



<u>Decision Ref:</u>	2022-0037
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Sale Agreements
<u>Conduct(s) complained of:</u>	Incorrect information sent to credit reference agency Appointment of debt collection agency Delayed or inadequate communication
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the information furnished to the Irish Credit Bureau (ICB) by the Provider in relation to repayments made on an account, held by the Complainant.

The Complainant's Case

The Complainant states that she purchased a sofa in **2010** through a "0% finance" arrangement with the Provider. The Complainant asserts that she paid off the remaining balance of **€436.53** on this agreement on **28th November 2011**. The Complainant has included in her submissions a letter from the Provider dated **6th November 2011** which states:

*"AMOUNT OUTSTANDING LESS REBATE ON EARLY SETTLEMENT - €436.53
This Early settlement Amount is valid if you settle your agreement before
1/12/2011".*

The Complainant states that in **2013** she received a letter from a collections agency requesting payment of a "lump sum of arrears". The Complaint contends that at this juncture she supplied evidence of her payment records to the Provider, and to the collections agency. The Complainant submits that she subsequently received a threat of court proceedings.

The Complainant states that in **2018** she was refused finance: firstly, under an agreement to act as guarantor on her cousin's purchase of a car and secondly, when she sought to purchase her daughter's Christmas present. She asserts that she subsequently obtained a copy of her credit report in **January 2019**. The Complainant submits that the report recorded "*negative data from [the Provider]*", specifying 24 months of 6 months' arrears and a written off amount as at **October 2016**. The Complainant submits that this information is "*incorrect*".

The Complainant submits that in **March 2019** she contacted the Provider to notify it of her incorrect credit report. The Complainant states that she was advised by the Provider that "*it would be rectified in 28 days*". The Complainant submits that in **May 2019**, the report had still not been rectified and that she contacted the Provider again to notify it that her credit report was still incorrect. The Complainant asserts that she was advised by the Provider that it would be "*another 28 days*" before the matter was rectified. The Complainant says that her credit report was "*still not rectified*" and that she proceeded to email the Provider again with regard to the matter in **June 2019** and **July 2019** but she did not receive a reply.

The Complainant is disappointed that it took an extensive period of time to resolve the matter, and only after she had made numerous calls and repeated requests to rectify the situation.

The Complainant wants her credit report to be rectified and for the negative information to be removed. She states that this has caused her a lot of "*worry and stress as the information is untrue*". The Complainant would like to be compensated for her "*time and the stress of having bad credit and trying to get it cleared*".

The Provider's Case

The Provider contends that the Complainant entered into a fixed term credit agreement which had a zero balance since **28th September 2016**, when the balance of €718.13 was written off by the Provider as no payments had been received since **25th November 2011**.

The Provider asserts that the account had been given an "*interest free offer*" whereby if the cash price of the goods had been fully paid by **1st December 2011**, interest would not have been payable.

The Provider states that on **1st December 2011**, €1354.81 had been paid by the Complainant, but the cash price was in fact €1398.00, leaving a shortfall of €43.19. The Provider accepts that there is no evidence to indicate that the existence of this shortfall was communicated to the Complainant before **June 2013**. At that point, six letters were sent to the Complainant notifying her of the outstanding arrears of €718.31, comprising €675.12 in interest plus the shortfall from the original agreement of €43.19.

In its Final Response Letter dated **19th September 2019**, the Provider contends that following its telephone conversation with the Complainant in **September 2016**, “it removed the debt balance” from her account.

The Provider goes on to state that:

“This was an error, the debt should not have been removed, as I have noted earlier, the balance was owed as you did not fully settle the account within the interest free period...Based on the information available to me and in consultation with our Credit File team the arrears status was accurate as you had failed to maintain contractual payments and did not settle the account.”

When the Provider responded to the formal investigation by this Office, of this complaint, it acknowledged a number of breaches on its part of the provisions of the Central Bank of Ireland’s of the Consumer Protection Code. It advised that in its view correct information had been shown on the ICB’s credit profile until March 2019, when the account was reviewed by a team manager and a decision made to amend it to remove negative bureau data, due to no contact regarding the arrears since 2013. The provider says that after this, it is apparent the Complainant’s credit file should have been amended, and the final response letter issued in reply to the complaint should not have defended the negative entries on the customer’s credit file.

The Complaint for Adjudication

The complaint is that the Provider wrongfully submitted incorrect information to the Irish Credit Bureau (ICB) over a continuing period from **2013** onwards, regarding arrears and a write off of the Complainant’s account balance (each of which the Complainant says is an error) and, despite requests, the Provider has failed to correct this.

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.

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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 **7 January 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

Chronology of Events

- **19th June 2010:** The Complainant entered into a fixed term credit agreement for furniture with the Provider
- **28th October 2010** – Provider asserts that Complainant entered arrears and a letter was sent to her explaining that the Direct Debit payment had been unsuccessful.
- **6th November 2011:** Provider sends the Complainant an Early Settlement Offer whereby if the cash price of the goods had been fully paid by **1st December 2011**, interest would not have been payable
- **6th November 2011:** Provider notified Complainant that the Early Settlement Offer is only given after the “Special Offer Date” (SOD) has passed.
- **5th June 2013:** The Provider sent the Complainant a letter notifying her of the outstanding balance of €718.31 that had been due since **December 2011**
- **15th June 2013:** A further arrears letter was sent by the Provider to the Complainant
- **22nd June 2013:** A further arrears letter was sent by the Provider to the Complainant
- **29th June 2013:** A further arrears letter was sent by the Provider to the Complainant
- **6th July 2013:** A further arrears letter was sent by the Provider to the Complainant
- **30th September 2013:** Complainant receives warning of court proceedings and writes to the Provider seeking confirmation that any outstanding balance had been paid.
- **6th October 2013:** Provider writes to Complainant confirming that her account is being managed by its Arrears Department and that her query has been forwarded to them
- **September 2016:** Telephone call between Complainant and Provider’s agent, wherein Complainant communicated her understanding that she had settled the account in full. Provider’s agent said he would refer the matter to another department
- **28th September 2016:** Provider removed debt balance from Complainant’s account
- **27th February 2019:** Complainant writes to Provider stating that she has received a copy of her credit report which contains references to arrears and a write off. She asserts this did not happen and seeks rectification of the matter
- **1st March 2019:** Complainant writes to Provider referring to her previous correspondence in 2013. She states that in the meantime she has been refused

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credit. Shas received a copy of her credit report which includes apparently incorrect information

- **6th March 2019:** Provider writes to Complainant apologising for the delay in response and the inconvenience caused. It seeks a copy of the Complainant's credit file so that an investigation and review can take place
- **7th March 2019:** Complainant sends Provider a copy of her credit file and evidence of another company's refusal to provide her with credit in November 2018, as a result of the negative credit report
- **20th March 2019:** Complainant seeks an update from the Provider in respect of its investigation
- **22nd March 2019:** Provider writes to Complainant confirming that "*as no contact was made when the payment was due*", a request has been made to remove the "*negative data*" from her credit file. The Provider states that the amendment can take up to 28 days to update
- **7th May 2019:** Complainant writes to Provider stating that the credit reference agency has not yet received information from the Provider on her credit record
- **15th May 2019:** Complainant writes to Provider seeking information that was sent to the credit agency "*so that I don't need to open a query with the credit ombudsman*". The Complainant states that she needs any negative incorrect information removed from her credit report. She writes: "*Can you advise when it was sent, and what was sent, did you mark any arrears as incorrect?*"
- **28th May 2019:** Provider writes to Complainant confirming that her email has been forwarded to its amendments team to complete her request. The Provider notes that "*it can take up to 28 days to be updated with the relevant agencies*"
- **19th July 2019:** Complainant lodges complaint with this Office
- **19th September 2019:** Final Response Letter is issued by the Provider.

Evidence

(i) Credit Agreement

A copy of the credit agreement and its terms and conditions have been furnished to this Office as part of this complaint. In the 'Credit Product' section, the agreement states as follows:

"This is a 48 month agreement payable either by a first instalment of €43.19 (including Administration Fee, if any) on 23rd July 2010 and followed by 46 monthly instalments of €43.19 payable on the same day of each month;

OR

If this agreement is a Cash Price Option, by a first instalment of €43.19 (including Administration Fee, if any) on 23rd July 2010 and followed by 14 monthly instalments of €43.19 payable on the same day of each month, with a final payment of €750.15 payable on or before 23rd September 2011 Special Offer Date)

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The second option is the option to settle for the cash price, as long as this was paid in advance of the "Special Offer Date"

(ii) Early Settlement Letter

On **6th November 2011**, the Provider wrote to the Complainant stating the following:

*"Following your recent request, I am pleased to inform you of the following information in relation to early settlement of your agreement...
...AMOUNT OUTSTANDING LESS REBATE ON EARLY SETTLEMENT - €436.53
This Early settlement Amount is valid if you settle your agreement before 01/12/2011".*

(iii) Correspondence of 6th November 2011

The Provider contends that the above letter of **6th November 2011** was sent in error, in circumstances where such early settlement offers are only issued once the customer has missed the "Special Offer Date". The Provider asserts that this was clarified with the customer in an email on **6th November 2011**. However, that email has not been furnished in evidence to this Office and the Provider has provided only a note in this regard, which states:

"MISSED THE SOD FULL INTEREST WILL BE APPLIED TO THE AGREEMENT. ADV CS WE ONLY GIVE ESM AFTER THE SOD WHEN THEY HAVE MISSED THE SOD

(iv) Telephone Records

The Provider has also furnished a record of data displaying the inbound and outbound calls it had with the Complainant when she allegedly fell into arrears following her payment of €436.53 on **25th November 2011**.

The Provider asserts that due to the age of the account, it does not possess recordings of the calls. The data provided shows that four outgoing calls were made to the Complainant on **5th June 2013**, three outgoing calls were made to the Complainant on **7th June 2013**, two outgoing calls were made to the Complainant on **10th June 2013**, two outgoing calls were made to the Complainant on **11th June 2013**, one outgoing call was made to the Complainant on **12th June 2013**, two outgoing calls were made to the Complainant on **13th June 2013**, one outgoing call was made to the Complainant on **18th June 2013**, one outgoing call was made to the Complainant on **19th June 2013**. The Complainant called the Provider on **30th September 2013** and **21st September 2016**, and the Provider subsequently called the Complainant on **21st September 2016**.

(v) Final Response Letter dated 19th September 2019

The Provider's Final Response Letter outlines the terms of the payment arrangement as set out above. It states that:

"We issued correspondence to you regarding this balance as your account was in arrears and if a customer has not maintained the required payments under the terms and conditions of the agreement this can be recorded on their credit file".

The letter refers to a telephone conversation between the Provider and the Complainant. It is noted that a recording of this telephone conversation was not made available to this Office. The letter states:

"During the telephone call you told the agent you had paid the account in full and you questioned the €718.31 balance. The agent suggested to you, was the €436.53 you had paid on 25 November 2011 a previously agreed early settlement figure. You did not say it was, but you believed you had paid the account in full.

He did not conduct a full account history review with you but said he would refer the matter to another department and I see that on 28 September 2016 we removed the debt balance from your account. This was an error, the debt should not have been removed, as I have noted earlier, the balance was owed as you did not fully settle the account within the interest free period."

Analysis

The Complainant entered a "0% finance" agreement with the Provider to purchase a sofa. The Complainant sought to avail of an early settlement offer set out in the Provider's letter of **6th November 2011**. The letter clearly referred to a balance of **€436.53** being owed and stated that:

*"This Early Settlement Amount is valid if you settle your agreement before **01/12/2011**."*

The Provider acknowledges that this early settlement offer should not have been issued at that time, and was done "in error". It says that this was clarified with the customer in an email on **6th November 2011**, which stated that such early settlement offers are only issued, once the customer has missed the "special offer date".

The Complainant submits that she paid off the balance of €436.53 on **28th November 2011**, within the period specified in the letter of **6th November 2011**. The Provider's records show that this payment was made on **28th November 2011**.

The Complainant heard nothing further from the Provider until **June 2013** whereupon she received correspondence from a collections agency requesting payment of a 'lump sum of arrears'. I note that, at this point, the Complainant sent evidence of her payment to both the Provider and the collections agency.

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Although the Complainant made the payment of €436.53 referred to in the Early Settlement Offer letter, the Provider contends that this payment, although received, was not sufficient to conclude the repayment arrangement.

The reasons for this are stated to be that the value of the goods was **€1,398.00** and the interest charge was set at €675.12, with monthly repayments of €43.19 to commence from **October 2010**. It says that by **25th November 2011**, the Complainant had made 12 payments of €43.19 and payments of €400 and €436.53 by bank transfer or credit/debit card. These transactions totalled **€1354.81**. It says that the interest free offer ended on **1st December 2011** and the Complainant had not paid the full original value of the goods, being €1398.00. As a result, the interest charge of €675.12 and shortfall of €43.19 became owed. Therefore, a balance of €718.31 fell due.

It is apparent to me that at this point the Complainant believed that she had paid off the debt in full, by way of the payment on **28th November 2011**. She did not receive any correspondence from the Provider in respect of this matter to suggest otherwise until **June 2013**, some eighteen months later.

In response to a query from this Office in relation to any communications with the Complainant in relation to her final payment on **28th November 2011**, the Provider submits that:

“No correspondence would have been needed until the account was in arrears, at which point, the arrears letters were sent and calls were made.”

The first apparent communication made by the Provider to the Complainant in respect of the arrears owed, was in a letter of **5th June 2013**, which notified her of the purportedly outstanding balance of €718.31 that had been due, since **December 2011**. Regrettably, this Office has been provided only with a template copy of this letter, and not with a copy of the one sent to the Complainant. The Provider also says that four subsequent letters were sent by the Provider to the Complainant in respect of the arrears (on **15th June 2013**, **22nd June 2013**, **29th June 2013** and **6th July 2013**). The Provider has furnished template copies of these letters also. The template letters submitted in evidence contain no details of the addressee, no title or surname within the salutation, no account number, no agreement number and no details of any arrears, or balance, in addition to being entirely undated. This is not acceptable and in my opinion these templates are of insufficient probative value in this investigation.

I am satisfied that the Provider is under an obligation to furnish accurate and fair information to the ICB. This serves to protect both the financial service provider and the customer. The Provider has a weighty responsibility in that respect, in circumstances where the credit profile of an individual has very significant implications, and if not accurately recorded, it can severely affect that person's ability to access other credit facilities.

It is apparent that the Provider failed to effectively communicate the balance owed to the Complainant, in its letter of **6th November 2011**. Neither did it acknowledge the payment it

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received from the Complainant in response to that letter, nor the impact or consequences of that payment to her account.

In my opinion the Provider also showed significant delay in communicating the arrears status to the Complainant, who understandably believed she had already fully settled the account. She paid the exact figure of **€436.53** quoted in bold on the face of the aforementioned letter, in order to avail of the 'Early Settlement' offer made to her in November 2011.

The Provider says that the Complainant was notified of the fact that she received the early settlement offer in error, however, the Provider has not in my opinion, offered adequate evidence to this Office, to establish that it took effective steps to notify the Complainant that a balance remained outstanding, what that balance was, and how it had arisen.

When the Provider did eventually draw the Complainant's attention to the arrears status of the account, eighteen months had elapsed. The Complainant received repeated letters and numerous phone calls in **June 2013** in respect of an arrears status she did not believe was accurate.

It is noted that despite receiving numerous phone calls and letters in respect of the arrears in **June 2013**, the Complainant only engaged with the Provider in respect of the matter upon the threat of court proceedings in **September 2013**, at which point she wrote to the Complainant seeking confirmation that any outstanding balance had been paid. At this point, the Provider notified her that her account was being managed by the Arrears department. However, it appears that a further three years then elapsed before either party took further steps.

In **September 2016**, the Complainant telephoned the Provider to communicate her understanding that she had settled the account in full. The Provider's agent said he would refer the matter to another department, and the debt balance was subsequently removed from the Complainant's account. This is reflected in the Complainant's credit report, which shows that the latest balance of €0.00 was updated on **2nd October 2016**.

According to the Provider's Final Response Letter, this balance was removed in error at that time, as the balance was owed because the Complainant did not fully settle the account within the interest free period.

On **27th February 2019**, the Complainant wrote to the Provider stating that she had received a copy of her credit report which contained references to arrears and a write off. She asserted that this "*did not happen*" and sought rectification of the matter. The Provider repeatedly told the Complainant that the matter would be rectified within 28 days; however, despite repeated requests by the Complainant in **June** and **July 2019**, the Provider failed to amend the Complainant's record.

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The Provider concedes and the service provided to the Complainant was not satisfactory. It acknowledges its failure to respond to the Complainant's requests seeking an explanation of the balance and her requests to amend the credit file.

I note that the Provider apologised for the inconvenience caused and it states in its Final Response Letter of **19th September 2019** that its service level has fallen short of its goal to provide an efficient and "*problem free*" service. However, it affirms that the Complainant's Credit File status was accurate as she had failed to maintain contractual payments and did not settle the account. It states that it removed the outstanding balance of €718.31 in error but that it does not intend to ask the Complainant to repay this amount.

It is clear to me from the evidence however, that the Complainant was not effectively or appropriately informed of the nature of this balance on her account, despite repeated requests by her to the Provider for an explanation, and for confirmation that her account had been settled.

In my opinion, in late 2011, the Complainant was entitled to believe that the account had been discharged in full, by way of the payment which she had made, in response to the early settlement offer she received in writing from the Provider. In those circumstances, the Provider's action in removing this outstanding balance from the Complainant's account in September 2016 (which it describes as having been done in error) and its more recent confirmation in reply to the investigation of the Office, that it does not seek to pursue the Complainant for any balance, is not an adequate compensatory measure in my view.

It is apparent from the documentary evidence and submissions provided by the parties that although the Complainant incurred arrears on her account with the Provider, the Provider failed to notify her of these arrears (as it has failed to adduce any adequate evidence that this was communicated effectively to her). It is apparent that the Complainant suffered as a result of this ineffective communication, in that she was refused credit when applying to be a guarantor on the purchase of a car, and when attempting to purchase a gift for her daughter.

I am conscious that the Complainant's complaint against the Provider is that it wrongfully submitted incorrect information to the Irish Credit Bureau over a continuing period from 2013 onwards. I am satisfied on the basis of the evidence made available by the parties, that it is appropriate to uphold this complaint. In my opinion it is not adequate for the Provider to simply say that the early settlement offer made available to the Complainant in November 2011 was simply an error, when she clearly relied upon it in order to settle her account in full at that time. The complete absence of any evidence of communication from the Provider, from the time of that payment, until 2013 is entirely unacceptable and I am satisfied that the Provider has a case to answer in that regard.

The Irish Credit Bureau report, of **January 2019**, clearly shows 23 indicators showing 6 months of arrears with the 24th indicator displaying a "W" by way of confirmation that a write-off had occurred. In my opinion, the indicators on this ICB printout were in no way or

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manner accurate by reference to the factual interactions as between the Complainant and the Provider; bearing in mind the complete absence of adequate communication from the Provider to the Complainant, I take the view that the registration of such indicators with the ICB was entirely unacceptable.

I note that the Provider wrote to the Complainant in **October 2013** confirming that her account was being managed by its Arrears Department and that her query had been forwarded for dealing. The complete absence of any further communication thereafter to address the Complainant's query was unacceptable in my opinion.

Indeed, when the Complainant spoke with the Provider agent in **September 2016**, explaining that she had settled the account in full and the Provider indicated again that the matter would be addressed by another department, I note that the Provider's next step was to remove the debt balance from the Complainant's account, but it subsequently indicated that the removal had been "in error".

The Provider has a very important duty and obligation to its customers to ensure that correct credit reference information only is filed with credit reference agencies. Incorrect repayment indicators can have a very significant and serious impact upon a person's ability to access credit. The Provider also has obligations to its customers to maintain adequate record keeping, and whilst its failures in this particular matter occurred many years ago, this obligation is one which I believe the Provider should consider and review, in the context of its ongoing service provision.

Accordingly, on the basis of the evidence available, I consider it appropriate to uphold this complaint as I take the view that the Provider's conduct in this matter has been unreasonable within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**, as amended. To mark that decision, I have made certain directions detailed below. This includes a direction regarding the CCR only, as the Irish Credit Bureau has ceased to operate and, accordingly, credit references are no longer made available by the ICB, and its records have been deleted.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld, on the grounds prescribed in **Section 60(2)(b)**.
- 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 ensuring that no negative indicators have been registered by the Provider with the Central Credit Register, regarding this borrowing by the Complainant in 2010, and if any such have arisen, by ensuring the removal of any such negative indicators, insofar as they are referable to the Complainant's credit agreement with the Provider in **2010**, which I have found to have been repaid in full, on **28 November 2011**.

- I also direct the Provider to make a compensatory payment to the Complainant in the sum of **€3,000** (Three thousand Euro) 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.



MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

31 January 2022

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.