



<u>Decision Ref:</u>	2022-0062
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Maladministration (mortgage) Incorrect information sent to credit reference agency Refusal to transfer mortgage into sole or joint names
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns the First Complainant's credit rating.

The Complainants' Case

The First Complainant asserts that his credit rating has been negatively impacted due to reports submitted to the Irish Credit Bureau (ICB) by the Provider and that these actions have *"affected [him] professionally and personally"*.

The First Complainant sets out in his submissions his recollection of the events surrounding the restructure of his parents' mortgage, contending that the Provider incorrectly added him as a joint borrower, with his parents, in or around **March 2009**. The First Complainant states that this arrangement commenced following his father getting *"into trouble with the payments"* on his mortgage with the Provider.

The First Complainant states that he agreed to assist his father at that time *"on the basis that [he] was not to be a joint borrower and [on the basis that he] was not to be blacklisted in any way in relation to this mortgage"* and he has detailed his understanding of the restructure in his submissions.

The First Complainant contends that the Provider *"at no point ever wrote to [him] about this mortgage until [he] discovered in 2016 that [he] was on the ICB"*. He goes on to state that he *"queried this with [the Provider] and only then did they start posting arrears letters to [him]"*.

The First Complainant stated in a letter to this Office dated **22 August 2018** that he conducted an ICB check in **2016**, however, the Complainants' representative subsequently stated in a letter dated **24 May 2019**, that the ICB check was carried out in **2017**. The First Complainant contends that he:

"...Carried out an Irish Credit Bureau Search which showed that [the Provider] had entered a rating that was adverse to him in both a business and a personal capacity..."

The First Complainant has submitted that the negative credit rating continues to affect him, stating in 2018 that:

"... my wife and I have had our second baby, recently, I have been declined for loans for car finance in the past few months but now to be declined for a small loan to buy another pram has really irritated us."

The Complainant wants the Provider to pay him compensation in the amount of €75,000.

The Provider's Case

The Provider stated in its Final Response Letter dated **16 March 2018** that:

*"...if [the First Complainant] is a party to a loan that is in arrears, there will be an adverse effect on his ICB rating. It is the Bank's position that [the First Complainant] is liable for the borrowing on Account Number 149***/*. [The First Complainant] requested the Transfer of Equity (TOE), to introduce himself as a co-borrower, in order to allow the borrowing term to be extended with a lower monthly repayment. The consideration for [the First Complainant's] offer to become a co-borrower on the loan was a change to the term of the loan in favour of [the First Complainant's] other co-borrowers. The Bank has made it clear that an extension of the term of the loan was not available in the absence of [the First Complainant] assuming joint liability for the loan."*

In addition, in its formal response to the investigation of this Office, by way of letter dated 1 July 2020, the Provider set out a timeline of events from March 2009 to 22 May 2018 when its Final Response Letter issued to the Complainants.

The Provider advised when responding to this Office that matters relating to the ICB element of the Complainant's complaint were not discussed prior to 2018 but, throughout the relevant period, the Provider wrote to the Complainant, at his nominated address, in relation to the arrears' status of the loan. The Provider made available copies of the relevant correspondence in that regard.

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Jurisdiction of the FSPO

The issue of the jurisdiction of this office has been the subject of submissions and correspondence passing between this Office and the Complainants. By way of correspondence dated **08 May 2019**, this office sent a “*preliminary opinion*” wherein the Complainants’ primary grievance was summarised as a failing on the part of the Provider to correctly give effect to the First Complainant’s intentions in **March 2009**, the point when he was added as a borrower to his parents’ mortgage account. Subject to any submission that the Complainants wished to make, they were advised by this Office that the “*complaint falls outside the jurisdiction of the FSPO*” by reference to **Section 51** of the **Financial Services and Pensions Ombudsman Act 2017** (hereinafter ‘the Act’).

The First Complainant’s representative responded by letter dated **24 May 2019** referring to the fact that the First Complainant has discovered his negative credit rating on foot of an ICB search “*carried out in 2017*”. A point was also made regarding an allegation that the Provider ‘discouraged’ the Complainant from seeking “*independent advice in respect of the transaction*” (understood to be the addition of the First Complainant as a borrower to his parents’ mortgage account in March 2009).

The First Complainant’s representative went on to summarise as follows:

Our client became aware of the conduct complained of, after he discovered that his credit rating was adversely affected by [the Provider’s] actions and furthermore the complaint in respect of the discouraging of independent legal advice was made within the six year time limit.

...

You further point out that the legislation allows our clients to make a complaint within 3 years of when they were made aware of the behaviour. Since there is now a call on jurisdiction we would point out our client only knew of the consequences of the behaviour when he went to avail of a new product i.e. the opening of a bank account and saw a negative rating on his ICB report.

The aforementioned correspondence from the First Complainant’s representative gave rise to the further examination of the jurisdictional issue and, ultimately, this Office issued its Final Determination of Jurisdiction in a letter of **12 December 2019**. This confirmed that both the complaint regarding the addition in March 2009 of the First Complainant as a borrower to his parents’ mortgage account, and the complaint regarding the alleged discouragement to seek independent legal advice at that same time, fell outside the jurisdiction of this Office, owing to the elapse of time before the complaint was made to the FSPO.

In coming to this conclusion, this Office noted that the Complainant had raised a complaint with the Provider in November 2012 regarding his addition as a joint-borrower. This evidenced that the First Complainant was aware of this issue, no later than in November 2012, and therefore it was not open to him to rely on **Section 51(2)(iii)** which provides for a time limit of 3 years from the date on which the person making the complaint became aware, or ought reasonably to have become aware of, the conduct giving rise to the complaint because that time limit expired in November 2015, but the complaint was not made to the FSPO until 2018.

The time limit of 6 years from the date of the conduct giving rise to the complaint was equally not satisfied.

The Final Determination of Jurisdiction of **12 December 2019** concluded that the Complainant was entitled to pursue his complaint regarding the continuing reporting of negative indicators to the ICB. This determination was expressly stated to be subject to the following:

It should however be noted that in investigating the Complainant's complaint regarding his negative ICB rating, this office will not investigate whether the Provider wrongfully added the Complainant as a joint-borrower to the Mortgage in or around March 2009 (save insofar as it is necessary to consider such matters in order to investigate the Complainant's grievances regarding the negative ICB rating).

The Complaint for Adjudication

The complaint is that the Provider has reported incorrect information to the ICB regarding the First Complainant, and that his ICB rating has been adversely affected as a result.

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.

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A Preliminary Decision was issued to the parties on **24 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.

I note that the 'Transfer of Equity' document signed by the First Complainant (and by his father) on 21 March 2019, includes the following passage, directly underneath which the signatures appear (underlining added):

Credit reference searching and reporting

[The Provider] may from time to time make enquiries relating to you by contacting your employers, accountants, mortgagees, landlords and credit reference agencies and may also provide information to credit reference agencies concerning this application and the manner in which the account is conducted. For this [the Provider] requires your consent. Please note that if you do not consent [the Provider] may not be able to consider your application. Credit reference agencies will keep a record that a search has been made (usually for a year) and may disclose that fact and the information relating to you provided by [the Provider] to their other members. I/we authorized [the Provider] to make such inquiries as it deems necessary to carry out credit reference searches against me/us, and to provide information concerning this application and the conduct of the account to credit reference agencies.

I am conscious in that regard that the complaint regarding the recording of negative indicators with the ICB falls to be considered by reference to the terms and conditions of the borrowing, to which the Complainants agreed.

The terms underlined above, which were expressly accepted by the First Complainant (and I note that the signatures appearing underneath the passage were referable to this particular passage only) clearly authorised the Provider to provide information concerning the conduct of the account to credit reference agencies. Accordingly, the evidence confirms that the negative reporting made to the ICB when the recalculated repayments were not met, was fully authorised and lawful. As the First Complainant was a co-borrower at this time, I am satisfied that such reporting by the Provider, in terms of the First Complainant's credit rating, was authorised and legitimate.

I also note that the First Complainant states that he agreed to assist his father in 2009 on the basis that he "*was not to be blacklisted in any way in relation to this mortgage*". The First Complainant's letter of 21 March 2009, wherein he noted his agreement "*to putting myself on the mortgage*", in fact stated as follows:

Please ensure my name is not blacklisted from any previous issues on this mortgage.

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I believe it is reasonable to conclude that this request was directed towards all and any historic defaults and did not concern any further event of default that might occur in the future.

With regard to the First Complainant's contention that the Provider "*at no point ever wrote to [him] about this mortgage until [he] discovered in 2016 that [he] was on the ICB*", I note that the Provider has furnished 'Arrears Correspondence' which reflects that relevant correspondence was sent to the First Complainant.

I have noted that this correspondence was sent to the address he supplied on the 'Transfer of Equity' document (the same address as the First Complainant's parents), which I also note is the same address the First Complainant supplied on the Complaint Form submitted to this Office. I am satisfied in that regard that the First Complainant's contention that he was not sent arrears' correspondence, is not borne out by the evidence.

In light of the entirety of the foregoing, and in the absence of evidence of wrongdoing by the Provider or conduct within the terms of **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017**, I do not consider it appropriate to uphold the 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.



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

15 February 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

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

