



<b><u>Decision Ref:</u></b>	2022-0082
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Car Finance
<b><u>Conduct(s) complained of:</u></b>	Dissatisfaction with customer service Delayed or inadequate communication Failure to process instructions in a timely manner Failure to process instructions
<b><u>Outcome:</u></b>	Substantially upheld

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

This complaint arises from a Personal Contract Plan (“PCP”) agreement the Complainants entered into with the Provider through a motor dealer.

#### **The Complainants’ Case**

The Complainants say that they entered into a PCP agreement with the Provider in **March 2017**, through a motor dealer. The Complainants submit that due to the Provider not receiving the full paperwork from the motor dealer on time, there was a delay in setting up their direct debit repayment. The Complainants state that they ‘*were kept in the dark*’ while the Provider and the motor dealer were engaging on the matter. The Complainants state that they have had to wait three years for the Provider to accept the error and make amends.

The Complainants submit that they were ‘*confused*’ by the Provider in how it dealt with the matter. They state that at one point they were told that they ‘*could be accused of bad debtors*’. The Complainants attest that the Provider arranged to set up a meeting with its agent, but that this meeting did not happen because the Provider’s agent had left the organisation some time previously.

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

The Provider, in its letter of **16<sup>th</sup> June 2020** states that due to an error made during the set-up of the Complainants' finance facility a payment was missed, which resulted in the account carrying one payment in arrears from **June 2017** onwards.

The Provider proposed that this **June 2017** payment be cleared by way of the Provider writing off this payment. The Provider states that this write-off will be reported to the Consumer Credit Register to reflect this.

The Provider states that in order to bring the terms of the agreement up to date since the conclusion of the direct debit in **March 2020**, it proposed a payment break, which guaranteed the minimum future value of the Complainants' vehicle ("**GMFV**") extension to **August 2020**.

The Provider, in its letter dated **8<sup>th</sup> September 2020**, submits that the Complainants had requested that their direct debit not be reinstated. The Provider states that this request was submitted to its fulfilment team however, due to an operator error the direct debit was reinstated. As a result of this error, three direct debit payments were raised on the Complainants' account.

The Provider says that the Complainants were also advised by one of their agents that another agent would contact the motor dealer where the car was purchased. The Provider submits that this agent was not aware that the other agent had left the employment of the Provider.

The Provider states that the service that the Complainants received during this time "*fell short of the standard we strive for in [Provider] and for this I apologise*".

### **The Complaint for Adjudication**

The complaint is that the Provider proffered poor customer service in respect of the Complainants' PCP agreement from **2017** onwards.

### **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.

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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 **11 February 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**

#### **2017**

- **27th March 2017:** PCP Finance Agreement was entered into by the Complainants. The agreed term was for 35 months, to commence on 27<sup>th</sup> April 2017. After the period of 35 months, an optional payment of €13,018.24 could be paid on 27<sup>th</sup> April 2020.
- **26<sup>th</sup> April 2017:** Letter from Provider to Complainants enclosing copy of PCP agreement and acknowledging receipt of completed Direct Debit instructions
- **2<sup>nd</sup> May 2017:** Direct Debit to payment account was refused by the Complainants' paying account
- **8<sup>th</sup> May 2017:** Letter issued by Provider to Complainants notifying them that their Direct Debit payment would now be €294.87 per month with effect from **27<sup>th</sup> May 2017**
- **16<sup>th</sup> May 2017:** Telephone call from Complainants to the Provider, advising that the Direct Debit issue had been resolved, and it was now active
- **23<sup>rd</sup> May 2017:** Telephone call from the First Complainant to the Provider, advising that he is unable to afford two payments in May. Provider advised that the two payments were due as a result of the Direct Debit for the previous month, i.e. April 2017. The Provider advised the First Complainant that a request would be made to push the missed payment out to the end of the agreement.
- **25<sup>th</sup> May 2017:** Telephone call from Provider to the Complainants to advise that the Provider was in a position to push out the missed payment to the end of the agreement
- **17<sup>th</sup> July 2017:** Telephone call from First Complainant to the Provider, noting that the June direct debit payment had been rejected. The First Complainant advised that he had contacted the paying Bank and was of the view that the issue lay with the Provider, and not the paying Bank.
- **24<sup>th</sup> July 2017:** Call from First Complainant to Provider regarding the stopped June payment. The First Complainant again advised that he believed the issue lay with the

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Provider and not their paying bank. He advised the Complainants would not be paying the June payment if it was determined that the block was due to the Provider. Complainants' handwritten notes record this call as taking place on **25<sup>th</sup> July 2018**.

- **26<sup>th</sup> July 2017**: Call from the First Complainant to the Provider, requesting a Final Response Letter from the Provider with regard to the June payment issue and delay in set up. The Provider states that the First Complainant requested GAA tickets, so as to '*sweeten the deal*'. The Provider refused to comment.
- **31<sup>st</sup> July 2017**: Call from the First Complainant to the Provider. The Provider advised it would pass on the complaint so that the investigation could proceed, and a Final Response could be issued.
- **4<sup>th</sup> August 2017**: 5 Day Acknowledgement Letter was issued by the Provider to the Complainants
- **14<sup>th</sup> August 2017**: Final Response Letter issued in respect of the delay in the set-up of the account and the missed Direct Debit payment in **June 2017**. The letter advised that the payment that was missed in **April 2017** due to the delay of the set up, had been pushed to the end of the agreement
- **17<sup>th</sup> August 2017**: Telephone call from First Complainant to the Provider. He advised of his receipt of the Final Response Letter and that he would not be paying the **June 2017** payment.

## 2018

- **23<sup>rd</sup> March 2018**: Telephone call from First Complainant to the Provider regarding the Final Response Letter. He advised that his next course of action was to contact this office.
- **21<sup>st</sup> May 2018**: Telephone call from First Complainant to the Provider, advising that he was not in a position to pay the outstanding **June 2017** payment, and was discussing the issue with the intermediary motor dealer.
- **13<sup>th</sup> November 2018**: Telephone call from First Complainant to the Provider in respect of the Final Response letter of **14<sup>th</sup> August 2017**. Complainants sought clarity in respect of who was at fault regarding the proof of address issue.
- **13<sup>th</sup> November 2018**: Telephone call from First Complainant to the Provider looking for a particular representative's contact telephone number
- **14<sup>th</sup> November 2018**: Telephone call from First Complainant to the Provider regarding the Final Response Letter, particularly who was at fault in respect of the proof of address issue
- **6<sup>th</sup> December 2018**: Letter from Complainants to the Intermediary in respect of the delay in set up of Direct Debit agreement.

## 2020

- **21<sup>st</sup> January 2020**: Telephone call from the First Complainant to the Provider, looking to speak to a specific representative of the Provider. The Complainant noted issues in respect of the missed Direct Debit payment, querying if the arrears were to be moved to the end of the agreement. The Provider's agent advised that there were options available to the Complainants to make up the missed payment.

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- The Complainant enquired as to what would happen if the missed payment was not paid. The Provider advised that the payment would have to be made in accordance with the contract.
- **9<sup>th</sup> March 2020:** Direct Debit on account was ended by the Complainants
- **20<sup>th</sup> March 2020:** Telephone call from the First Complainant to the Provider enquiring about when the final payment of the PCP agreement falls due. The Provider advised that the final payment was due in **May 2020** and noted that a particular representative of the Provider would contact the Complainants and the Intermediary, and that representative would get in touch with the Complainants. The Complainants were advised of the option of a payment break.
- **12<sup>th</sup> May 2020:** Telephone call from First Complainant to Provider. The First Complainant advised that they were unhappy that they did not receive a call back in respect of the set-up of their account.
- **14<sup>th</sup> May 2020:** Letter of complaint from Complainants to Provider. The Complainants state that the set-up of the loan account was poor and that they were informed during a telephone call on **12<sup>th</sup> May 2020** that a particular representative of the Provider would be in contact with them, but no such contact took place.
- **21<sup>st</sup> May 2020:** 5 Day Acknowledgement Letter was issued by the Provider to the Complainant.
- **25<sup>th</sup> May 2020:** Telephone call from First Complainant to the Provider. The First Complainant requested the contact number of a particular representative of the Provider. The Provider's representative advised it would lodge a request for a payment break in respect of the Complainants' account. The First Complainant sought a Final Response Letter, having already issued a letter of complaint to the Provider (on **14<sup>th</sup> May 2020**).
- **15<sup>th</sup> June 2020:** Payment Break letter was issued by the Provider to the Complainants in terms set out in the Final Response Letter issued on **16<sup>th</sup> June 2020**.
- **16<sup>th</sup> June 2020:** Final Response Letter issued by the Provider to the Complainants. The Provider acknowledged that there was an error in the initial set-up of the loan account, which resulted in a payment being repeatedly carried over since **June 2017**. The Provider offered to clear the outstanding payment and, in light of the cessation of the Direct Debit arrangement in **March 2020**, to arrange for a payment break to the agreement at no additional expense to the Complainants.
- **14<sup>th</sup> July 2020:** Complaint Form sent by the Complainants to this Office
- **27<sup>th</sup> July 2020:** Payment Break Letter of **15<sup>th</sup> June 2020** signed and accepted by the Complainants
- **13<sup>th</sup> August 2020:** Telephone call from First Complainant to the Provider. The First Complainant refers to conversations had with a representative of the Provider on previous occasion. The First Complainant referred to the three instalments taken from the Complainants' account despite the payment break that was in place. The Complainant objects to the manner in which the Provider was communicating with the Complainants and requests that communications take place via post. The First Complainant advised that he wished to bring the issue to this Office's attention. The First Complainant took issue with having to deal with multiple representatives of the Provider. The Provider advised that it would request that a refund be made, and that someone contact the Complainants to resolve issues.

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- **17<sup>th</sup> August 2020:** 5 Day Acknowledgement Letter issued by the Provider to the Complainants
- **31<sup>st</sup> August 2020:** Payment Break letter issued by the Provider to the Complainants, in the terms set out by the Final Response Letter issued on **8<sup>th</sup> September 2020**.
- **8<sup>th</sup> September 2020:** Final Response Letter issued to the Complainants. This letter recognised the operator error that resulted in the direct debit payments being taken during the payment break period as agreed on **27<sup>th</sup> July 2020**. This letter also noted that a representative of the Provider was due to speak to the Complainants, and this did not take place. The Provider advised that the particular representative identified by the Complainants was no longer working for the Provider; however, this was not known at the time by the representative of the Provider who offered to arrange the telephone call. In light of this error, the Provider offered the sum of **€500.00** by way of goodwill gesture. The Provider also confirmed that a second payment break letter would be issued offering a payment break at a rate of 0% interest.
- **5<sup>th</sup> October 2020:** Payment Break letter of **31<sup>st</sup> August 2020** signed and accepted by the Complainants.
- **13<sup>th</sup> October 2020:** Telephone call from Provider to Complainants to confirm whether the Complainants wanted to go ahead with payment break. The Provider's agent was unaware of previous conversations between Provider and Complainant.
- **16<sup>th</sup> October 2020:** Telephone call from Provider to the Complainants in respect of the payment extension and to get the payments up to date. The account and the surrounding issues were discussed. The Provider confirmed that there was a 0% interest payment break in place until **January 2021**.
- **16<sup>th</sup> October 2020:** Telephone call from the First Complainant to the Provider in respect of the first telephone call from the Provider to the Complainant earlier that day during which the Provider's representative sought payment of 2 payments. The First Complainant notes that this Office has a pending investigation in respect of the matter. The First Complainant advised of his willingness to make a payment, but objected to the nature of the call made earlier that day, namely, being asked security questions before proceeding with the call. The Provider's agent advised that this was usual security protocol and that such questions were to be expected at the outset of any telephone communication with the Provider.
- **21<sup>st</sup> October 2020:** Final Response Letter issued by the Provider to the Complainants. This letter advised of the payments owed in respect of the loan account.
- **2<sup>nd</sup> November 2020:** Telephone call from the First Complainant to the Provider, requesting that payments be taken on the account in the amount of €884.61. The First Complainant states that he received a message from the Provider outlining the options regarding an additional payment break. The First Complainant states that he did not receive an email to which the message refers. The First Complainant queried why the Direct Debit has been refused on the account again, and requests a call back.
- **5<sup>th</sup> November 2020:** Telephone call from the First Complainant to the Provider. The First Complainant requests to make a complaint in respect of communications with the Provider.

## 2021

- **27<sup>th</sup> January 2021:** The PCP agreement between the Provider and the Complainants matured. As of this date, the Guaranteed Future Value payment (“GFVP”) fell due.
- **27<sup>th</sup> January 2021:** The Provider debited the amount of €11,543.89 from the Complainants’ account
- **23<sup>rd</sup> April 2021:** Letter from Provider to this Office enclosing settlement proposal

### Evidence

#### (i) Letter of Recognition

In respect of the relationship between the Provider and the motor dealer intermediary, the Provider makes reference in its submissions to a sample Letter of Recognition that is issued by the Provider to such Credit Intermediaries. It is noted that the Provider has been unable to provide an exact copy of the letter issued to the intermediary in the present matter. The sample letter provided sets out the Provider’s obligations in compliance with s.144 of the Consumer Credit Act, 1995. The Letter of Recognition sets out the legal basis for the relationship between the Provider and the Intermediary.

The Letter states:

*“This recognition is given solely for the purpose of Section 144 of the said Act and does not grant you any right to pledge our credit, accept, reject or negotiate agreements on our behalf in respect of the provision of credit. Under no circumstances are you authorised to give any warranty or make any statement or representation on behalf of [the Provider] in respect of any credit which may be made available by [the Provider] to consumers....*

*In completing the proposal on behalf of the Customer you certify that you are acting on the instructions and as agent for the Customer in completing the form, and are certifying in each case the completeness and accuracy of the information on the proposal form”.*

#### (ii) Letter of 23<sup>rd</sup> April 2021 from Provider to this office

The Provider wrote to this office in acknowledgement of further submissions made by the Complainants in the investigation of this complaint. The Provider acknowledges that it debited the amount of €11,543.89 from the Complainants’ account on **27<sup>th</sup> January 2021** and notes that a refund was processed the following day at the Complainants’ request. The Provider refers to Clause 3 of the Terms and Conditions which sets out the ‘Options at End of Hiring’.

The options can be summarised as follows:

- Option 1: The Complainants must pay the GMFV and become owner of the car

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- Option 2: The Complainants pay the final payment or hand in the car as a set off for other goods/new agreement
- Option 3: The Complainants hand back the car and not pay the GMFV.

The Provider states as follows:

*"If none of these options are indicated within 21 days of the end of the agreement, Option 3 is the default.*

*The Provider points that no option was indicated to the Provider within the requisite 21 days, thus making Option 3 the default. In these circumstances, the Complainants are liable to hand back the car and not pay the GMFV. The Provider must point out that the car has not been handed back by the Complainants and the GMFV was refunded at the Complainants' request."*

The Provider goes on to make reference to the Complainants' submissions and notes they have alluded their desire to go with Option 2, *"but to date the Complainants have neither paid the final payment, nor handed back the car as set off for other goods/new agreement."*

It continues:

*"However, the Provider notes that it should not have processed the direct debit payment on the **27<sup>th</sup> January 2021** and must apologise for any inconvenience caused to the Complainants as a result. Taking this into account, the Provider would like to offer €1,000 in full and final settlement of this dispute"*

*(iii) Letter from Provider dated **16<sup>th</sup> June 2020** in response to Letter of Compliant dated **14<sup>th</sup> May 2020** in respect of engagement issues*

The relevant excerpts from the letter state as follows:

*"Firstly, please accept my sincere apologies on behalf of the [Provider], for the service you received and for any upset and alarm caused to you as a result.*

*Due to the error made during the set-up of your Finance facility resulting in a missed payment, the contract/account had been carrying one payment in arrears since June 2017.*

*Your comments on this matter and the service you received has been formally recorded and highlighted to Management."*

*(iv) Complainants' further Submissions in response to the Provider*

The Complainants responded to the Provider's settlement proposal by e-mail on **6<sup>th</sup> May 2021**. They rejected the proposal and made the following further submission:

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*"The Provider states we should have handed back our car within 21 days after 27<sup>th</sup> January 2021. We refute this as [Agent] spoke to us on the **27<sup>th</sup> January 2021** telling us they would be contacting us in the very near future to refinance the loan. As outlined previously this did not happen. We never got a recording copy of this conversation as of yet where another member of the Provider states I used foul language towards him. Further submission is where the Provider has phoned me on **26<sup>th</sup> April 2021** asking me what I want to do about the balance remaining. [Agent] has never mentioned to me on this date that we were in default with our contract, only to start making payments again. I then reminded her that this was to be done in early February according to [Agent]. She said she had no knowledge of this only to identify [Agent] as Head of Operations. I was accepting what she was saying and asked would there be outstanding interest and she said no. I then said I would ring her back at my earliest chance, which I did on **30<sup>th</sup> April 2021** and left a message on her phone. The Provider puts a different twist on this in their latest submission. However [Agent] has contacted me on **5<sup>th</sup> May 2021**, where she said she has no such message from me on her phone. There is always from the start of this agreement, phone calls that can't be traced from the Provider and we are not happy about this".*

The Complainants made a further submission in response to the Provider on **7<sup>th</sup> May 2021**, wherein they stated:

*"I am very hurt that the Provider has said on **27<sup>th</sup> January 2021** that he received a very aggressive call from me and further said I told him [Expletive]. That is taking my good name. Why can't the Provider produce the recording of this call? [Agent] also rang me on this date and told me he was a head personnel at [Provider]. He told me he was returning the money they withdrew from my account and strongly advised me to a SEPA transaction from my side as this would be a faster process. He then told me they would be in touch with me ASAP to refinance the loan. This recording can't be found either. They then say they were in default of the agreement...we need the truth please. Then the Provider offers 1000 euro for all their mistakes and think it's all ok".*

The Provider responded to this submission in a letter dated **12<sup>th</sup> May 2021** in which it refers to the call of **26<sup>th</sup> April 2021** that took place between the Provider's representative and the First Complainant. It confirmed that this call was not recorded, nor were the calls of **27<sup>th</sup> January 2021**. The Provider confirmed that it is not obliged to record all calls between its representatives and customers. It is apparent from the representative's note of the call that the First Complainant was informed of the fact that the call was not being recorded. The Provider states:

*"...the Representative clearly advised the Complainant that they sought to speak to him about the refinancing of PCP finance agreement, which had reached an end in January of this year. The Representative advised the Complainant of the balance of the account and asked if the Complainant intended to refinance the agreement. The Complainant clearly stated that he wished to "hear back from the FSPO to hear the offer" before he would consider refinancing.*

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The First Complainant responded to the Provider on **13<sup>th</sup> May 2021** as follows:

*"..The Provider says they rang me on the **26th April 2021** to organise the refinancing of the remaining balance on the loan. The Provider admits to making contact with me on this date because your goodselves [referring to this office] asked them to do so. Hence this backs up my earlier submission where I said the Provider told me on **27<sup>th</sup> January 2021** they would be in touch ASAP to refinance this loan, but alas this didn't happen. I was always waiting between these dates mentioned above for the Provider to contact me which never happened. I see where the Provider does not admit to me ringing her and leaving a message on her mailbox on the **30<sup>th</sup> April 2021**. I referred to start financing the remainder of the loan in this message. Further to this submission, I can't emphasise enough about the way Provider says all calls between us are not recorded. If this is the case the Provider has no such right to concoct a malicious story saying on **27<sup>th</sup> January 2021**, that I was threatening and abusive and swore at them during a phone conversation. I take a very dim view of this and without it been backed up it hurts me greatly, to think a professional institution would stoop so low."*

The First Complainant made an additional submission on **14<sup>th</sup> May 2021** as follows:

*"...Since we now know that the Provider never got back to me as promised by [Agent] on **27<sup>th</sup> January 2021** until such time they were advised to by yourselves [referring to this Office], should they forfeit those 3 months payments. I think they should because its pushing my loan 3 months further from completion. Thanks."*

The Provider responded to this submission by letter on **17<sup>th</sup> May 2021**. The Provider refers to their previous submission which noted that the Complainant "*advised he won't look to refinance anything until he has heard back from the FSPO to hear the offer*". The Provider submits that this demonstrates the Complainants' attitude in that they seek to defer any refinancing arrangement until the completion of this Office's adjudication. The Provider suggests that its alleged lack of engagement is related to this attitude of the Complainants more so than the Provider's failings.

In respect of the First Complainant's submissions in respect of the telephone conversation on **27<sup>th</sup> January 2021**, the Provider says it is satisfied that the recollection of the calls on that date were accurately recorded by the Representatives in attendance, on the calls.

The First Complainant replies to this letter from the Provider by email on **17<sup>th</sup> May 2021**, stating:

*"I find the first part of the Provider's submission an utter nonsense and indeed an avoidance to face facts. I'll explain, on the **27/1/2021** the Provider said they would the refinancing of the loan started ASAP which has never happened, only for yourselves drawing this to their attention. I always awaited hearing from them regardless to any correspondence from yourselves."*

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*It is very clear from dates, that we never heard of any offer from the Provider until at least 3 months after the **21/1/2021**. Therefore, why did the Provider not fulfil their promise as regards to refinancing the loan. Furthermore, when the Provider made contact with us during late April after been advised by yourselves as they admitted, it was a lady that had overcharged us previously, which made us very uncomfortable. We did explain to the Provider (lady) that we had all confidence lost in them as they had overcharged the second time round. Now we all know the saying "fool me once shame on you fool me twice shame on me" hence this is as I have said "a nonsense" and I'm not entwined by it. Secondly, the Provider makes no submission as to the voice message I left on their phone on **30/4/21** where I wanted to make payments. Thirdly the Provider is happy with the recordings that took place between us on **27/1/21**. Can we have this recording please.*

The First Complainant made a further submission in respect of the Provider's letter of **17<sup>th</sup> May 2021**, by email of **19<sup>th</sup> May 2021**. He states:

*"A further submission to the Provider's latest submission, which I have already referred to as an utter nonsense and where I now refer it to be totally disgraceful and again very misleading where I'm now going to explain. The Provider took money from our account last July or thereabouts without our permission. This happened under [Agent's] watch. They then put this money back after it was made known to them. They then made collections later a while, with us paying manually via debit card. They then where can be seen asked for two payments in one month, December I think to finish out the 36 month contract. As you'll see we made no hesitation to pay those payments in the same month last December, where one will agree, a very lean time to be paying out money that could have been handled better by the Provider due to their overcharging the previous July. And now they come on with a concocted story that I am avoiding payments because I told [Agent] when she contacted me on **26/4/21** that I had confidence lost in her due to past experiences. Why did the Provider put [Agent] back in this role after what happened, that said we are now doing a new contract with [Agent] after her reinsurance that it's now straightforward process, but this is totally our decision whether to work with [Agent] or not. I find the Provider most abusive towards us in there last response as you can see we always went the extra mile to keep our contract up to date. The Provider makes it clear, they can make mistakes and then try their best to mislead the whole situation. The Provider always finds it difficult to answer very straightforward questions, which leads me back to an easy question. Why did the Provider let 3 months lapse since **27/1/21** until you [this office] prompted them to do so.*

The Complainant submits one further response to the Provider's stance on the matter by way of email on **3<sup>rd</sup> June 2021**, wherein he states:

*"Why did the Provider activate a direct debit to withdraw 11,500 plus euro on **27/1/21**, when as said before the previous payments made before this date were done manually, i.e. taken from Visa Debit Card.*

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*This looks very clear that their goal was to do as they done on the 27<sup>th</sup> January 2021, which was to drain our account of the said sum without our knowing or indeed permission. Furthermore we have now received a letter from the Provider dated **21/5/21**. This letter is very stern, and demands us to make payments asap. It sets out clearly that we are in arrears and in breach of contract. It also demands 321.64 euro immediately. This letter is signed by [Agent]. This is totally contrary to what the Provider was clear in telling us on **26/4/21**.”*

*(iv) Audio Evidence*

**Telephone call of 25<sup>th</sup> July 2018**

As per the Chronology of Events set out above, the Provider records this conversation as taking place on **24<sup>th</sup> July 2018**. The Complainants’ handwritten notes of the conversation note it as occurring on **25<sup>th</sup> July 2018**. Their notes state:

*“Spoke with [Agent]... about Direct Debit. Drew her attention to come...about DD date. She agreed that they had not received the paperwork from the garage in time for the first DD on 27/4. They then went looking for payment on the 8/5/17 when we were advised to stop the DD from [Paying Bank].*

**Telephone call of 20<sup>th</sup> March 2020**

The Complainants make reference to this telephone conversation in the handwritten contemporaneous notes submitted to this Office as part of their complaint. Their notes state:

*“Spoke with [Provider’s Agent] ... said it was set up badly and changes were made. [Agent] said he would get [another Agent] to liaise with [Intermediary] and myself. We explained to [Agent] we did not think this was one problem and [Agent] agreed. If [Intermediary] make a mistake with Direct Debit it’s not our fault. [Agent] agreed.”*

The Complainants make further reference to this conversation in a separate handwritten note which states:

*“Friday 20/3/2020 at 3.10pm, spoke with [Provider’s Agent], said he would get [Agent] to liaise between [Motor Dealer Intermediary] and myself. [Said Agent] retired 12 months ago.”*

**Telephone call of 12<sup>th</sup> May 2020**

The Complainants make reference to this telephone conversation in the handwritten contemporaneous note submitted to this Office as part of their complaint. Their note state:

*“Call went through, [Provider] repeatedly apologised for the delay in communication. Meet with [Agent] where he told me he was Credit Card Collection after a struggle to put me through to [Agent] where he said think GMF was postponed.*

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*Then he put me on hold for 15 mins to find any updates to my file and said 2 payments were fine due to Covid-19, April and March. He then told me we can keep the repayment of €295 until January 2021 and change our car at this time. He also told me he was making a note of my complaint to put on file”*

**Telephone call of 27<sup>th</sup> May 2020**

The Complainants make reference to this telephone conversation in the handwritten contemporaneous notes submitted to this Office as part of their complaint. Their notes state:

*‘[Agent] rang me...wanting to extend the PCP for 3 months and when she was made aware of HISTORY she decided to get someone more senior to contact me”*

**Telephone call of 28<sup>th</sup> May 2020 (No Audio Evidence submitted)**

The Complainants make reference to two telephone conversations on this date in the handwritten contemporaneous notes submitted to this Office as part of their complaint. Their notes state:

*“[Agent] spoke to me for 17 minutes wanting to know what we were doing with our contract. She told me [Provider] sent me out a letter indicating our contract was due to expire. I said we got no letter. She then told me the [Provider] was extending PCP contracts with added interest. This is totally contrary to what [other Agent] told us earlier on a few occasions*

*[Agent] told me our contract should expire in April of this year which she explained was 36 payments from April 2017. [Agent] also said the Bank were giving 3 months...due to Covid-19.*

*[Agent] then told me she would find a copy of the letter we did not get in March/April and find out how much interest is owed. I think she is...[illegible]...as Bank are closed since March/April”.*

*“Spoke with [Agent] where he told me [Provider] were giving extension on PCP loans and assured me he would ring me on the **26<sup>th</sup> May 2020**. He did not ring me on **26<sup>th</sup> May 2020**.”*

**Telephone call of 27<sup>th</sup> July 2020**

The Complainants make reference to this telephone conversation in the handwritten contemporaneous notes submitted to this Office as part of their complaint. Their notes state:

*“Spoke with [Agent] and she assured me there was nothing in the forms that we are now signing and posting to [Provider] that could mislead us. She also made it clear that there is only 2 instalment of €291 left on this contract. When she receives our signatures she will talk again. She also said our names will now be removed from Credit Rating Bureau...”*

/Cont’d...

**Telephone calls of 13<sup>th</sup> August 2020**

The Complainants make reference to telephone conversation with the Provider on this date in the handwritten contemporaneous notes submitted to this Office as part of their complaint. Their notes state:

*"Phoned [Agent], went to answer machine. Phoned [Provider] head office. [Another Agent] took call. She took complaint and assured me a reimbursement of money taken on 11<sup>th</sup> August 2020. She told me I would get letter of apology and then somebody would ring me to start the process again"*

**Telephone call of 27<sup>th</sup> August 2020**

The Complainants make reference to three telephone conversations with the Provider on this date in the handwritten contemporaneous notes submitted to this Office as part of their complaint. Their notes state:

*"Spoke to [Agent], explained we were getting conflicting letters from [Provider] looking for Direct Debit signed and payments made from different tellers. We explained to [Agent] we were confused and were waiting for the clarification on the complaint before we were going to budge with payments. [Agent] assured me that she would get someone to ring me ASAP."*

*"[Agent] rang me around 4.00pm and told me I was getting a gesture of goodwill to the tune of €450 including interest [on] 2 payments of 291. I explained we were not due any interest due to [Provider's] mistakes she was arrogant and would not agree to same".*

*"[Agent] rang me at 4.45pm and told me [Agent] never charge the interest that [other Agent] referred to. I paid the 2 instalments of 291 and he assured me this was the final of the PCP payment.*

**Telephone conversation of 13<sup>th</sup> October 2020**

The Complainants make reference to telephone conversation with the Provider on this date in the handwritten contemporaneous notes submitted to this Office as part of their complaint. Their notes state:

*"...[Agent] from [Provider] rang me to ask me did I want to go ahead with the Payment Break. He told me he was not aware of my previous talks with [Provider]. He said he would get back to me soon".*

**Telephone conversation of 16<sup>th</sup> October 2020**

The Complainants make reference to two telephone conversations with the Provider on this date in the handwritten contemporaneous notes submitted to this Office as part of their complaint.

Their notes state:

/Cont'd...

*“Call from [Agent] at Collections looking for 2 payments. Demanding my personal data. Asked him did he know about letter [Reference is made by Complainants to letter received on **15<sup>th</sup> October 2020** dated **7<sup>th</sup> October 2020** demanding €13,018.29 with interest of €93.08) He said no and got snotty. He didn’t know about [other Agent’s] call on **13<sup>th</sup> October 2020** either.*

*“Rang [Provider] at 11am to make a complaint about most recent events. Met [Agent] who totally understood my confusion about letter dated **7<sup>th</sup> October 2020**. Said he would...[illegible] with [Agent] and the team about the case and would log my complaint with a letter about same coming.*

#### Telephone conversation of **2<sup>nd</sup> November 2020 – (D)**

The Complainants make reference to two telephone conversations with the Provider on this date in the handwritten contemporaneous notes submitted to this Office as part of their complaint. Their notes state:

*“Rang [Provider] and met with [Agent], explained I never got any emails as message sent to my phone from [Provider] on **30<sup>th</sup> October 2020** suggested. [Agent] took my mobile number and said she would ring me back ASAP. Rang back at 15.55 and said he mislaid my account number and looked for it again promising to ring the morning after, on 3/11/20. [Complainants later note in their handwritten records that this Agent never called them back].*

#### Telephone conversation of **5<sup>th</sup> November 2020**

The Complainants make reference to two telephone conversations with the Provider on this date in the handwritten contemporaneous notes submitted to this Office as part of their complaint. Their notes state:

*“Meet [Agent] at 9.56am logging complaint and apologised for [other Agent] breakdown and [Provider] in honest communication again, totally agreed with our frustration in message sent on the **30<sup>th</sup> October 2020** to my phone. [Agent] said he would email me with receipt of complaint.”*

#### Telephone conversation of **2<sup>nd</sup> December 2020**

The Complainants make reference to telephone conversations with the Provider on this date in the handwritten contemporaneous notes submitted to this Office as part of their complaint. Their notes state:

*“[Agent] rang looking for payment and when asked about Direct Debit he said he set it up after we made payment last month. That is interesting as he said on the 4/11 he did not know why it was not working”*

#### Telephone conversation of **3<sup>rd</sup> December 2020**

The Complainants make reference to telephone conversations with the Provider on this date in the handwritten contemporaneous notes submitted to this Office as part of their complaint. Their notes state:

*"[Agent] rang from [Provider] to collect a payment of €294.00. He got this payment but was unable to tell me why our Direct Debit was not set up to take same. This Direct Debit has been madly managed by [Provider], has got me 3 payments in December. I pointed this to [Agent] as to a complaint to hear him say I have already made a previous complaint. He took the payment.*

*I feel I followed all instructions from [Provider] only to find out as we went forward that they were not adhering to any of my communication endeavours. See all correspondences and dates where they accuse me of not making payments".*

#### Telephone conversation of 27<sup>th</sup> January 2021

The Complainants make reference to telephone conversations with the Provider on this date in the handwritten contemporaneous notes submitted to this Office as part of their complaint. Their notes state:

*"Spoke to Head of [Provider] on mobile...where he suggested I get [Paying Bank] to recall €11,501 through SEPA...*

#### Further written submissions by the Complainant (undated)

##### *Summary of all Dealings with [Provider]*

*1) We started with the Provider on 27<sup>th</sup> March 2017. On the 27<sup>th</sup> April 2017 we noticed our Direct Debit was not taken. We then contacted the Provider to find out why this happened, and to be told there was a problem between the intermediary and the Provider. We were told by the Provider that it was the intention to take 2 payments in the following month (27/5/17). We were not at all happy with this and would not go with the plan. The Provider then suggested they would leave the missed payment until the end of our contract. We were never happy with this and made our point clear on several occasions. This always stayed on our minds up until 30<sup>th</sup> March 2020.*

*4) Provider take 3 payments manually from us over the phone? Why did they not ring us for the €11,500 plus they withdrew from our Account. We have emailed the Provider (NO'T) on 19<sup>th</sup> August 2020 and 27<sup>th</sup> August 2020 twice, which were not replied to.*

*We have emailed the Provider on 30<sup>th</sup> October 2020 and the 2<sup>nd</sup> November 2020 and got no reply. We have phoned the Provider on 20 or more occasions where they don't confirm, only to say they have not recorded all our calls. Are they submitting the calls that suit them? They also say they have the initial contract "I think" between the intermediary and themselves mislaid.*

*5) A The Provider has admitted to some mistakes in their contract, but they have not admitted to all.*

*b) The Provider is forming the point of view that we signed to have our loan cleared in full on 27<sup>th</sup> January 2021. This is not the case as outlined above.*

/Cont'd...



c) *The Provider has not submitted all calls between ourselves. These calls are most important.*

d) *It is my opinion the Provider has misled me on occasion*

e) *The Provider says I was very aggressive on 27<sup>th</sup> January 2021. I don't think that to be the case. However, if someone was down 12k, I think they would be making their point very clear. We will need a recording of this call.*

f) *The Provider says they rang me at 12.30pm 27<sup>th</sup> January 2021 and state I was taking my 12k back through SEPA. This is not the case as the Provider suggested I do this as it would be quicker to retract the 12k this way The Provider rang me on his mobile [Mobile number inserted] and assured me he was the Head of [Provider]. He also told me I could ring him at any time if needed. It seems too generous to me that the Provider would put this money back if they were fully entitled to do so.*

g) *The Provider says they were compensating to €1174.87 which includes €380 interest. The Provider has stated earlier that they*

*7) We're not charging interest*

*8) The Provider withdrew €11,543.8 taking into account their compensation package of €1,174.87.*

*Why did the Provider do this without the compensation agreement being signed. As above we signed no compensation agreement.*

*This concludes summary of events until I received the call on **27<sup>th</sup> January 2021** from the Provider.*

*...that the Provider would be starting a new contract on 27<sup>th</sup> January 2021, ie changing our car at this point and using our current car as the deposit for same. At no point were we made aware by the Provider that we were clearing the loan in full on 27<sup>th</sup> November 2021. Now in our opinion this was totally misleading information from the Provider. On 2 occasions, more so on 27<sup>th</sup> January 2021 we were left without Bank Account drained without one knowledge by the Provider. This leads me to think the Banks policy is to apologise rather than look for permission as is easier."*

### **Analysis**

According to the original PCP agreement, the GFVP was **€13,018.24**. The GMFB amount of €11,543.89 was debited from the Complainants' account on **27<sup>th</sup> January 2021**.

The First Complainant contacted the Provider to advise that he had not authorised the Provider to take this amount from his account. The Provider submits that this was contrary to his acceptance of the extension letter. Per the Complainants' request however, the payment was recalled.

/Cont'd...

The First Complainant advised that when the funds were returned to him, at that point, he would then liaise with the Provider in respect of the payment of this amount, over a period of two years. The Provider makes reference to call notes it has included in the evidence provided to this Office, as part of its submissions.

It is apparent from a reading of both the sample Letters of Recognition issued by the Provider to the intermediary and the PCP finance agreement itself, that the motor dealer intermediary in the present case is recognised as an Approved Credit Intermediary within the meaning of the Consumer Credit Act, 1995. The motor dealer intermediary in the present case did not act as the Provider's agent in the facilitation of finance, and instead acted as the Complainants' agent in submitting a finance proposal for the Provider's consideration.

The role of the intermediary was as agent to the Complainants in the submission of a financing proposal, and therefore the recording obligations of all pertinent information relating to such financing proposals lay with the intermediary.

The PCP finance agreement, a copy of which has been submitted, demonstrates that the contract is ultimately between the Provider and the Complainants.

#### Set-up of the PCP Agreement

The initial query raised by the Complainants related to a delay in the set-up of their account. This delay resulted in the first payment, which was due on **27<sup>th</sup> April 2017**, being missed. The Provider's Final Response Letter of **14<sup>th</sup> August 2017** sets out that this delay was as a result of an issue regarding proof of their address, which required clarification from the motor dealer intermediary. As set out above, the intermediary had a responsibility for ensuring all information relevant to finance proposals was submitted to the Provider, and to ensure the accuracy of such information.

The Provider submits that it has an obligation to obtain sufficient proof of address in advance of activating a PCP agreement. It is apparent, therefore, that it was the intermediary's responsibility to ensure that the Complainants' proof of address issue was resolved. The issue was resolved on **13<sup>th</sup> April 2017**, and the Provider submits that it received the appropriate documentation for processing, on **20<sup>th</sup> April 2017**. The account was subsequently activated on **27<sup>th</sup> April 2017** and the Provider submits that the intention was to take the payments for *both* the April and May periods on **27<sup>th</sup> May 2017**.

As is set out in the Chronology of Events above, the First Complainant contacted the Provider by telephone on **23<sup>rd</sup> May 2017**, a number of days before the above-mentioned intended double payment date. During this call, the First Complainant advised that they would not be in a position to make the two payments within the one month. The Provider submits that a request was made to move the **April 2017** payment, to the end of the agreement in 2020. The Provider confirmed it was in a position to do so on **25<sup>th</sup> May 2017**, and the payment was moved.

The Provider submits that it is satisfied that the delay in the set-up of the agreement was not due to a delay on its part, but rather a delay in the provision of complete information from the intermediary. The Provider submits that despite this delay, it acceded to the Complainants' request to defer the delayed payment to the end of the PCP agreement.

The Provider submits that this evidences *"its good engagement with the Complainants in seeking to resolve an issue the Complainants were experiencing, but for which the Provider was not responsible"*. I accept this. In my opinion, it was an appropriate solution for the April 2017 payment to be held over, to the end of the 3 year period.

#### June 2017 Payment

In respect of the missed direct debit payment in **June 2017**, the Provider notes in its Final Response Letter of **14<sup>th</sup> August 2017** that the payment was rejected by the paying Bank, and this was not the fault of the Provider. It submits that it was a matter for the Complainants to contact the paying Bank, and notes it was unable to assist any further on this particular matter. I accept this. There is no evidence before me to indicate that the Provider bears any responsibility for the missed payment in question.

#### Customer Service Issue

In respect of the Complainants' assertion that the Provider failed to give satisfactory customer service in respect of the PCP agreement and their prior complaint, the Provider acknowledges that there were certain instances in which its actions fell short of the level of service expected of it, over the course of the loan. However, it states that it has made a fair and reasonable offer of compensation to the Complainants in recognition of these instances. It also submits that *"these are isolated incidents"* and *"are not reflective of the Provider's customer service in general"*. The Provider is of the view that it dealt with the Complainants *"in a fair and professional manner at all times throughout its interactions"*.

The Provider refers to its Final Response letter of **16<sup>th</sup> June 2020**. It notes that this letter was written in response to the Complainants' letter of complaint of **14<sup>th</sup> May 2020**, which noted issues concerning the Complainants' experiences with engagement between the Provider and the Complainants regarding the set up of the account in 2017. The Provider notes that an aspect of this complaint related to inaccurate advice that a particular representative of the Provider would investigate matters for the Complainants, when in actual fact, the representative in question was no longer employed by the Provider. I note indeed, that at that point, the issue regarding the set up of the account had been resolved 3 years earlier, as outlined above.

It is apparent from listening to the audio evidence submitted as part of this complaint that the Complainants were repeatedly told that their queries would be dealt with, and that a representative of the Provider would contact them. These follow up calls were however never made, which understandably contributed to the Complainants' frustration with the Provider and the inconvenience caused to them. The Provider submits that *"if and when these issues arose, the Provider made apology and an offer of recompense"*.

Although the Provider's agents were at all times courteous in their dealings with the Complainants, I do not accept that sufficient acknowledgement was made of the confusion caused to them. It is clear from the audio evidence that the approach taken most often by the Provider's agents in respect of the Complainants' queries was to attempt to refer the matter to another colleague, and it was rarely the case that this colleague would deal with the Complainants' issues.

Although it has caused undeniable inconvenience and distress to the Complainants, the Provider cannot be held responsible for the delay in it receiving accurate information at the outset of the PCP arrangement. In any event, I note that it adopted appropriate steps that the Complainants were agreeable to in the circumstances, by moving the first payment to the end of the loan arrangement and I therefore consider this aspect of the matter to have been long since resolved.

Although the Provider has recognised that certain instances of poor customer service took place in respect of the Complainants, it submits that these are isolated incidents. However, this does not detract from the fact that these instances of poor service contributed to the overall inconvenience and concern caused to the Complainants throughout this process. In those circumstances, noting these failures by the Provider, I take the view that its conduct was unreasonable within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**, as amended. In my opinion the €500.00 compensation offered is not sufficient in circumstances where the audio evidence makes it clear that the Complainants did not receive an appropriate level of service, given their level of engagement and the clear distress and inconvenience this matter was causing them.

I appreciate that the Provider has redressed the losses suffered by the Complainants, such as the direct debit being taken unexpectedly from their account in **January 2020**. However, I consider it appropriate to substantially uphold the complaint and to direct the Provider to uplift the compensation offered to the Complainants to a figure of **€850** (eight hundred and fifty euros) in recognition of the inconvenience caused to the Complainants.

It will be a matter for the Complainants to liaise directly with the Provider with a view to deciding on the option which is most appropriate for them, following the maturity of the PCP agreement and they can decide whether to return the vehicle, make an additional payment or indeed use the vehicle as a part set off for other goods in respect of which a new PCP will be entered into. It is disappointing that these issues have given rise to such a delay in the exercise of these options, but it will be a matter for the Complainants to now proceed with the option which best suits them.

## Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld on the grounds prescribed in **Section 60(2)(b)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €850 (eight hundred and fifty euros) to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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  
Financial Services and Pensions Ombudsman (Acting)

7 March 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.