



<u>Decision Ref:</u>	2022-0158
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Personal Loan
<u>Conduct(s) complained of:</u>	Failure to process instructions Disputed transactions
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint arises from the transfer of the Complainants' loan repayments to an incorrect third-party account.

The Complainants' Case

In a submission accompanying their Complaint Form, the Complainants explain that they held a loan account ending **8433** with the Provider. The Complainants further explain that they paid €100.00 per month to this account, up to **September 2016**, from an account held with a third-party financial service provider ("the third party").

The Complainants say that a standing order from the third party to the Provider was "*reset up*" on **27 September 2016**, due to lack of funds in the third party account. The Complainants state that the standing order was "*reset up*" again on **11 August 2017**. However, in respect of this standing order, the €100.00 per month payment was paid to a Provider account ending **5455**, which was not the Complainants' account.

In **December 2018**, the Complainants say they received correspondence from an asset servicing company acting on behalf of the Provider, in respect of an outstanding balance due to the Provider in the amount of **€2,687.65**.

The Complainants say they contacted both the Provider and the asset servicing company in relation to this letter and started to make payments of €300.00 per month to the asset servicing company. The Complainants say they made payments on **24 January, 7 February, 21 February, 8 March** and **26 March 2019**, while they investigated the matter with the Provider and the third party.

In the course of their investigations, the Complainants say they discovered that the €100.00 per month taken from their third-party account, which they had believed was being paid to their loan account, was in fact being paid to an account which was not theirs (account ending 5455). The Complainants say that when they investigated the matter further, they discovered that account ending 5455 was in credit, and the outstanding balance with the asset servicing company was €887.65 as of **2 September 2019**.

In resolution of this complaint, the Complainants stated, on their Complaint Form, as follows:

- “1. We would be grateful to have this issue resolved by carrying out an investigation into what happened*
- 2. Where did the money taken out of our account go to. Approx €2,387.00*
- 3. Why did it not go into the right account*
- 4. Any loss of credit rating and interest charges incurred to be resolved”*

The Provider’s Case

The Provider says that the Complainants’ inception date for their loan account was **30 March 2012**. The Provider says the Complainants borrowed the sum of **€7,866.69** which was subject to a variable interest rate of 13.15%.

The Provider says it has no knowledge of who set up the standing order in respect of account ending **5455** and that it was set up without any input from the Provider, its servants or agents.

In respect of this standing order, the Provider says that from the documentation submitted by the Complainants, this standing order appears to have been done online, with the third party. However, the Provider says it has no direct knowledge in this regard.

The Provider says that it would not be possible for an incoming standing order to be accidentally or unintentionally processed in a manner which would result in funds being

transferred to an account, other than the account of the documented intended recipient, which is identified on the instruction form.

In terms of the procedures and safeguards in place to avoid funds from an incoming standing order being unintentionally transferred to the wrong account, the Provider says, in the circumstances, this question would be more appropriately directed to the third party.

The Provider says that when the First Complainant telephoned on **11 August 2017**, he asked for the details of the loan account, for the purposes of setting up a standing order. As is clear from the recording of this conversation, the Provider says its agent gave the First Complainant the correct account details and advised him in relation to generating the appropriate IBAN and BIC.

The Provider says that the telephone conversation took place at 9:55am and while the Provider has no direct knowledge of the setting up of the standing order, it notes from the documentation submitted by the Complainants, that the standing order was set up at 11:09am the same day. The Provider submits that whoever made the mistake, in relation to the setting up of the standing order, it was not the Provider, its servants or agents. The Provider says that the Complainants and the holders of account ending **5455**, do not share the same initials.

The Provider states that the Second Complainant telephoned on **26 July 2019** to request statements in relation to the Complainants' account from inception. The Provider says its agent informed the Second Complainant that only four payments had been made to the loan account over the previous two years. The Provider says the Second Complainant expressed shock at this information, stating that thousands of euro worth of payments were unaccounted for. The Provider says its agent queried the repayment method and the Second Complainant stated that it was by way of standing order set up with the third party. The Provider says its agent advised the Second Complainant to make enquiries with the third party. The Provider says this is the earliest record on its systems, of there being any issue with the standing order in relation to the Complainants' loan account.

The Provider says that while it does not have a record of the specific date, once it had been established that the Complainants' standing order had not been set up correctly, the Provider made contact with the owners of account ending 5455, into which the standing order transferred monies had been paid. The Provider says these owners agreed to return the **€1,700.00** that had been paid into their account by the Complainants, and this sum was credited to the Complainants' loan account on **25 September 2019**.

In respect of the credit balance of €512.35 that remained on the loan account following this, the Provider says this amount was withdrawn on **9 October 2019** and the account was

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closed. The Provider says that no interest, charges or fees were applied to the Complainants' loan account between **September 2016** and **9 October 2019**, the date of closure of the account.

From a review of the statements of account, the Provider says that the Complainants' loan account first fell into arrears in or around **March 2015**. While repayments recommenced, the Provider says the loan account remained in arrears, with the arrears being "significant" in or around **March 2016**.

The Provider says that on **5 November 2018**, it appointed a collections agency. In summary, the Provider says the Complainants' loan account had been in arrears to some degree, since **March 2015**. While there had been numerous attempts on the part of the Provider to seek to address the arrears on the loan account, with initial engagement on the part of the Complainants with a view to restructuring the loan, the Provider says there was limited engagement from the Complainants, in the time leading up to **November 2018**. The Provider says that it had refrained from enforcing the loan up to that point, despite the significant arrears relative to the loan. The Provider further says that it could not reasonably, have been expected to continue to exercise forbearance, indefinitely.

The Provider says that the Complainants' record on the "Consumer Credit Register" currently reflects that there is a zero-balance outstanding on the loan account and that the account was closed on **9 October 2019**.

The Provider originally stated that the Complainants' credit rating has not been adversely affected by the events which are the subject of this complaint. In a submission to this office however on 25 March 2022, the provider clarified that, because the missed repayments associated with the standing order issue, were reported to the CCR, its previous statement was not entirely accurate. The provider also referenced the missed payments that preceded (and were therefore independent of) the standing order issue, which were also reported to the CCR.

The provider said, in those circumstances that although it would not, in other circumstances, have effectively expunged the Complainants' poor repayment history from the CCR, as a practical acknowledgement of its error, nevertheless it had now done so, in accordance with its discretion. Furthermore, the Provider advised that it wished to offer the Complainants a goodwill gesture in the sum of €1,000.00 in full and final settlement of their complaint, as an acknowledgement of the confusion and inconvenience caused by the error in the responses given to this Office.

The Complaint for Adjudication

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The complaint is that the Provider wrongly facilitated the payment of the Complainants' loan repayments to an account, which was not theirs.

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. 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 **3 September 2021**, 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

I note that the Complainants entered a Credit Agreement dated **29 March 2012** with the Provider in the amount of €7,866.69, repayable over a term of 84 months (7 years) by way of 182 repayment instalments and subject to a variable interest rate. The Provider's conduct, which is the subject of this complaint, began when the Complainants set up a new standing order in **August 2017**, for the purpose of making their loan repayments. In this respect, I note it is not disputed that the loan repayments were made to an incorrect account held with the Provider (account ending **5455**) which is not, and was not, owned by the Complainants.

The First Complainant telephoned the Provider on **11 August 2017** in respect of the loan account. During this call, the First Complainant explained that there had been some confusion between the Complainants as to who would be making the repayments, which resulted in neither party making repayments for some time.

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Later in the conversation, the First Complainant enquired as to whether he could make the repayments by direct debit. The Provider's agent then advised that if the First Complainant wished to set up a standing order, he would need the IBAN for the loan account. The Provider's agent asked the First Complainant whether he had internet access, to which the First Complainant responded that he did.

I note that the Provider's agent told the First Complainant that he would need to give the third-party provider of the paying account, the IBAN for the loan account, and explained how to generate the Provider's IBAN. The First Complainant then asked the Provider's agent for the loan account number. I note that in response to this, the Provider's agent gave the First Complainant the correct loan account number (ending 8433), which the First Complainant indicated he was writing down.

I note that the Provider's agent also gave the First Complainant the correct sort code for the loan account. Further into the conversation, I note that the First Complainant stated that he would then have to set up a standing order. The Provider's agent advised the First Complainant that if he preferred to make the repayments by cash, that he could do so, and that the Provider did not have a preferred payment method.

On considering the documentation provided by the Complainants as part of their complaint, I note that the Complainants have provided a copy of a third party 'Standing Order History Log' which indicates that a standing order was set up, to be paid from the Complainants' third-party account, as follows:

<i>"S/O No: 000004</i>		<i>Receiver Name: A AND B [Complainants' surname]</i>		
<i><u>Date</u></i>	<i><u>Time</u></i>	<i><u>Action</u></i>	<i><u>Channel</u></i>	<i><u>ID</u></i>
<i>11/08/2017</i>	<i>11:08:51</i>	<i>Setup</i>	<i>Internet</i>	<i>[ID]"</i>

The Complainants have also supplied a copy of a third party '**New Standing Order Confirmation**' which states that this document was printed at '**11:09**' on **11 August 2017**. It can be seen on this document that the 'Receiver's IBAN' is identified as a Provider IBAN ending in **5455** and, under the heading 'Receiver Details', the receiver's name is recorded as 'A AND B [Complainants' surname]'.

The Complainants have also supplied a further third-party document titled '**Standing Order Details**' in respect of this standing order, showing the 'Receiver IBAN' as a Provider IBAN ending in 5455 and the 'Receiver Name' as 'A AND B [Complainants' surname]'.

The evidence in this complaint shows that a standing order was set up on the Complainants' third-party account on **11 August 2017**. The evidence also suggests that this standing order

was set up online by, or on behalf of, one of the Complainants, and this appears to have occurred approximately one hour following the First Complainant's telephone conversation with the Provider's agent on **11 August 2017** during which the correct account details were identified by the Provider.

In respect of this conversation, I note that the First Complainant was provided with the correct account details for his Provider loan account and at no point was the First Complainant given details of the account ending in 5455. The documentation in respect of the standing order also shows that, from inception, the standing order contained incorrect receiver/recipient IBAN details, which appear to have led to the standing order amount being transferred to the Provider account which was associated with this IBAN (the account ending in 5455) rather than to the Complainants' loan account.

In the context of this complaint, it is my opinion that the Provider is not responsible for a standing order set up on an account held with another financial service provider, regardless of whether the purpose of the standing order was to facilitate the repayment of the Complainants' loan from the Provider, and regardless of the fact that the money was transferred (incorrectly) to a Provider account, held by a different owner.

Having considered the matter in detail, I note there is no evidence to suggest that the Provider was directly involved in the setting up of the standing order. In this respect, I note that the account on which the standing order was set up, was not a Provider account but was held with another financial institution (the third party). In such circumstances, it is my opinion that the Provider was not responsible for ensuring that the standing order was set up correctly, or for ensuring that it contained the correct information.

In a submission dated **5 January 2021**, the First Complainant refers to a letter from the Provider dated **12 July 2019**, *"to say that they had discovered a technical error with our account."* Having examined this letter from the Provider, I note that the technical error referred to in this letter, does not necessarily relate to a technical issue on the Complainants' loan account.

Rather, it related to an omission on the part of the Provider to include a particular passage in a letter (referred to by the Provider as a *'3 month Letter'*) previously issued to the Complainants in respect of the arrears on their loan account. As a result, I am satisfied that the technical error referred to in the Provider's letter, is unrelated to the conduct which is the subject of this complaint.

Arising from the Credit Agreement, it is my opinion that the Complainants were responsible for making the required loan repayments. In circumstances where I am satisfied that the Provider was not responsible for any errors associated with the standing order, it is also my

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opinion that the Provider cannot be held responsible for any adverse consequences arising from the Complainants' loan repayments not reaching their loan account, such as the application of additional interest, fees or charges; adverse credit reporting; or decisions regarding the collection or enforcement of the loan.

As the Provider was not responsible for the moneys being transferred by the Complainants to the wrong account, it cannot be responsible for the Complainants' failure to make their repayments to their loan as those payments fell due, or the consequences of those being reported to the CCR. Further to this, I note from the Provider's complaint response that arrears appear to have accrued on the loan account, and certain repayments had not been made, before the **August 2017** telephone conversation, and before the standing order set up at that time.

In particular, I note that the Provider wrote to the Complainants on **13 June 2017** in respect their "*current Loan arrears.*" In those circumstances, I am satisfied that any adverse impact on the complainants' credit rating, from those previously existing arrears, is an entirely separate matter from any suggested credit rating impact, arising from the events of August 2017 onwards, for which I have found that the Provider is not responsible.

In terms of the money transferred to account ending 5455, as a result of the standing order set up by the Complainants with the third party, I note from the evidence that the Provider appears to have engaged successfully with the owners of account ending 5455, and happily, the amount of **€1,700.00** which the Complainants had paid to the wrong account, was recovered by the provider, on their behalf and credited to the Complainants' loan account on **25 September 2019**.

While the parties have not supplied any evidence of the precise amounts transferred to account ending 5455, I note it is not disputed by the Complainants that the full amount to be refunded arising from the standing order error, was **€1,700.00**. Further to this, I note from the loan account statements that there does not appear to have been any interest, fees or charges applied to the loan account during the period from **11 August 2017 to 9 October 2019** (the date the loan account was cleared). I am satisfied that the provider has, in recent submissions clarified the position regarding the CCR report, insofar as it noted that:

"The Provider was obliged, under s.11 of the 2013 Act, to report all instances of arrears and missed repayments – however inadvertent – on the Complainants' loan account. In the circumstances, the Provider can confirm that it did in fact report every missed repayment, including (but not limited to) those that arose as a result of the standing order issue. In the Complainants' submission of 18 January 2022, they enclosed a single page of a 4-page CCR report which pertains to their loan account. That page has a section headed "*Historical Analysis*", which indicates that, on 28 February 2019 ("*Date of Maximum Number of Payments Past Due*"), the

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account was at its worst state of delinquency, in that there was €2,688.00 worth of arrears on the account at that time, which represented 38 repayment instalments (*"Maximum Number of Payments Past Due"*).

The Provider cannot account for there being such a section in the CCR report included in the Complainants' submission of 18 January 2022 (the Complainants suggest that the said report may have been produced in November or December 2021) where there is no such section in the CCR report included in the Complainants' submission of 14 October 2021 (that report indicating on its face that it was produced in October 2021). The Provider did not produce either CCR report; the CCR did. The Provider can confirm that the missed repayments were contemporaneously reported to the CCR at all relevant times and that no amendments to the CCR were submitted in 2021; any further queries in relation to the discrepancy between the two copy reports ought therefore to be directed by the Complainants to the CCR or to the parties from whom these reports were obtained."

I am satisfied to note the further confirmation from the Provider that:

"... the Provider's credit reporting department in January 2022 exercised a discretion available to it in the very narrow circumstances of the present complaint. An amendment was accordingly submitted to the CCR which should be reflected at the end of the month (March 2022). The Complainants' CCR report will therefore no longer indicate that there were such substantial arrears on the Complainants' loan account. It will instead report that, from June 2017 to September 2019, there was one payment continuously in arrears. This is a technical requirement imposed by the CBI, due to the debt ultimately being referred to a collections agency. It is a matter for the Complainants to make contact with the CCR pursuant to s.13 of the 2013 Act if they wish to add an explanation to their CCR report in respect of the relevant arrears; the Provider has no further function in this regard."

In these circumstances, I am conscious that, in the difficult circumstances in which the Complainants found themselves, the Provider has acted very reasonably in addressing the Complainants' situation. I also note the recent offer from the Provider to make a compensatory payment of €1,000 to the Complainants for the error in the information given to this Office originally, when responding to this complaint investigation. If the Complainants wish to accept that offer, they should make contact with the Provider as soon as possible, as the Provider cannot be expected to hold that offer open indefinitely for the Complainants.

Insofar as this complaint for adjudication is concerned however, for the reasons outlined above, in the absence of any evidence of wrongdoing on the part of the Provider, I do not consider it reasonable to uphold this complaint.

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Conclusion

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

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

6 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

(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.

