An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2022-0151
Sector:	Banking
Product / Service:	Personal Loan
Conduct(s) complained of:	Incorrect information sent to credit reference agency Failure to process instructions
Outcome:	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the Provider's administration of a loan account that was held by the Complainant since **21 September 2010**. The Provider, in respect of this complaint, is a Credit Union.

The Complainant's Case

The Complainant submits that he petitioned for bankruptcy in the United Kingdom on **17 December 2010** and that he was discharged from his bankruptcy by an English court on **17 December 2011**. He submits that the loan from the provider, pertaining to this complaint, was included in the bankruptcy.

The Complainant submits that despite his discharge from the bankruptcy in **December 2011,** the Provider has continued to send information on the loan in question to the Central Credit Register (CCR). The Complainant contends that this action on part of the Provider is inaccurate.

The Complainant contends that the Provider has stated to him that it would be happy to remove the loan in question from its reporting records to the CCR, but it says that in order to do so, it requires such direction from the CCR.

The Provider's Case

The Provider states that the liability of the Complainant to the Provider was reduced to a carrying value of zero in the books on **30 March 2011** *"in recognition of the diminution of asset value and in accordance with accounting requirements*".

The Provider contends that the liability continues to exist, and it maintains that the loan account remains, though it acknowledges that due to the bankruptcy, it cannot enforce the collection.

The Provider contends that a loan written-off in accounting terms, means that the lender does not count the money owed as an asset of the Provider anymore. Its financial statements reflect that change, and the lender is required to write-off bad loans, so that the financial statements "*give a true and fair view*".

In a final response letter dated **10 March 2021**, the Provider states that it had sought advice on the matter the Complainant raised and "*unfortunately, we are required to continue to report your loan to the Central Credit Register*".

The Provider states it is required to comply with the Guidance on the Central Credit Register. The Provider refers to page 50 of this Guidance document (Version 2.1) which states:

> "*PLEASE NOTE: Loans held by CISs that are subject to bankruptcy, judgment or insolvency service arrangement are reportable to the CCR unless there is a specific legal instruction not to do so.*
>
> *PLEASE NOTE: An event of bankruptcy, judgment or insolvency arrangements is not reportable to the CCR. All other data relating to these loans must be reported*."

The Provider states that it contacted the Stakeholder Engagement Unit of the CCR in the Central Bank by email on **17 April 2020** in relation to the Complainant's issue. In email dated **17 April 2020**, the Stakeholder Engagement Unit of the CCR replied as follows:

> "*…there is no specific field in the CCR for lenders to report bankruptcies, insolvencies etc, and they should continue to report the loan to the CCR, unless directed by the Court not to do so*."

The Provider further states in its final response letter that it would:

> "*…be happy to exclude your loan form our returns to the Central Credit Register (CCR). However, we risk being in breach of regulation by doing so, in the absence of such direction form the CCR*".

<u>The Complaint for Adjudication</u>

The Complaint is that the Provider has maladministered the Complainant's loan account in question, since **December 2010**, including that it has wrongfully continued to report to the

/Cont'd…

CCR in respect of the of the loan account, despite the Complainant being discharged from bankruptcy since **December 2011**.

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 **5 April 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 substantive submissions from the parties, within the period permitted, the final determination of this office is set out below.

I note that the Provider and the Complainant entered into a loan agreement on **21 September 2010** for the amount of **€28.173.47** (twenty-eight thousand one hundred and seventy-three euro and forty-seven cent).

This loan comprised the refinancing of an existing loan of **€25,373.47** and an additional loan of **€2,800** (two thousand, eight hundred euro). The interest rate was 10.25% and the loan was to be paid on a weekly basis with the term of the loan finishing on **26 November 2013**. The Complainant failed to repay the loan and some three months later, he entered bankruptcy in the United Kingdom on **17 December 2010.**

I note that the Provider sent a letter to the Complainant dated **3 February 2011** stating that he was in arrears for a loan with the Provider for the amount of **€2,961.38** (two thousand nine hundred and sixty-one euro and thirty-eight cent).

According to the copies of the Provider's monthly return submitted to the CCR from 30 June 2017 to 31 August 2021, as at **31 August 2021,** the Complainant owed **€22,157.50** (twenty two thousand, one hundred and fifty seven euro and fifty cent) in respect to the loan, which was noted as "*active*" in the Provider's monthly return, with 125 outstanding repayments.

/Cont'd…

I note that the Guidance on the Central Credit Register provides that:

> "*PLEASE NOTE: Loans held by CISs that are subject to bankruptcy, judgment or insolvency service arrangement are reportable to the CCR unless there is a specific legal instruction not to do so……*
>
> *Sample Credit Status Reporting Scenarios*
> *…..*
>
> ***4. A CIP writes off the debt under a credit agreement internally, but continues to hold the CIS liable for the debt.***
>
> > *If a CIP has written off an exposure, but is continuing to hold the CIS liable for the debt under the credit agreement even if the CIP is not in active pursuit thereof, the CIP must continue to report this credit agreement as an active contract on the CCR.*
> >
> > *The CIP must only report Write-Off under the Credit Status data field where the account is to be closed, i.e. where the CIP is no longer holding the CIS liable for the debt under the credit agreement……*
> >
> > ***4.6.5 Closure of the contract…***
> >
> > *When the debt owed under a contract has been repaid, refinanced or written off, the CIP should reflect this at the next reporting date on the CCR…*
> >
> > *Where the closure of the credit agreement is as a result of a write-off, i.e. a write-off has taken place that was not part of a settlement with the CIS, the CIP must reflect this by reporting the following:*
> > - *o Write-Off under the Credit Status data field; and*
> > - *o Closed in Advance under the Contract Phase data field if the closure occurs earlier than the maturity date.*
>
> [My underlining for emphasis]

The Central Bank Borrower FAQs (Frequently Asked Questions) in relation to the Central Credit Register states:

> *"No information on bankruptcy, or OTHER personal insolvency arrangements is contained on the Central Credit Register.* ***If the bankruptcy or insolvency process resulted in a loan being written off, the lender will most likely report than (sic) loan as "written off". Information on this loan will remain on your credit report in line with our retention periods****. If the process did not result in loan(s) being written off*

/Cont'd…

by a lender, then it may be correct for the lender to continue to report the loan(s) as an active loan to the Central Credit Register.

So, while it may not be possible for the lender to pursue you for repayment of a loan following your discharge from bankruptcy or any other personal insolvency arrangement, lenders may still be obliged to submit information to the Central Credit Register for that loan.

You can read more about retention periods.

You may wish to take separate legal advice on this matter or refer to the Insolvency Service of Ireland for further information at www.isi.gov.ie."

[My Emphasis]

I further note that the Provider also sought clarification from the Central Bank regarding:

"*instances where a borrower is declared bankrupt…can I take it therefore that whilst an event of bankruptcy is not typically reported, the missed loan repayments continue to be reported*"

On **17 April 2020**, it received an email stating:

HI [redacted]
as per our recent call, please note that there is no specific field in the CCR for lenders to report bankruptcies, insolvencies etc, and they should continue to report the loan to the CCR, unless directed by the Court not to do so.

Best wishes

No evidence has been supplied of the contents of that telephone call, which may have offered better or more detailed guidance to the Provider, but this is unclear.

The Central Bank guidance referred to above makes clear that bankruptcy, does not of itself, result in an obligation being placed on a lender to cease reporting a loan to the CCR. However, it is also clear from the Central Bank Borrower FAQs regarding the Central Credit Register that if the bankruptcy process results in a loan being written off, then the loan will be reported as written off, to the CCR:

"No information on bankruptcy, or OTHER personal insolvency arrangements is contained on the Central Credit Register. ***If the bankruptcy or insolvency process resulted in a loan being written off, the lender will most likely report than*** *(sic)* ***loan as "written off". Information on this loan will remain on your credit report in line with our retention periods****.*

[My Emphasis]

/Cont'd…

When the Provider was asked by this Office during the investigation of the complaint whether it had written off the loan, and whether it continues to hold the Complainant liable for the repayment of the loan (and if so why), the Provider's response was as follows:

> "[t]*he liability of the Complainant to [the Provider] was reduced to a carrying value of zero in the books of the [Provider] on 30/03/2011, in recognition of the diminution of the asset value and in accordance with accounting requirements. However, the liability continues to exist, and the loan account remains but, due to the bankruptcy, collection cannot be enforced. A loan written-off in accounting terms means that the lender doesn't count the money owed as an asset of the company anymore. Its financial statements reflect that change. The lender is required to write-off bad loans, so that financial statements give a true and fair view*"

The essence of the Provider's position is that it has written-off the loan internally, but it nevertheless continues to hold the Complainant liable for the loan. However, the Provider has offered no explanation as to why it continues to hold the Complainant liable for the loan (and report the loan accordingly to the CCR as being one which is "active", including details as to the number of outstanding payments) even though it is clear that the Provider had no remedy or means of recovering the loan from the Complainant, due to his discharge from bankruptcy.

The Provider maintains that it is legally obligated to report the loan to the CCR in the absence of a legal instruction not to do, which appears to be based on the information it received from the Central Bank of Ireland. This does not however explain why the Provider does not accept that the Complainant is no longer liable for the loan, following his discharge from bankruptcy in December 2011, or why it has not previously reported the loan to the CCR as having been written off from that date (in which case such information would have remained on the Complainant's CCR record for a limited period).

I note in this regard that the Complainant, was adjudicated bankrupt in the UK pursuant to the Insolvency Act 1986, and that section 281 of the Insolvency Act 1986 provides that

> *(1) Subject as follows, where a bankrupt is discharged,* ***the discharge releases him from all the bankruptcy debts****, but has no effect—*
>
> *(a)on the functions (so far as they remain to be carried out) of the trustee of his estate, or*
>
> *(b)on the operation, for the purposes of the carrying out of those functions, of the provisions of this Part; and, in particular, discharge does not affect the right of any creditor of the bankrupt to prove in the bankruptcy for any debt from which the bankrupt is released.*
>
> *(2) Discharge does not affect the right of any secured creditor of the bankrupt to enforce his security for the payment of a debt from which the bankrupt is released...*
>
> [My Emphasis]

As the Complainant's debt to the Provider at the time he entered bankruptcy was an unsecured debt, I take the view that the Provider's conduct with respect to the manner in

/Cont'd…

which it reported the Complainant's loan to the CCR, has been unreasonable within the meaning of ***section 60(2)(b) of the FSPO Act 2017***, particularly in circumstances where the Provider has acknowledged that "*due to the bankruptcy, collection* [of the loan balance] *cannot be enforced*".
In my opinion, when the Provider became aware of the Complainant's discharge from bankruptcy, it ought to have recognised that the loan was no longer recoverable from the Complainant from that time, and it should have moved to write off the loan balance, on that basis.

There is a statutory obligation on all regulated financial service providers, to report data relating to active loans, including payment performance. If, however, a loan has been discharged, or written off, then the obligation is to report it accordingly. If a borrower has been discharged from bankruptcy, it is the responsibility of the lender to determine based on that event, whether the loan can still be considered active, and reported on that basis to the Central Credit Register, or whether the outcome of the discharge from bankruptcy is such that the monies are no longer recoverable, and the loan is one for witing off.

I do not consider it reasonable that the Provider has continued, since his discharge from bankruptcy, to report the Complainant's loan to the CCR, on an indefinite basis, notwithstanding that it is clear that the Provider does not regard the Complainant's loan as active in any meaningful sense, nor does it consider the debt to be one where payments are ever expected to be made by, or recovered from, the Complainant. This position adopted by the Provider is one which would essentially defeat the purpose of bankruptcy and prevent the Complainant from forever achieving a credit profile which did not refer to this historical debt from which he was released in December 2011, upon discharge from bankruptcy at that time.

The bankruptcy itself, though not being a reportable event to the CCR, was likely nevertheless, to have had a very serious and negative impact on the Complainant's credit rating. This is because any loan write-offs that arose as a result of the bankruptcy were likely to have had a serious adverse effect on the Complainant's credit rating, in any event.

Neither should the Complainant's bankruptcy be equated with a return to credit worthiness, and it was likely that after December 2011, the Complainant would experience difficulties in accessing credit, even if his loan with the Provider had been written off by it, and then excluded from reporting, when the Provider, as a Credit Union became obliged to register details with the CCR in 2017.

Accordingly, on the basis of the evidence available, noting that the debt was written off by the Provider internally, and was not capable of being recovered from the Complainant because of his discharge from bankruptcy in December 2011, thereby releasing him from the debt, I do not accept that it was reasonable for the Provider to continue to hold the Complainant liable for the debt in question, or to categorise the loan as "active" and report it to the CCR on that basis.

I accept that the Provider may have been caused some confusion by the information available to it, in the particular circumstances that arose, but I consider it appropriate on the

/Cont'd…

evidence to uphold the complaint that the Provider wrongfully reported this unsecured loan account to the CCR, despite the Complainant being discharged from bankruptcy from December 2011.

Conclusion

- My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is upheld on the grounds prescribed in ***Section 60(2)(b).***

- Pursuant to ***Section 60(4)(a)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to rectify the conduct complained of by immediately notifying the CCR that the loan has been written off by the Provider, with effect from the date of the Complainant's discharge from bankruptcy, and by requesting the CCR to amend its records accordingly.

- 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)

4 May 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

/Cont'd…

(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.