 2016	P
January 2017	M
February 2017	M
March 2017	M
April 2017	P
May 2017	P
June 2017	P
July 2017	M
August 2017	M
September 2017	M
October 2017	M
November 2017	M
December 2017	M
January 2018	P
February 2018	P
March 2018	P
April 2018	P
May 2018	P
June 2018	0
July 2018	0
August 2018	0
September 2018	0
October 2018	0

It can be seen from the above table that a profile indicator denoting the fact of the existence of an alternative repayment arrangement ("M") was notified to the ICB in respect of the entire six month duration of the May 2017 agreement and in respect of the three month period during which the November 2016 agreement remained in being prior to its termination.

It is also evident that the Complainant's record with the ICB accurately reflects the normal status of his record from the beginning of the June 2018 agreement up to October 2018.

Accordingly, in respect of these periods, I do not accept that the Complainant's ICB record fails to reflect his relationship with the Provider.

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For the remaining periods in the two-year timeframe identified by the Complainant, his ICB record reflects that his account was designated "P" indicating that it was the subject of pending litigation.

I note the Provider in a letter dated 5 December 2017, in response to a query by the Complainant, wrote, among other things:

"...

*We then compared our internal profile with your ICB Rating. We confirm that they matched perfectly.*

*As outlined above you are currently being reported as "M" to the ICB and not "P" as outlined in your enquiry.*

*Following our review we are satisfied that your ICB Rating has been correctly reported by us."*

The Provider, in its response to this Office received on 8 January 2020, states:

*"A 'P' indicator was only reported to the ICB in respect of the Complainant's account when, for the relevant reporting period, the Complainant's account was in arrears and had been transferred to the Provider's Litigation department.*

*Accordingly, the Provider refutes the Complainant's contention that the Provider sent erroneous reports to the ICB in respect of the Complainant's loan account with the Provider during the period January 2016 to October 2018."*

In my view, the management of the Complainant's account by the Provider's litigation department does not, of itself, mean that any litigation is pending as I understand that word, even if the account is in arrears.

I am therefore of the view that it was misleading, inappropriate and unreasonable for the Provider to utilise the designation "litigation pending" simply because his account was being managed by its litigation department. The use of this designation is very serious and I believe it does not provide an accurate or fair view of the Complainant's account when used simply on the basis of which division of the Provider was managing the account.

In my Preliminary Decision I stated that while the Provider is contractually entitled to report the status of the Complainant's account to the ICB, this comes with an obligation to ensure that the report is accurate and to amend it if not. I outlined that it was my view, it was unreasonable for the Provider to use the designation "P" merely when an account in arrears is being managed by its litigation department.

The Provider has in its post Preliminary Decision submission challenged my view in this regard.

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The Provider has, in its post Preliminary Decision submission, detailed that it *“disputes this contention and states that the account was not simply managed by the Litigation Department”*, it is then detailed by the Provider that the account *“was the subject of legal activity with four separate demand letters being issued”*.

The Provider states that following the issuing of these demand letters which in its view indicated *“litigation was pending”* it *“prompted the Complainant to re-engage with the Provider”* and the Complainant would then present a proposal.

It is detailed by the Provider that *“In each instance where the Provider re-engaged with the Complainant, the Provider did not reverse its decision to litigate but rather placed litigation on temporary hold, so as the (sic) consider the Complainant’s proposal”*.

The Provider then submits a timeline of the engagement between the parties, including the dates on which its demand letters were issued.

The Provider has, as part of the post Preliminary Decision submission, supplied copies of the four demand letters issued dated **8 March 2012, 11 February 2013, 4 April 2013** and **15 September 2016**

The content of 8 March 2012 letter is as follows:

*“Your account currently has arrears of €10,980.53 outstanding. Please note that compound interest is charged on instalments in arrears and other overdue payments at the same rate of interest applying to your loan.*

*We now formally demand payment of the above arrears. **In the event you fail to address the arrears position within the next 7 days we shall instruct our solicitors to institute legal proceedings for the possession of the mortgaged property with the potential risk to you of the loss of such property.***

*The costs of any possession proceedings that may be instituted will be added to your mortgage debt. We estimate the costs of such proceedings could range from €3,000 to €13,000, but in exceptional cases may be higher. Following repossession further additional costs may also be added relating to the management and sale of the property”*.

The content of 11 February 2013 letter is as follows:

*“Dear Sir*

*We have been instructed by our client [the Provider].*

*Your mortgage account is in arrears in the sum of €22,907.44 as of the 31 January 2013.*

/Cont’d...



*We understand from our client that they have previously written to you and requested you to discharge the arrears due on the account. Despite these requests from our client, you have failed to discharge the arrears due.*

*We now call upon you to discharge the arrears within a period of 14 days from the date hereof. If the arrears are not discharged within this period, we have instructions to commence legal proceedings against you in the High Court in which we will seek an order for the possession and/or an order for the sale of the above premises.*

*If it is necessary to bring these proceedings, we will also seek to recover from you the legal costs of the proceedings.*

*It should be noted that compound interest is charged on instalments in arrears and other overdue payments at the same rate of interest applying to your loan. An arrears amount can include not only your monthly mortgage repayment but also buildings insurance premiums, legal costs, unpaid direct debit fees or other sums incurred under the mortgage and /or loan offer.*

*We estimate the costs of such proceedings could range between €3,000 and €13,000 but in exceptional cases may be higher. Following repossession further additional costs may also be added relating to the management and sale of the property. This letter will be utilised to affix the costs of any such Possession Proceedings to you. Please note that legal fees accrued to date are €400.00 exclusive of VAT and outlay, a detailed breakdown is available upon request.*

*Should the proceeds of the sale of your property be insufficient to repay your loan account, following repossession, the remaining balance shall continue to be due and owing in accordance with the terms of your mortgage facility including interest accruing, charges, legal costs, selling and other related costs”*

The content of the 4 April 2013 and the 15 September 2016 letters are similar in tone to the above correspondence, however instead of requesting the Complainant to discharge arrears both the letters state:

*“In the circumstances we call upon you now to redeem the full amount due on the Mortgage within seven days of today’s date”*

The Provider submits in its post Preliminary Decision submission that it “includes these letters as an **additional point of fact.** This is evidence that the Complainant was notified that legal proceedings were contemplated, and steps were being taken to commence legal proceedings”.

The Provider further submits that as the ICB's "website does not contain a definition section in relation to its designations" in the Provider's view "it is open to the Provider to use the 'Pending litigation' designation when the credit subject is in arrears, is not in an ARA and steps had been taken in the litigation process including multiple notifications to the Complainant that litigation was the next step". It is further submitted by the Provider that "a solicitor had been appointed in relation to that litigation".

The Provider then submits the dictionary references for "pending", which it feels supports its interpretation.

In my Preliminary Decision I stated:

*"I am therefore of the view that it was misleading, inappropriate and unreasonable for the Provider to utilise the designation "litigation pending" simply because his account was being managed by its litigation department. The use of this designation is very serious and I believe it does not provide an accurate or fair view of the Complainant's account when used simply on the basis of which division of the Provider was managing the account"*

In response the Provider, in its post Preliminary Decision submission, expresses the view that this statement "*amounts to an **error of fact***". The Provider details that "*litigation was waiting to be dealt with, likely to happen soon and impending*" (its submitted dictionary definitions). [Provider's emphasis]

The Provider concludes its post Preliminary Decision submission with the following paragraph:

*"The Provider believes that seeking to engage with a customer in an attempt to come to a mutually beneficial solution and in doing so, temporarily halting the progress of planned legal proceedings, can be in the customers best interests. The Provider submits that the alternative, which is to refuse to engage, would be contrary to the Provider's obligations under the CPC/CCMA and not in the best interest of customers. The preliminary decision implies that such engagement on the part of a Provider can no longer represent a situation where litigation is pending. In such circumstances, engagement by a customer without the intent to come to an arrangement could conceivably be used as a device to indefinitely delay litigation. It has been clearly established in the present case that litigation was pending, intended and that a solicitor was instructed. The preliminary decision makes an **error of fact** in concluding otherwise and furthermore, creates a situation where a Provider could be discouraged from engaging with a customer where litigation is pending so as to preserve the right to continue with those planned proceedings. The Provider submits that CPC has no such intention, and the preliminary decision makes an additional **error of law** by implying such an intent".* [Provider's emphasis]

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I reject the Provider's assertions in this regard. At no stage in my Preliminary Decision, or at any other stage, did I discourage the Provider from engaging with the Complainant. Nor would I ever do so. I believe it is always in the best interest of all parties that maximum engagement takes place at all times.

While I note the submissions of the Provider including its submission of '*demand letters*', It remains my view that the Provider was not correct in reporting the Complainant's loan as 'P'. It is difficult to understand how the Provider has arrived at the view that my decision "*creates a situation where a Provider could be discouraged from engaging with a customer where litigation is pending so as to preserve the right to continue with those planned proceedings*".

While four '*demand letters*' had been issued this, in and of itself, does not mean any litigation is in being or is imminently pending or planned. If it did this would effectively mean that litigation was for four years imminent/ pending on the Complainant based solely on the four letters issued between 2012 and 2016. While I note the Provider states "*In each instance where the Provider re-engaged with the Complainant, the Provider did not reverse its decision to litigate but rather placed litigation on temporary hold, so as the (sic) consider the Complainant's proposal*". Once again, I must point out that I do not believe the issuing of a demand letter amounts to litigation being in existence.

In summary, the Provider was entitled to make reports to the ICB and while some of the reports that were made were accurate and reasonable, I do not believe it was reasonable to use the designation "P" on the basis which the Provider appears to have done.

In the intervening period between the issuing of my Preliminary Decision and the issuing of this Legal Binding Decision, I note the ICB has ceased its credit reference service as of 1 October 2021. I understand that the ICB's credit records are no longer available to its members for credit referencing purposes. Furthermore, I understand that ICB has indicated that as the purpose for retaining the credit records no longer exists, it will delete all its records.

In my Preliminary Decision I indicated my intention to partially uphold the complaint. I also indicated my intention to direct the Provider to amend the Complainant's record with the ICB by removing the designation "P" and, if necessary, to amend the Central Credit Register.

However, as set out above the ICB no longer exists. Accordingly, I now partially uphold the complaint and direct the Provider to amend the Central Credit Register to ensure that the account that is the subject of this complaint does not show as pending litigation for the period covered by this decision. I also direct that the Provider pay a sum of compensation to the Complainant for the inconvenience caused. In arriving at the appropriate level of compensation, I have taken into account that the Complainant was in significant arrears during these periods. These arrears would have negatively affected his credit rating in any event. Furthermore, the Complainant has not pointed to any particular detriment caused by the designation "P". Therefore, I believe the appropriate amount of compensation, in all the circumstances, to be €1,000.

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**Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b)** as I believe the conduct of the Provider was unreasonable.

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 (i) amending the Central Credit Register, if necessary, to remove any reference to litigation pending for the period covered by this complaint and (ii) by making a compensatory payment to the Complainant in the sum of €1,000, 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**

21 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,

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and

**(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.**

