



<u>Decision Ref:</u>	2022-0141
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Personal Loan
<u>Conduct(s) complained of:</u>	Incorrect information sent to credit reference agency Dissatisfaction with customer service Refusals (banking) Opening / closing of credit facility Failure to implement payment terms
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns mortgage loan and credit facilities extended by the Provider to the Complainant.

The Complainant's Case

The Complainant states that he entered a period of unemployment starting in **May 2018**. He continued to make his mortgage loan payments until **November 2018**, when he requested a moratorium on his mortgage loan for **3 months**, as he expected his employment position to improve after a period of time.

The Complainant states that the Provider's branch representatives "*refused to have anyone I could sit down with and explain my situation*", and informed him that he would have to go through a phone or online request process.

The Complainant states that he sought a **three-month** moratorium on his term loan, credit card, and overdraft, and requested that they be consolidated into one loan account. The Complainant attests that he was told by the Provider that an application could only be made for a moratorium of **six months** duration, and after making the application, he was informed on **24 December 2018** that his application was refused because future earnings could not be proven. The Complainant states that he was given no further options by the Provider, and he was asked to continue making any outstanding payments.

The Complainant states that he returned to employment in **March 2019**, and proceeded to pay all outstanding payments and interest accrued on his credit card and mortgage loan. The Complainant says that the Provider revoked his credit card after he made the repayments.

The Complainant states that he was refused an application for credit with a third-party provider, because the Provider had revoked his credit card. The Complainant contends that he paid the outstanding amounts on his credit card before it was revoked, and that the Provider's action led to the refusal of the application with the third-party provider.

The Complainant states that, in **November 2019**, he sought to merge his mortgage loan and overdraft into one account, which was refused by the Provider. The Complainant says that he had to attend a number of different locations in order to communicate with the Provider after this, and that he was "*given no proper means of communicating*" with the Provider in relation to his requests.

The Complainant also complains about discrepancy in information furnished to him by the Provider further to his Data Access Request. He states that there were additional telephone calls that were not supplied by the Provider further to his previous request for telephone call recordings, and that the Provider "*seem[s] to be selective*". He states that there was no recording from a Christmas Eve phone call "*to tell me they were unwilling to do anything for me*" and a call where "*their own staff expressed that the treatment was harsh*".

At the time when he made the complaint to this Office, the Complainant indicated that he believed that the amount of undue stress, time and effort which the Provider had caused him in its dealings with his finances should be compensated, but that his "*overriding aim is to restore my credit rating which has been so adversely affected by their actions.*"

The Provider's Case

The Provider states that the Complainant's loan account had been topped up, on **10 August 2018**, and went into arrears on **5 November 2018**. The Provider says that it contacted the Complainant by phone on **19 November 2018** to request a lodgement to the loan account. The Provider states that the Complainant explained his employment situation to it, and that he would clear the arrears, with an upcoming expected payment.

The Provider states the Complainant asked to restructure his mortgage loan, his credit card, and his overdraft facility into a single loan, and he sought a **three-month** moratorium on the loan repayments and set out that he expected his employment to resume in **February or March 2019**.

The Provider states that this application was commenced on **19 November 2018**, and that it produced its decision on **24 December 2018**, when the application was rejected, because the Complainant could not produce "*clear evidence of repayment capacity as [the Complainant] had no confirmed offers of employment*". The Provider says that it stated it

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would leave the application open, in the event that the Complainant's employment circumstances showed evidence of change. The Provider states that, after leaving messages, further to its attempts to telephone the Complainant on **14 January** and **25 January 2019**, "*it does not appear that [the Complainant] called us*" and the Provider cancelled the application on **17 April 2019**.

With regard to the Complainant's credit card, the Provider states that it wrote to the Complainant on **2 October 2018** to request the Complainant to make a payment to reduce the balance on the card, as it was over the approved limit. The Provider says that it wrote to the Complainant five times and telephoned him eight times between **2 October 2018** and **13 February 2019** to request him to make a lodgement on the credit card account, and the Provider "*explained the impact if the arrears continued*". The Provider states that voice messages were left where the Complainant did not answer the calls, and that the Provider has no evidence of the calls being returned until **13 March 2019**, after the credit card was revoked.

The Provider also stated that it is "*unable to amend [the Complainant's] record with the Irish Credit Bureau and Central Credit Register*".

In its response to the formal investigation of this Office in **March 2021**, the Provider acknowledged a failing insofar as it failed in late 2018, to formally document in writing the reasons for rejecting the Complainant's loan restructuring application. The Provider also stated that:

"on reviewing this complaint and taking account of the unique circumstances that the Complainant was facing in his personal life when the arrears accrued on his credit card facility and that he informed the Bank he was awaiting a settlement payment as part of a legal dispute which he subsequently used to clear and close the outstanding balance on his credit card facility, the Bank considers the revoking of the Complainant's credit card to have been unfair and premature and the Bank apologises for this."

The Provider confirmed that it had "*cleared the missed payments and the revoked status recorded on the credit card*" and updated the relevant credit agency references to reflect that the credit card account was closed, rather than revoked. The Provider also offered a "*goodwill gesture*" to the Complainant, in the amount of €2,750.

The Complaint for Adjudication

The complaint is that the Provider maladministered the Complainant's credit facilities in the period from **November 2018** to **March 2019**, including proffering poor customer service during the restructuring/moratorium application, wrongfully revoking his credit card, and wrongfully reporting negative indicators to credit reference agencies about his credit card facility.

The Complainant has sought for the Provider to restore his credit rating and that *“the amount of undue stress, time and effort [the Provider] has caused me in their dealing with my finances should be compensated”*.

Decision

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

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

A Preliminary Decision was issued to the parties on **29 March 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.

The Complainant was informed by letter dated **18 January 2021** that any suggested breaches of Data Protection legislation are matters for the Data Protection Commission. He was also informed that when issues of sustainability/repayment capacity are in dispute, this Office will not interfere with the commercial discretion of a financial service provider, but will investigate a complaint as to whether that provider, in handling a mortgage arrears issue/credit application, correctly adhered to its regulatory and/or legislative obligations.

The detail of any renegotiation of the commercial terms of a mortgage loan is a matter between the provider and the customer, and does not involve this Office, as an impartial adjudicator of complaints. The Financial Services and Pensions Ombudsman will not interfere with the commercial discretion of a financial service provider, unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to a Complainant, within the meaning of **Section 60(2)** of the ***Financial Services and Pensions Ombudsman Act 2017***.

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Prior to considering the substance of the complaint, I consider it useful to set out certain of the relevant terms and conditions of the Complainant's credit card account, which include the following provisions:

Monthly Statements and Payments Arrangements

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The initial payment will fall due within the period chosen on the application form following the first use of the Card. Each month the Cardholder must make the minimum payment to the account as stipulated in the Statement for that month.

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The Cardholder must pay on demand, and in any case, on receiving the statement:

- *any outstanding excess over the Credit Limit;*
- *any errors; and*
- *the amount of any Transaction made in breach of these Conditions.*

...

Ending the Agreement

...

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If ... you breach this Agreement or any other agreement with us, we (having served on the Cardholder any notice required in accordance with the Consumer Credit Act, 1995) may suspend any Card, end the Agreement, cancel all Card(s) and/or refuse to issue, renew or replace any Card whereupon you must cut all physical Card(s) in two (through the signature box, magnetic strip and Chip) and return them to us and delete or unregister all related Digital Cards.

I note that the Complainant takes issue with a number of separate matters including the Provider's failure to sanction a request for a repayment moratorium. The Complainant has already been advised that the detail of any renegotiation of the commercial terms of a mortgage loan is a matter within the commercial discretion of the Provider with which this Office will not interfere, unless the conduct complained of is noted to be wrongful, within the meaning of **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017**.

Accordingly, this Office will examine the decision to decline the restructure request, only insofar as any irregularities may be identified in the process leading to that decision, and not by reference to the decision ultimately reached, that being a matter solely within the discretion of the Provider.

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Those suggested irregularities appear to me to be limited to the proffering of poor customer service during the application process. In addition to this aspect of the complaint, the Complainant takes issue with the cancelling of his credit card, and with the negative reports made to credit agencies.

Suggested Poor Customer Service

The Complainant contends that the Provider failed to afford him a head-to-head meeting. The Complainant also complains about a particular occasion when he was obliged to wait for two hours in a Provider branch, only to be redirected to make phone contact. The Complainant contends that he had to attend a number of different locations in order to communicate with the Provider after this, and that he was *"given no proper means of communicating"*.

As part of the evidence provided to this Office, the Provider included recordings of several phone calls. I note that on **5 November 2018**, the Provider rang the Complainant to advise that a direct debit payment in respect of the Complainant's loan account had failed and that the account had thus fallen into arrears. In the course of this call, the Complainant indicated that he needed *"to call in and have a chat with somebody there and help me just put everything on hold"* in circumstances where he was in a dispute with his employer, which was affecting his cash flow. The Complainant was advised of the moratorium options available and was invited to *"start the process over the phone"* which he was happy to do.

It is therefore apparent that, though the Complainant initially indicated a desire to attend in branch to discuss the desired temporary arrangements, he was happy to proceed to initiate the application during the phone call. No objection was raised to this manner of dealing and indeed it had the benefit of getting the process underway straight away.

The Provider points out, in its response to this Office, that if the Complainant had expressed a disinclination to address the matter over the phone, the Complainant *"would have been advised of the option of visiting one of the Bank's branches to discuss his request face to face"*. This seems to be a reasonable approach, but I am satisfied that the Complainant did not express any such disinclination.

With regard to the Complainant's general complaint and that he was *"given no proper means of communicating"*, I am not satisfied that this has been established by the evidence. The Provider has furnished evidence of regular letters as well as recordings of phone calls, both successful and unsuccessful (the latter involving the leaving of voicemails which included the provision of phone numbers to call back on). I note that these calls were made frequently throughout the period in question, and I don't accept that there was an absence of proper communication by the Provider.

With regard to the particular occasion (some 12 months after the decision to decline the restructure request) when the Complainant says he was obliged to wait for a prolonged period in a Provider branch, only to be redirected to phone contact, only then to be redirected back to a branch, the Provider has stated that it has no record of the

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Complainant's account information being accessed in either of the two branches, during the month in question. The Provider nonetheless says that it accepts that the Complainant attended at these branches on the day in question.

The Complainant has alleged that, in the course of the phone call in question, he was advised that, in terms of the in-branch service, *"it depends which branch you go to and who you get"*. The phone call in question was recorded and, having reviewed it, I am satisfied that no such statement was uttered by the Provider's employee.

Ultimately, this aspect of the complaint concerns the suggestion by the Complainant that he was redirected from one Provider employee to another, thereby wasting the Complainant's time. Whilst this would no doubt have been frustrating, there is no adequate evidence available in my opinion, which bears out this suggestion of wrongdoing by the Provider.

cancelling of Credit Card

The Complainant acknowledges that arrears developed on his credit card. He states that, due to matters outside of his control, he was unable to make the necessary payments for a period, but that in March 2019, upon achieving settlement of an employment claim, he *"paid back in full including all interest the €8,800 on the credit card"*. The Complainant states that the Provider *"subsequently"* revoked the credit card *"even though it was paid back in full"*.

The Provider disputes this timeline. The Provider states that the credit card was *"permanently cancelled... on 1 March 2019 with an outstanding balance of €7,709.09DR"* at a time when the approved limit was €6,600. The Provider states that the *"outstanding balance was cleared in full by the Complainant on 2 April 2019"*. The Provider has also furnished correspondence regarding this account, notifying the Complainant of arrears on the account

Prior to the cancellation of the account, I note that the Provider wrote to the Complainant on **29 January 2019** in the following terms:

We would like to draw your attention to provisions relating to the "Ending of the Agreement" contained in the agreement between us governing the use of your credit card ("the Agreement").

As your account is in arrears, in accordance with the terms and conditions governing the use of your credit card account you are not entitled to use your credit card. Any transactions that you attempt to carry out will not be authorised.

You must immediately make a minimum payment of €848.20 in order to bring your account up to date. If this minimum payment is not received within 21 days from the date of this letter, we will terminate the Agreement and your credit card facility will be permanently cancelled.

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Details about you and your borrowings, including any arrears and the fact that your credit card has been revoked may be reported to credit reference agencies, which may include the Central Credit Register which is maintained and operated by the Central Bank of Ireland. This may impact your credit rating, which could make it more difficult to get credit in the future.

Following the termination of the agreement any outstanding balance, including accrued interest, will be referred to our solicitors or debt collection agency for recovery on our behalf.

[my underlining for emphasis]

I note that the minimum payment referenced above was not paid within the stipulated 21 days and the account was then cancelled on **1 March 2019** following which a letter issued to the Complainant on 5 March 2019 informing him of the decision, and demanding payment of the outstanding balance.

By reference to the terms of the Complainant's credit card account (the relevant portions of which are reproduced above) I am satisfied that the Provider was entitled to cancel the Complainant's credit card account, when it so did. I am equally satisfied, with regard to this aspect of his complaint, that the Complainant has not demonstrated any evidence of wrongdoing by the Provider or conduct within the terms of **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017**.

Notwithstanding the above, the Provider, in its response to this office, has stated that, on review, *"the Bank considers the revoking of the Complainant's credit cards to have been unfair and premature"* and it has offered compensation, in part to reflect this matter. I am pleased to note the Provider's approach to this aspect of the matter, recognising the unfairness given the Complainant's particular circumstances, entirely separate from its strict entitlements pursuant to the terms and conditions of the account.

Negative Reporting to Credit Agencies.

This aspect of the Complaint is connected to the previous aspect of the complaint insofar as the negative reporting that issued to credit agencies arose in respect of the Complainant's credit card account, both in respect of missed payments and in respect of the revoking of the account. I note that the account was in arrears for 5 months at the time of cancellation (albeit, due to Provider policy to allow one month's grace, 4 months arrears only were reported).

The reporting of both arrears and cancelled accounts is a statutory requirement pursuant to the Credit Reporting Act 2013 and the regulations made thereunder. The Provider is obliged to make these reports. The Complainant's complaint under this heading could only be upheld if the Provider had made an error of some sort, in terms of the accuracy of its reporting, but I am satisfied that it did not make such a mistake.

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The regular arrears letters sent to the Complainant warned that “*continuing arrears may also be reported to credit reference agencies*”. Furthermore, the Provider’s letter of 29 January 2019 (set out above) afforded the Complainant ample notice of the reporting that would ensue in the absence of the necessary payment and in the event of cancellation. When those payments were not made within the stipulated period, the Provider was entitled, indeed obliged, to report the relevant matters to the credit agencies.

Notwithstanding the above, the Provider, in its response to this Office, has stated that in hindsight, it considered that it had been unfair to revoke the credit card and, as a result, it had “*cleared the missed payments and the revoked status recorded on the credit card*” and updated the relevant credit agency references to reflect that the credit card account was closed, rather than revoked.

I am conscious that when the Provider sent its formal response to this Office in **March 2021**, it made clear that it had amended the Complainant’s credit rating. This was the redress which the Complainant had indicated was his overriding concern, at the time when he made his complaint to this Office in March 2020.

Although the Provider was, strictly speaking, in accordance with its terms and conditions, entitled to revoke the credit card and to register the negative indicators against the Complainant’s credit card account, I am satisfied that the Provider’s approach to its investigation of this complaint was an appropriate one and the correction of the indicators registered with the Central Credit Register will have had an immediate and very beneficial impact to the Complainant’s credit rating and his ability to secure credit if he wishes to do so.

I also note that when responding to this complaint in March 2021, the Provider offered the Complainant a sum of **€2,750**, by way of recognition of the difficult situation that the Complainant found himself in, and the time and effort he had to take in order to pursue his complaint.

I am satisfied that this was a very reasonable approach by the Provider to the Complainant’s complaint and in circumstances where this compensatory offer has remained open to the Complainant for acceptance since March 2021, I do not consider it necessary or appropriate to make any further direction and it will be a matter for the Complainant to make direct contact with the Provider if he wishes to accept that payment, in order to conclude.

Accordingly, on the basis of the evidence available, I do not consider it appropriate to uphold this complaint.

Conclusion

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

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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)

22 April 2022

PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.